Breaking Up Is Hard To Do: Law Firm Break-Ups and Retirements on Insurance

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Insurance Considerations

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Agenda

- Claim Statistics
- Claims-Made & Reported
- Who is Insured?
- Extended Reporting Period / Tail Coverage
- Scenarios

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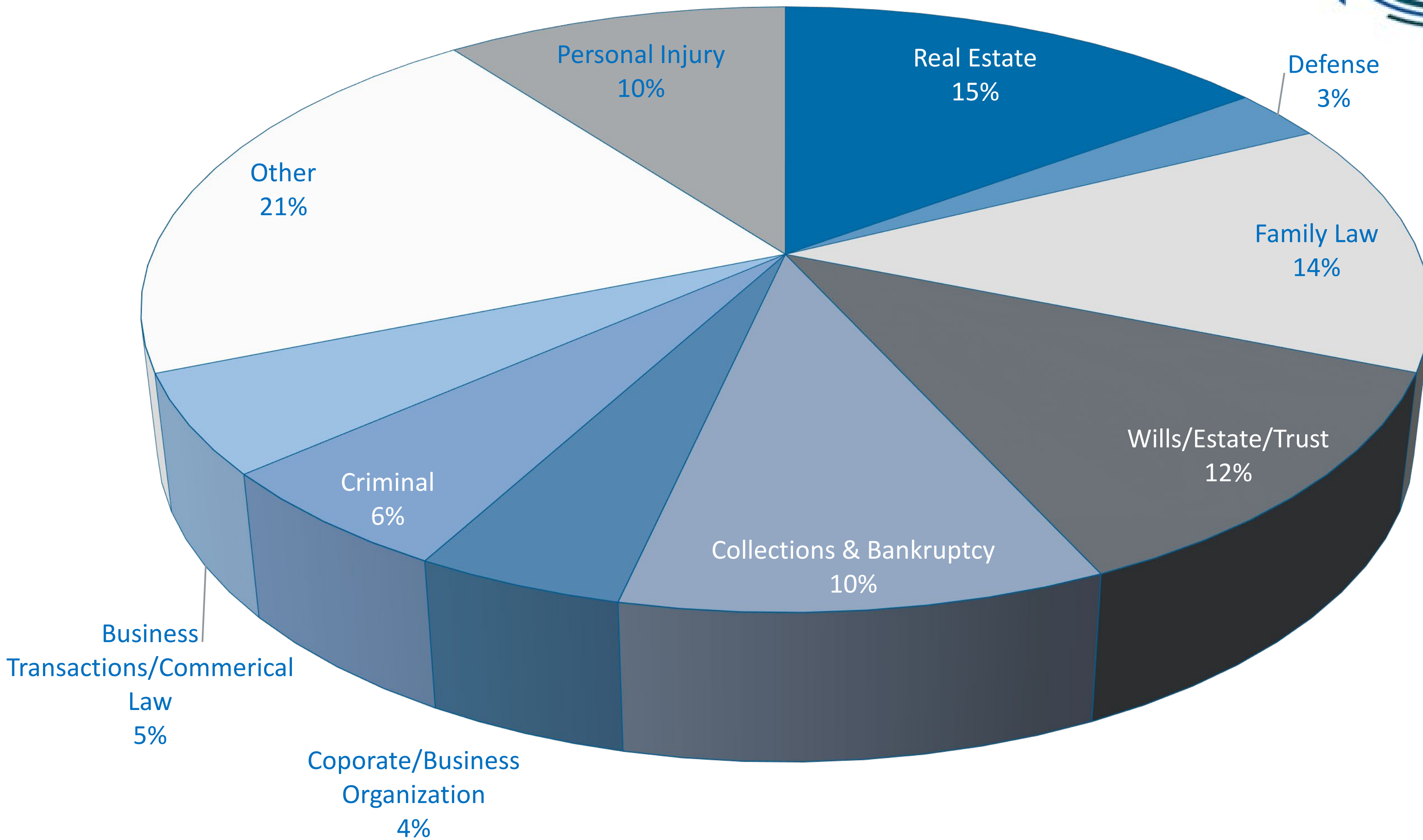
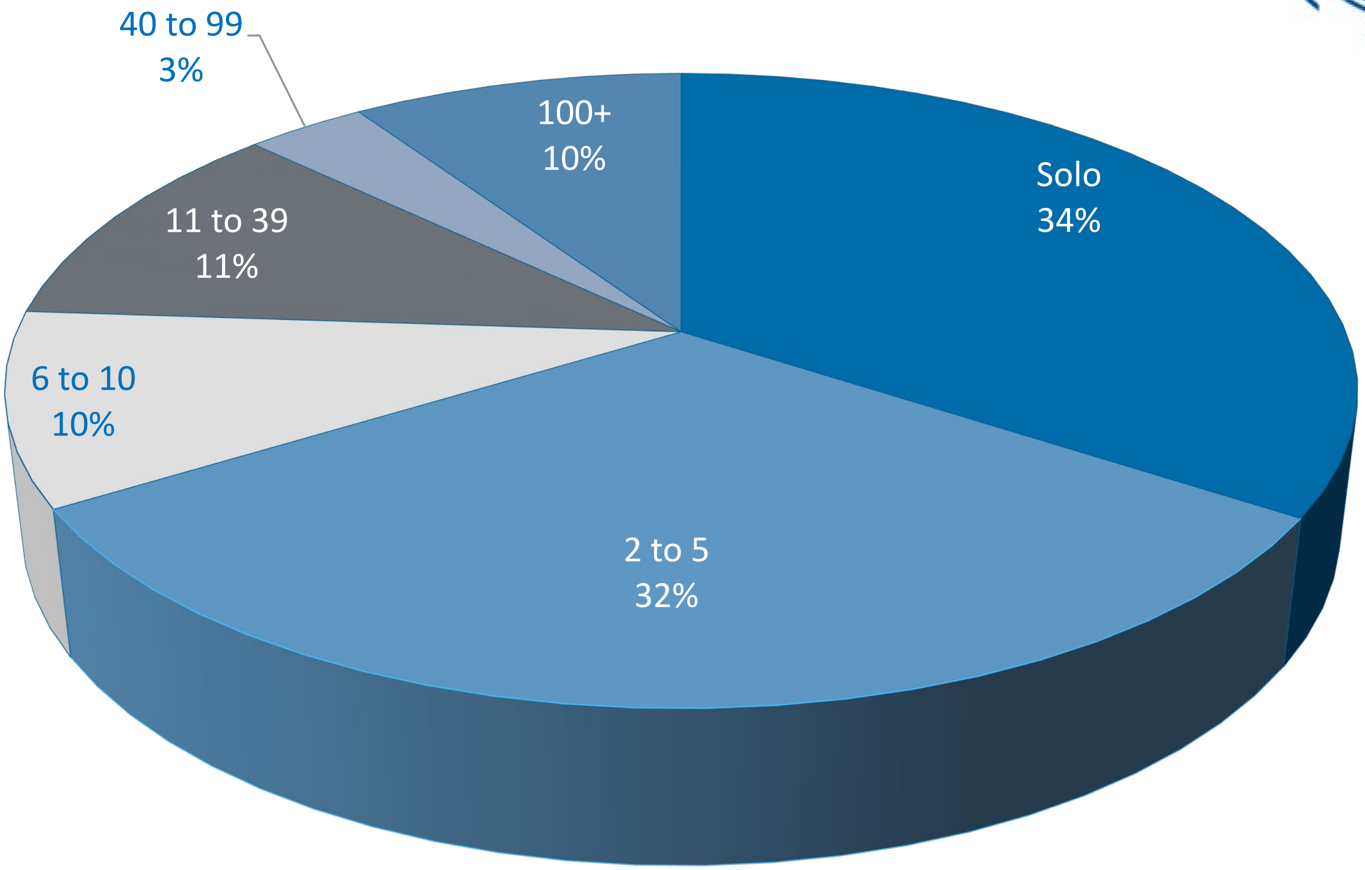
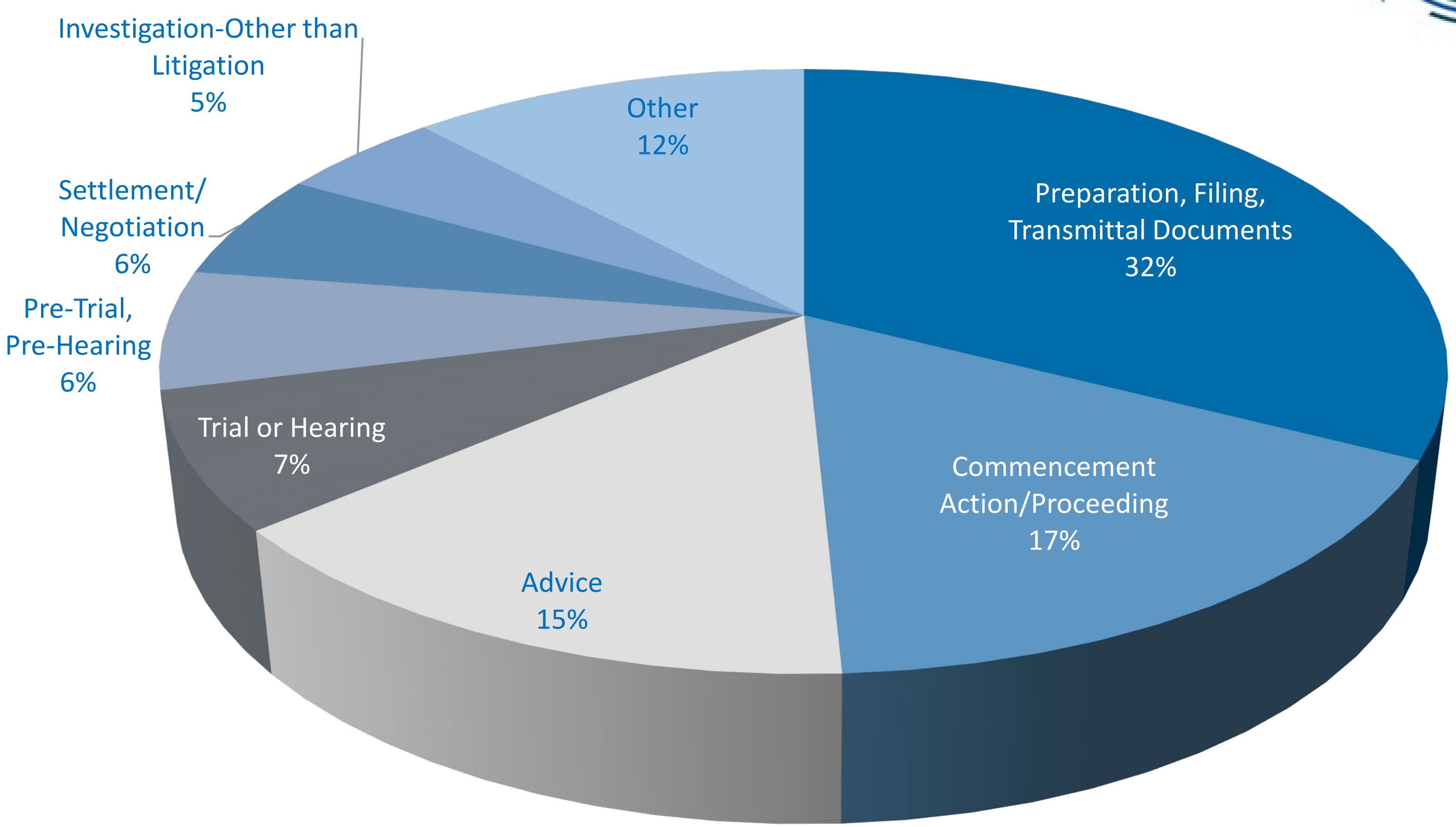
Claims by Areas of Practice



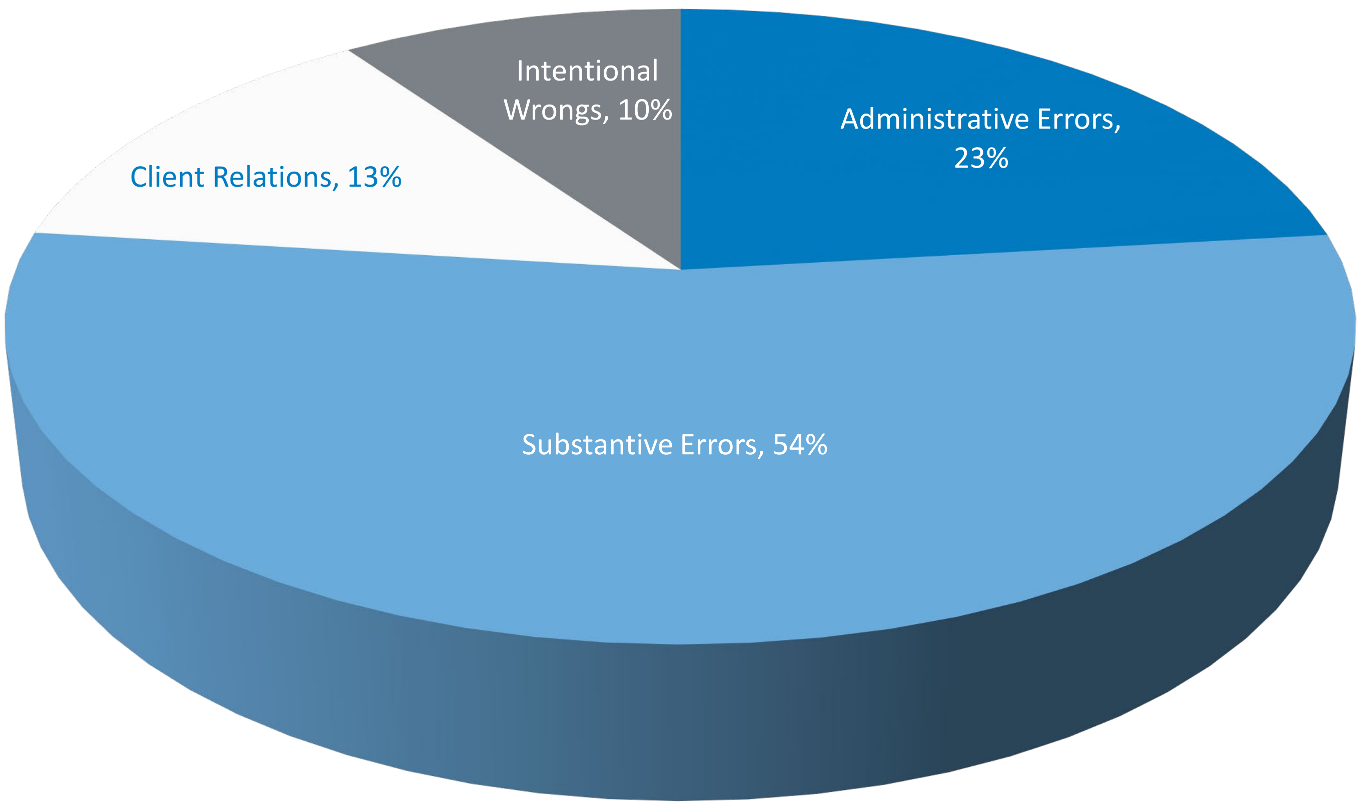
Percentage of Claim by Size of Firm



Percentage of Claim by Type of Error



Percentage of Claim by Type of Alleged Error



Claims Made vs. Occurrence Policy

Legal malpractice policies are "claims made" policies, as opposed to occurrence based policies:

- An occurrence-based policy covers losses that happen during the time you have the policy, regardless of when you file a claim
- Claims made and reported policies provides continuous protection for your prior activities as long as you have coverage and kept it active with no gaps
  - if a claim is first made and reported during the policy period (or extended reporting period) and the error or omissions occurred on or after retroactive date.

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Claims Made and Reported

"Claims-Made and Reported"

- LPL Insurance is written on a claims-made-and-reported basis
- Coverage is provided only for those claims that are both
  - First asserted by the claimant during the policy period and;
  - Reported by the insured during the policy period.
- Essentially, the insured law firm is covered only while the insurance policy is in force.
- When the policy expires, so does coverage.

Claims Made and Reported

Why do insureds delay reporting?

- May think a claim lacks merit and that they can self-defend.
- Failure to recognize that a claim has been made.
- Choose not to report a small claim that subsequently becomes a much larger claim.
- One member of the firm is “hiding” a claim from other members by, among other things, not reporting it.

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Prior Acts Coverage

- "Retroactive Date"
- The date continuous coverage was first obtained
- Claims triggered before this date are not covered
- Changing Carriers

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Who is Insured?

- The Named Insured
- Is coverage provided to:
  - Shareholders or partners?
  - Employees?
  - Former employees?
  - “Of Counsel” lawyers?
  - Independent contractors?
  - The estate/heirs/executors/administrators of an insured?

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Extended Reporting Period / Tail Coverage

An Extended Reporting Period (ERP), also known as "tail coverage," is coverage for claims that may be filed after the policy has expired, typically due to an attorney's retirement, leaving the practice, or the dissolution of the firm. Here are some key points regarding ERPs:

- **Purpose:** The main purpose of an ERP is to protect attorneys and the firm from potential malpractice claims that may arise after the policy has lapsed.
    - Coverage will date back to the firm's prior acts date
- **Coverage Period:** ERP's can extend coverage for a specified period, often one, three, or five years, depending on the policy and the insurer.
- **Cost:** Purchasing an ERP typically involves an additional premium payment. The cost can vary widely based on factors like the length of the extended period and the insurer's pricing structure.
- **Reporting Window:** There's usually a window of time (often 30-60 days) within which the decision to purchase an ERP must be made after the policy's expiration.

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Scenario #1 – Firm dissolves

- Firm dissolves with some partners forming new firms and other attorneys and partners joining other firms or leaving private practice
  - Insurance considerations:
    - Discuss with your insurance broker (who hopefully specializes in lawyers' professional liability insurance)
    - Option to buy tail coverage/ERP
      - 1 Year ERP – 75% of expiring premium
      - 3 Year ERP – 175% of expiring premium
      - 6 Year ERP – 225% of expiring premium
      - Unlimited ECRP – 250% of expiring premium

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Scenario #1 – Firm dissolves (continued)

- Risk management considerations & tips –
  1. **Plan ahead & discuss with your insurance broker**
  2. **Proper Client Notification**: Notify clients promptly about the firm's closure, and inform them of their options for obtaining their files and selecting new representation.
  3. **Document Transfer**: Keep detailed records of all file transfers, including dates, methods, and recipients. This helps demonstrate diligence in managing client matters during the transition.
  4. **Retention Policies**: Adhere to your jurisdiction's guidelines on file retention. Dispose of files in a manner that aligns with ethical and legal requirements.
  5. **Client Access**: Provide reasonable access to client files during and after the dissolution, ensuring that clients can retrieve their documents as needed.
  6. **Maintain Communication**: Keep open lines of communication with clients throughout the transition, updating them on the status of their matters and any changes in representation.

Scenario #2 – Solo attorney retires

Solo attorney decides to retire

- Insurance considerations – Retirement tail/ERP
  - **Retirement Tail could be free depending on your insurance provider
- Risk management considerations & tips –
  1. **Plan ahead & discuss with your insurance broker**
  2. **Proper Client Notification**: Notify clients promptly about the firm's closure, and inform them of their options for obtaining their files and selecting new representation.
  3. **Document Transfer**: Keep detailed records of all file transfers, including dates, methods, and recipients. This helps demonstrate diligence in managing client matters during the transition.
  4. **Retention Policies**: Adhere to your jurisdiction's guidelines on file retention. Dispose of files in a manner that aligns with ethical and legal requirements.
  5. **Client Access**: Provide reasonable access to client files during and after the dissolution, ensuring that clients can retrieve their documents as needed.
  6. **Maintain Communication**: Keep open lines of communication with clients throughout the transition, updating them on the status of their matters and any changes in representation.

Scenario #3 – Attorney leaves to join another firm

Attorney leaves a firm to join another firm, taking ongoing matters with him/her

- Insurance considerations –
  1. **Notify the Insurer:** The law firm of the departing attorney should inform the malpractice insurance provider of their departure. This ensures that the insurer is aware of the change in the attorney's status.
  2. **Firm's Coverage Continuation**: Confirm with the firm's malpractice insurer whether the departing attorney will still be covered for any work performed while at the firm.
  3. **New Employer's Coverage**: If the departing attorney is joining a new firm, they should ensure that their new employer has adequate malpractice insurance coverage in place.
  4. **Client Transitions**: Discuss with the firm how client matters will be transitioned, whether they will stay with the departing attorney or be handled by other members of the firm.
  5. **Keep Clients Informed**: Maintain open communication with clients about the attorney's departure and any changes in representation. Provide them with options and ensure their informed consent.

Contact Information

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Thank you!

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Greg Cooke is the Vice President at USI Affinity in their Lawyer's Professional Liability Division. He has extensive experience working with law firms, mainly focusing on their Professional Liability Insurance, Employment Practices Liability (EPLI) and Cyber Insurance. He is a regular speaker and panelist on Insurance and Risk Management topics relative to the legal industry.

Greg has 10+ years of experience in the insurance industry, specifically handling Professional Liability Insurance. Prior to joining USI Affinity, Greg spent over 5 years with Aon in a variety of different roles within Professional Liability Insurance. He handled both Lawyers and Insurance Agents, in both the admitted and non-admitted segments. Greg has now been with USI for over 9 years, with all of them dedicated to working with Law Firm's insurance needs.

Greg is licensed in all states for Property and Casualty. He graduated from Pennsylvania State University with a Bachelors Degree in Business Management.