

LEGAL MALPRACTICE: WHAT LAWYERS NEED TO KNOW AND HOW TO AVOID IT

DSBA CLE VIA ZOOM

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AND THE DELAWARE STATE BAR ASSOCIATION

WEDNESDAY, APRIL 26, 2023 | 12:00 P.M. – 1:00 P.M.

1.0 Hour CLE credits in Enhance Ethics for Delaware and Pennsylvania Attorneys

ABOUT THE PROGRAM

Join Mike Mooney, professional liability expert and Senior Vice President at USI Affinity, for a one-hour CLE Webinar. This seminar will help identify potential malpractice claims and provide steps you can take to reduce your risk.

SPEAKER

Mike Mooney
Senior Vice President, USI Affinity

Visit <https://www.dsba.org/event/legal-malpractice-what-lawyers-need-to-know-and-how-to-avoid-it/> for all the DSBA CLE seminar policies.

Please note that the attached materials are supplied by the speakers and presenters and are current as of the date of this posting.

Speaker

Mike Mooney

Senior Vice President, USI Affinity

Mike Mooney

Senior Vice President – Professional Liability Practice Leader



Mike Mooney is the Senior Vice President and Professional Liability Practice Leader for USI Affinity. Mike's responsibility is to drive growth and provide strategic leadership in the area of professional liability. Mike's key focus is the management and development of existing programs, new programs, business development and marketing planning. Mike oversees the underwriting, operations, risk management and sales departments that support the professional liability programs.

Mike is also responsible for coordinating the program management for USI Affinity's endorsed insurance programs, including The New York State Bar Association, The New Jersey State Bar Association, Pennsylvania Bar Association, DC Bar, Boston Bar, Delaware State Bar Association, and Exponent Philanthropy.

With more than 20 years of industry experience, Mike has worked extensively on many facets of insurance programs for professional service firms. Prior to joining USI Affinity, Mike spent over 8 years with Aon in a variety of management roles. Most notably, Mike was the Assistant Vice President and National Sales Manager for Aon Affinity's Healthcare Division and spent time as the National Sales Manager for the AICPA Accountant's Professional Liability Program.

Mike currently sits on the NYSBA Cyber Subcommittee, NJSBA Cyber Security Task Force, and the NYSBA Task Force on Attorney Well-Being. Mike spent 3 years on the NJ Supreme Court AD Hoc Committee on Attorney Malpractice Insurance. Mike served 3 terms on the Law Practice Management Services Committee of the DC Bar. In 2019, Mike testified in front of the NJ Assembly Judiciary Committee in favor of the passing of A-4880 which would provide legal malpractice reform in NJ. Mike is a regular speaker and panelist for the Law Practice Sections of the NYSBA, NJSBA, NJICLE, and DE State Bar regarding Insurance and Risk Management topics relative to the legal industry.

Mike holds a Property and Casualty Insurance License in New Jersey and National non-resident Producer License. He graduated from Rowan University in New Jersey with a bachelor's degree in Business Management.

Risk Management for Lawyers



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Mike Mooney
Partner/Senior Vice President
Professional Liability Practice Leader
USI Affinity

Questions

Email: Mike.Mooney@usi.com
Subject Line: Webinar Question
Body of email: The Question

Agenda



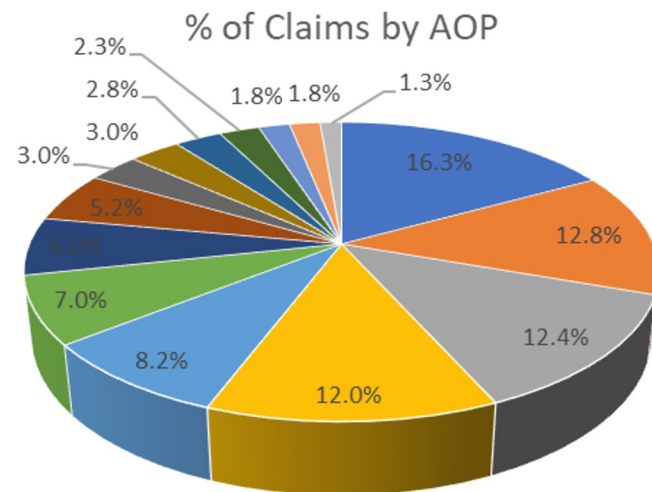
- Claims Observations
- LPL Considerations
- The Policy Form
- Risk Management

LPL Marketplace – Claims Observations



- Claim frequency levels have remained low for the past 5-6 years
- Reported claims frequency levels are an early indication of results in the small law space
- Since Covid-19 impact, claims reported frequency levels are at historic lows
- Claims severity is having a significant impact on large law results
 - Claim settlements now reaching over \$100M
- Defense costs are skyrocketing
 - Defense costs commonly blowing through the primary layer in large law
 - Claims teams seeking early resolutions to reduce litigation costs
- Courthouses across the country have been in shut down or some form of virtual operating mode with criminal cases taking priority in 2021
- Virtual mediations are very common
- Fraudulent wire transfer claims are on the rise
- Claim resolution levels are beginning to increase after a dip in 2020

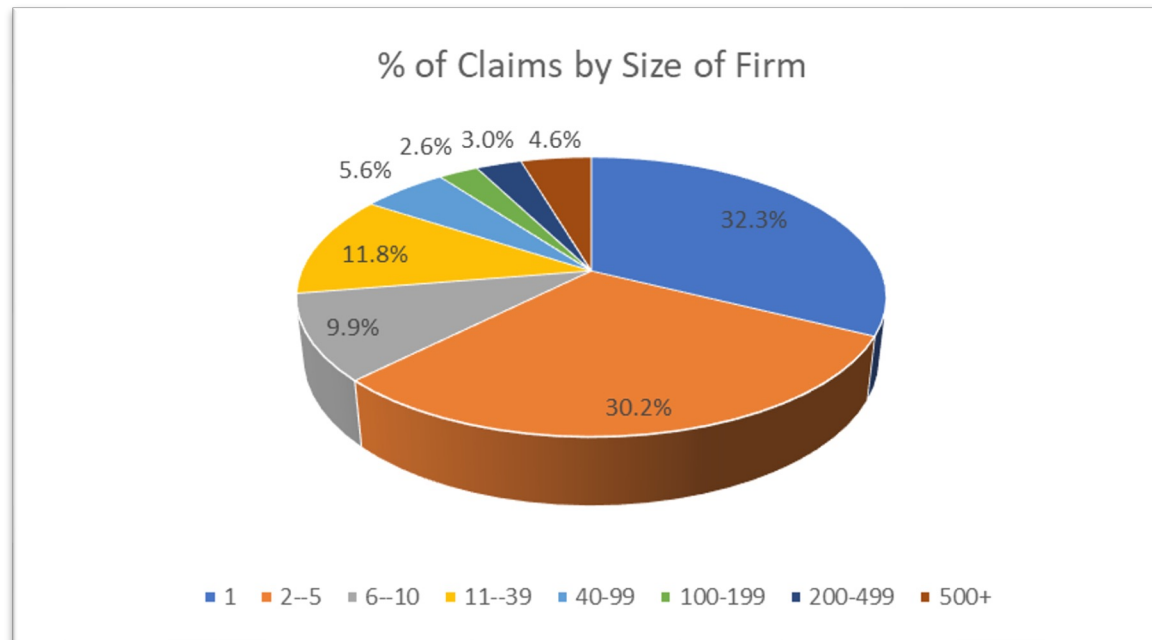
LPL Marketplace – Claims Observations



- Plaintiff- Personal Injury
- Family Law
- Real Estate
- Wills, Trust, Estate, & Probate
- Collections & Bankruptcy
- Commercial Law
- Criminal
- Corporate
- Patent, Trademark, Copyright
- Personal Injury - Defense
- Insurance Defense
- Labor Law
- Workers Comp
- Immigration
- Taxation

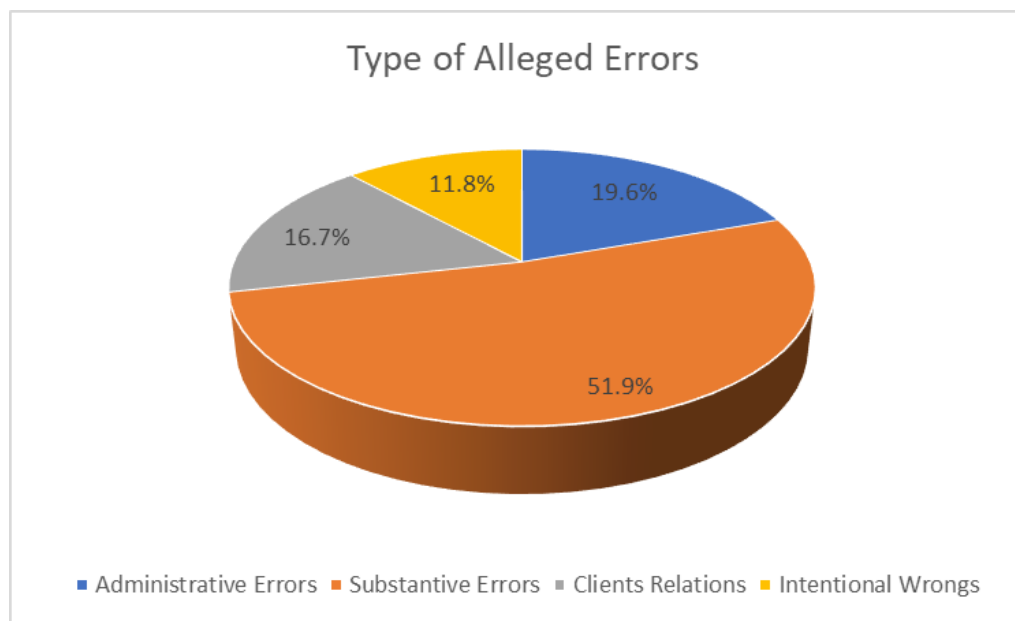
Source: 2020 ABA Claims Study

LPL Marketplace – Claims Observations



Source: 2020 ABA Claims Study

LPL Marketplace – Claims Observations



Source: 2020 ABA Claims Study

LPL Considerations



- Potential Billable Hours Lost
- Cost of Risk (Uncovered/Self Insured Risks)
- Emerging Risks
- Reputational Damage
- Cost of defending a claim

Claims Made vs. Occurrence Policy



- An LPL policy generally provides coverage for demands made upon the policyholder for damages brought forth during the policy period resulting from an error or omission within the firms covered prior acts date.
- An “occurrence” policy (such as a homeowner’s policy) normally insures an unexpected event within the policy period that result in bodily injury or property damage.

Prior Acts Coverage



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

Extended reporting periods



- “ECRP or Tail Coverage”
- Available for attorneys who retire from the practice of law
- Provides coverage for claims arising from conduct within the policy period which would otherwise be covered by the policy, but the claim is first made during the extended reporting period.
- Claim must have occurred while policy was in force.

Who is Insured?



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

Common Exclusions



- Intentional Acts
 - Dishonesty
 - Fraudulent or Criminal Acts
- Bodily Injury / Property Damage
- Insured vs. Insured
 - Unless Attorney Client relationship exists, and professional services are being rendered.
- Owned Equity
 - Normally greater than 10%-15%

What can cause premiums to be high?



- Step Rating
- Area of Practice
- Dabbling
- Geographic Location
- Attorney to Staff Ratios
- Retainer Agreements
- Docket Systems
- Fee Suits

What Policy features should I look for in my Liability Policy?



- ✓ Policy Features
 - ✓ Consent to settle Provision
 - ✓ Liberalization Clause
 - ✓ Choice of Counsel
 - ✓ Extending Reporting Period Options
 - ✓ Broad definition of legal services
 - ✓ Limited Exclusions
 - ✓ Deductible Reductions
- ✓ Supplementary Coverages
 - ✓ Disciplinary Proceedings
 - ✓ Subpoena
 - ✓ Loss of Earnings
 - ✓ Cyber Coverage

What is appropriate coverage?



- The dollar value of transactions or cases you work on
- The cost of defending a claim
- The value of assets you want to protect
- Potential billable hours lost

Risk Management



- Does the firm have procedures for identifying and resolving potential or actual conflicts of interest including cross-checking of former, existing or potential clients?
- Does the firm have a standard intake procedure?
- Does the firm regularly confirm representations in writing via use of formal engagement agreements? Disengagement letters? Nonengagement letters?
- Does the firm have at least 2 independently maintained docket systems?

Thank you!





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Contact Information

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