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ATG LEGAL EDUCATION

Understanding Exposures in a Legal Liability Claim

June 7, 2018

Presented by:

- **Brian Olson**
  Director of Member Services
  ISBA Mutual

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Lawyers' Malpractice Insurance

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Real Estate Case Study

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My Dog. Sunny

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Definition: Risk

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Definition: Liability

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Supreme Court Rules 721 and 722

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Definition: Exposure

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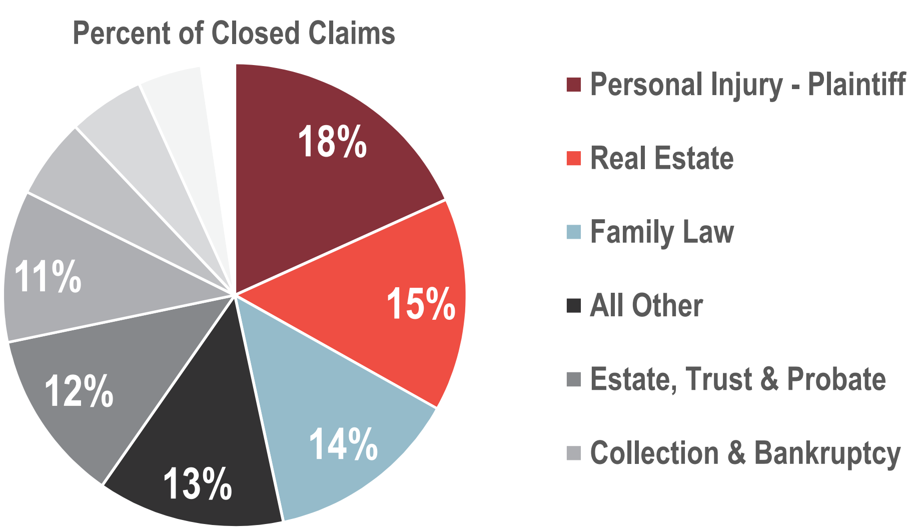
Top Five Areas of Practice with Highest Claims



Source: American Bar Association Standing Committee on Lawyers' Professional Liability *Profile of Legal Malpractice Claims 2012-2015*, 2015 Study

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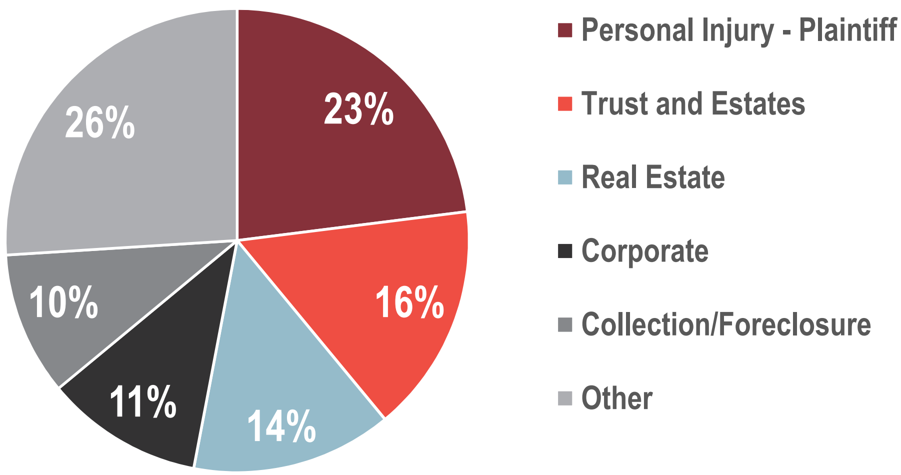
ISBA Mutual Top Five Claims

Percent of Closed Claims



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Firm Internal Procedures

- Client Intake
- Conflict of Interest
- Docket/Calendar Control System
- Individual Diary System
- File Review Process
- Billing Policy and Procedures
- Use of Engagement Letters/Disengagement Letters

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ISBA Mutual Real Estate Lawsuit

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- **Background**
  - In 2004, a judgment was obtained against the property owner of a building in Chicago and a judgment lien was placed against that building.
  - The owner of the lien later went into bankruptcy and the bankruptcy trustee became the holder of the judgment.

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- **Background**
  - In 2005, the property was foreclosed.
  - In 2006, the property was sold by the foreclosure bank to the plaintiff at a sheriff’s sale.
  - Shortly thereafter, the bankruptcy trustee intervened into the property foreclosure action and argued the original judgment ran with the property.

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- **Background**
  - In 2007, the foreclosure court agreed and the judgment became the responsibility of the plaintiff.
  - All of this transpired without any knowledge or involvement by our Insured.

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- **Our Insured**
  - After the bankruptcy court decision was reached, the plaintiff contacted our Insured to discuss the events.
  - Our Insured and the plaintiff are relatives and they had worked together on several real estate transactions previous to this, but our Insured was at no time officially involved in this transaction until after the judgment lien was found to run with the property.

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- **Our Insured**
  - Both the plaintiff and our Insured agree that, during the initial discussion, our Insured told him the judgment lien needed to be paid.

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- **Plaintiff Fails to Pay the Judgment**
  - Roughly one year later, the bankruptcy trustee served notice of a sheriff's levy on the plaintiff.
  - Plaintiff denied ever receiving the notice.
  - The property was sold to the bankruptcy estate.

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- **Plaintiff Fails to Pay the Judgment**
  - Eight months later, the plaintiff received notice of a motion to confirm the sale of the property to the bankruptcy trustee.
  - The plaintiff then contacted our Insured and a motion to quash was prepared.
  - Our Insured then engaged in discussions with the bankruptcy trustee and the plaintiff paid the agreed price to buy the property back.

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- **Lawsuit**
  - Six months after the plaintiff purchased the property from the bankruptcy trustee, our Insured was served.
  - He notified ISBA Mutual the following day.
  - The plaintiff sued the Insured for the difference between the settlement and the amount of the original lien and interest.

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- **Case Analysis**
  – What are the risks facing our Insured?
  – What are the potential liabilities facing our Insured?
  – What are the legal exposures facing our client in this case?

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- **Your Firm**
  – What are the big picture risks to your firm?
  – What liabilities are you currently exposed to?
  – What exposures is your firm currently facing?

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Loss Prevention

- Risk Identification
- Risk Prevention
- Risk Reduction
- Risk Transfer

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Loss Reduction: What Is an Incident?

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Better Than a Stick! Contact a Professional

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Policy Interactions

- Coverage Agreement
- Supplementary Payments
- Definitions
- Conditions

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Summary

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- Understand your exposures.
- Use engagement agreements and disengagement letters.
- Seek advice from a professional at the risk hotline.
- Have a plan for risk financing.

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Questions

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