DC Bar – Lunch & Learn
Malpractice Insurance for Solo & Small Firms

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Insurance Considerations

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Agenda

- The Policy
- Claims
- Prior Acts
- Who is Insured?
- Are all policies the same?
- **Cyber Insurance**
  - Why the need?
  - What is it?
- Selecting Appropriate Coverage
- Selecting a Carrier

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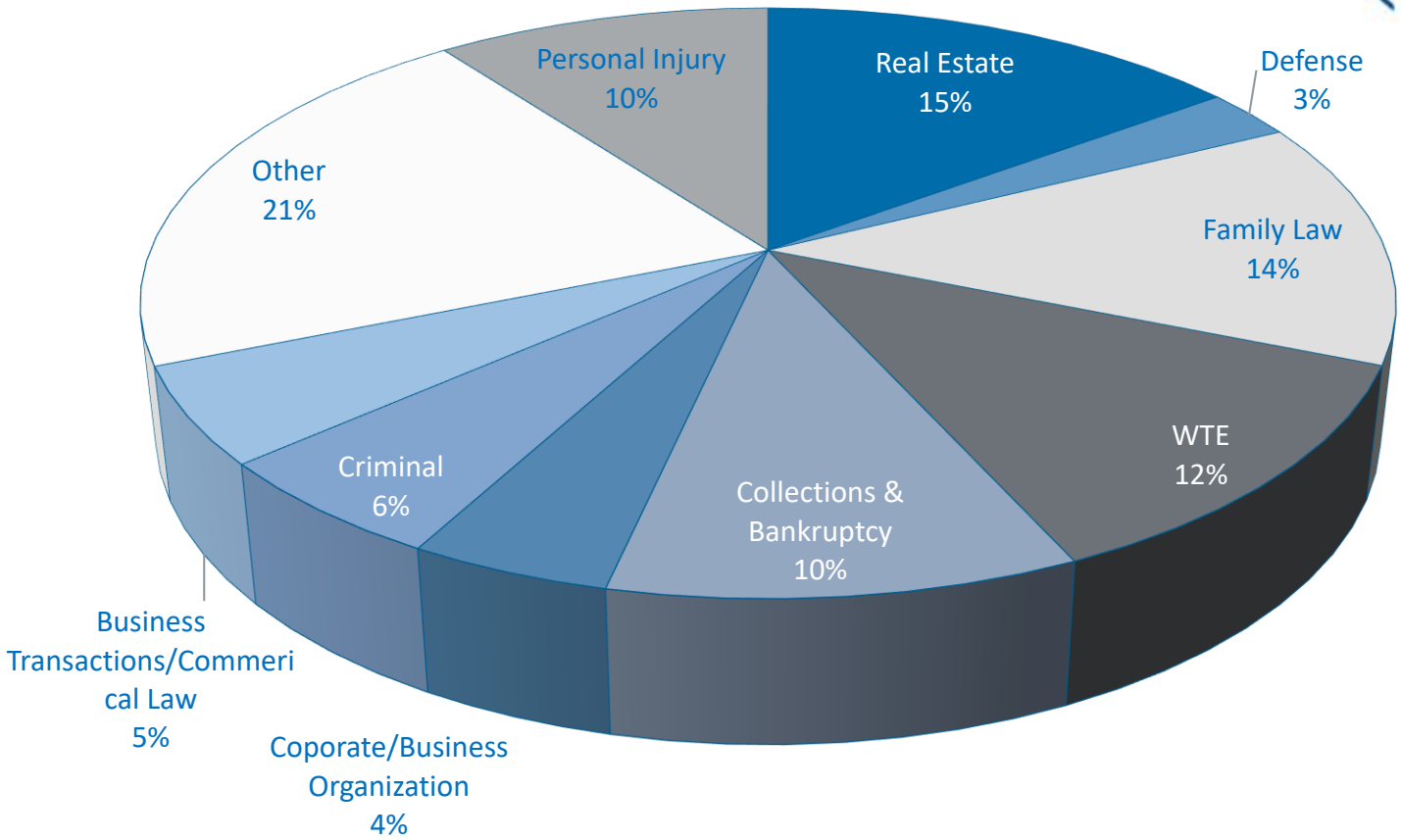
Claims by Areas of Practice



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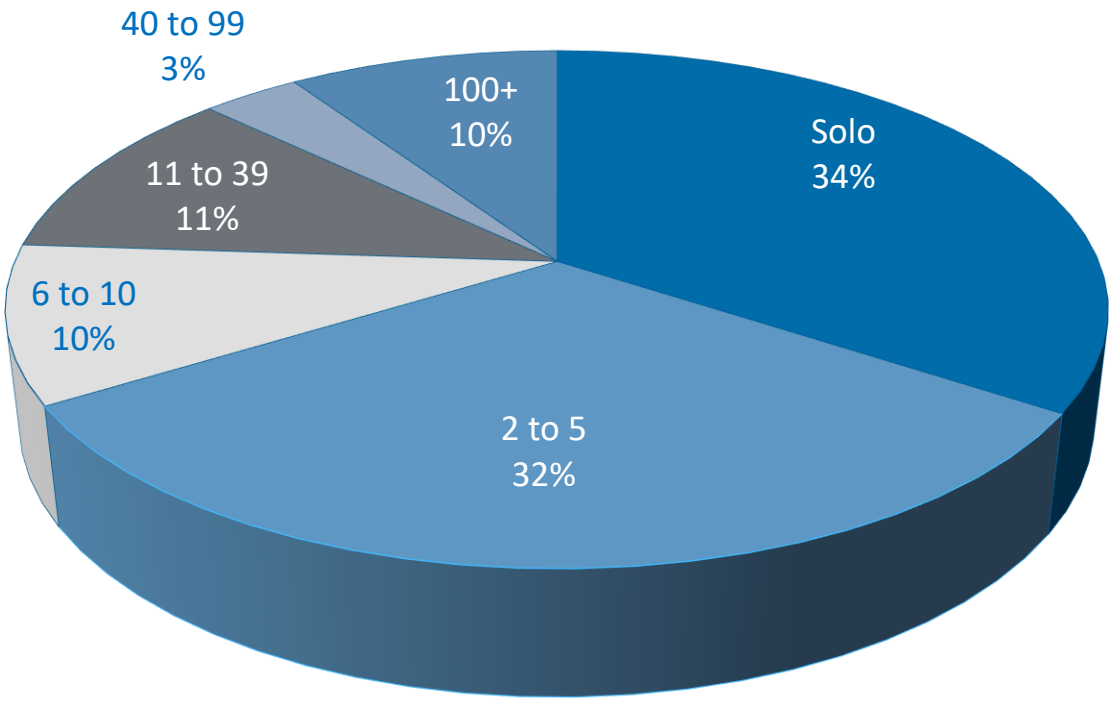
Percentage of Claim by Size of Firm



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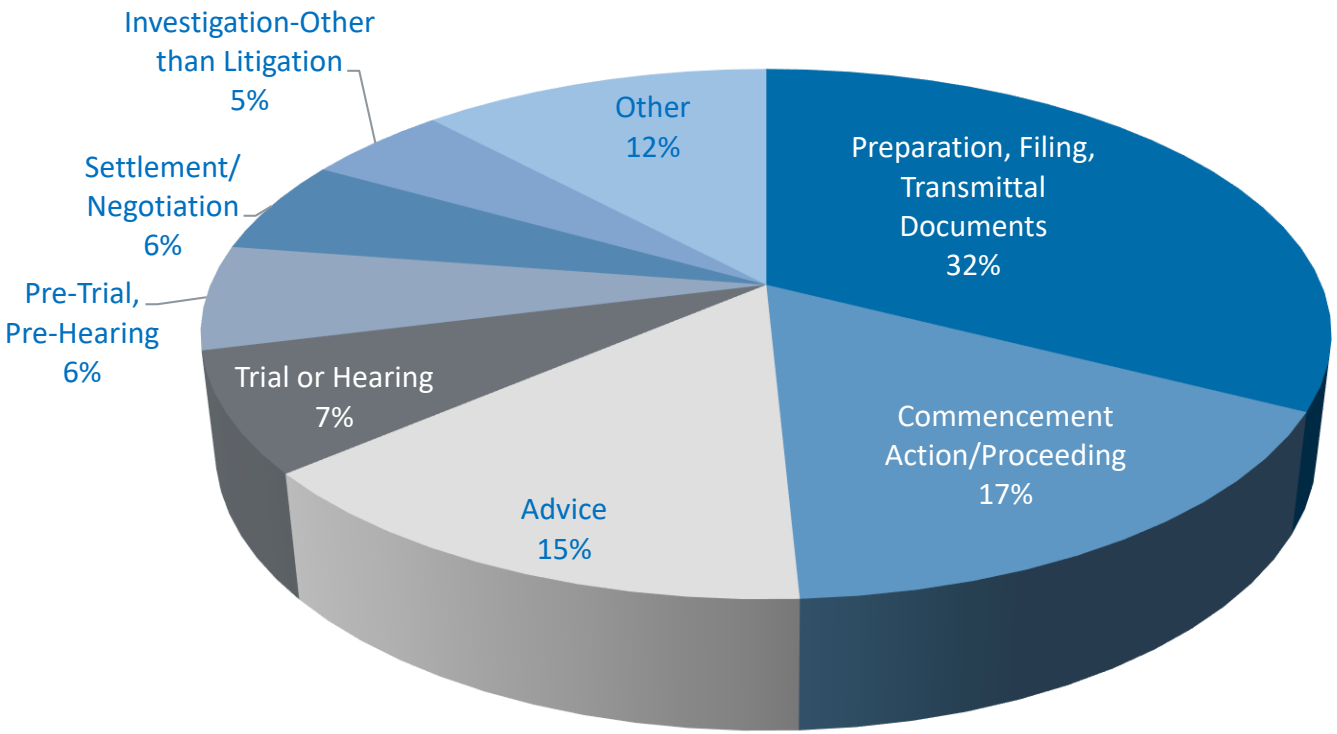
Percentage of Claim by Type of Error



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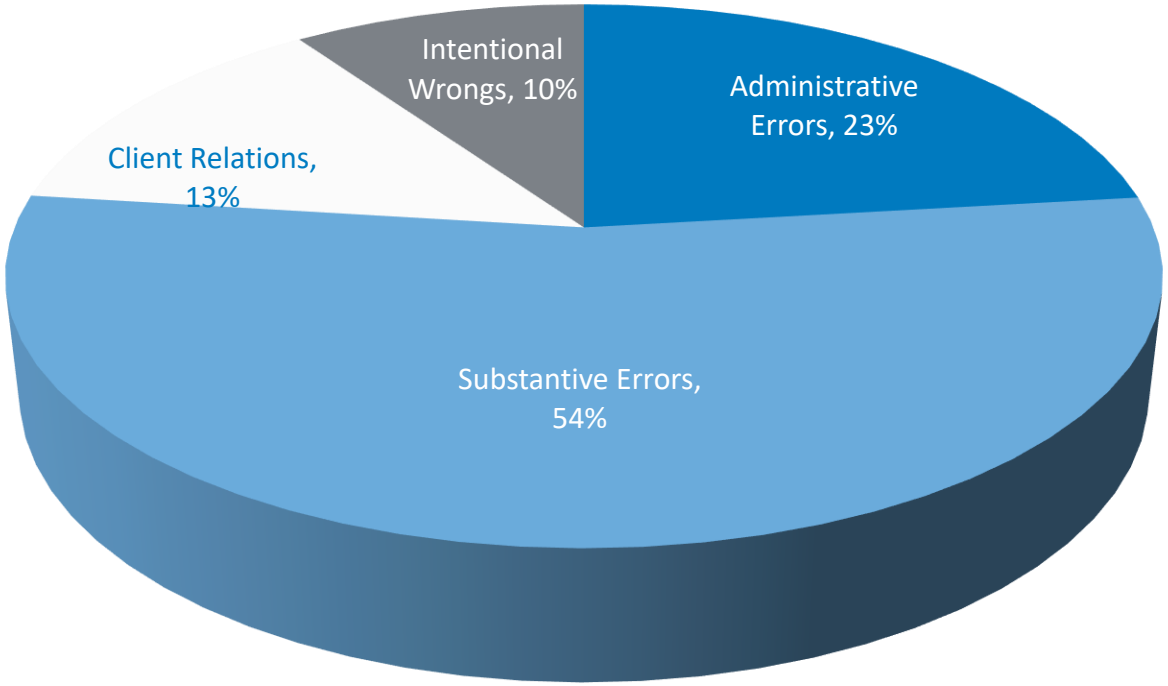
Percentage of Claim by Type of Alleged Error



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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.

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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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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.

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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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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%

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Proper and timely notice

- Report incidents or situations to your carrier immediately
- Provide written notice of claim
- These circumstances may be considered a claim:
  - A demand is received for money or services
  - Service of suit
  - Institution of alternative dispute resolution or arbitration proceedings
  - Disciplinary action is threatened or filed
  - Notice received by any insured that is the intention of a person or entity to hold the insured responsible for the consequences of an alleged wrongful act
  - Any request to waive a statute of limitations

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Are all insurance policies the same?

- Deductible Options (Per Claim vs. Aggregate)
- Expense Allowances (Inside Limits vs. Outside Limits)
- Definition of Professional Services
- Consent to Settle Provision
- Exclusions
- Supplementary Coverages
  - Disciplinary Proceedings
  - Subpoena
  - Loss of Earning
  - Public Relations Expense*
  - Breach Notification Expense*

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CYBER LIABILITY;

COVERAGE, UNDERWRITING AND CLAIMS

USI 2018 Cyber

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Why Law Firms?

- Why are law firms at risk?
  - Rich collection of confidential information
  - Security vulnerabilities
    - Lack of technology sophistication
    - Failure to detect a breach
  - Smaller law firms are easier targets than larger law firms

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Data Security Gaps

- Lost or stolen devices
- Wireless access
- Staff training
- Insider threats
- Cloud computing
- Lack of Encryption
- Lack of patching

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Insurance Coverage Gaps

	Property	General Liability	Crime/Bond	K&R	E&O	Cyber / Privacy
1st Party Privacy / Network Risks						
Physical Damage to Data						
Virus/Hacker Damage to Data						
Denial of Service attack						
B.I. Loss from Security Event						
Extortion or Threat						
Employee Sabatoge						
3rd Party Privacy/Network Risks						
Theft/Disclosure of private Info						
Confidential Corporate Breach						
Technology E&O						
Media Liability (electronic content)						
Privacy Breach Expense						
Damage to 3rd Party's Data						
Regulatory Privacy Defense/Fines						
Virus/ Malicious Code Transmission						

Coverage Provided:	
Limited Coverage:	
No Coverage:	

Traditional Insurance Gaps to name a few:

- Theft or disclosure of Third Party Information – GL
- Security & Privacy – "intentional act" exclusion – GL
- Data is not tangible Property – GL, Prop. and Crime
- Bi/PD Triggers – GL
- Value of Data if corrupted, destroyed or disclosed – Prop & GL
- Contingent Risks from external hosting, etc .
- Commercial Crime policies require "intent" and only cover "money securities and other Tangible Property"
- Territorial Restrictions
- Sublimits or long waiting periods applicable to any virus coverage available – Prop.

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What Does Cyber Insurance Cover?

Cyber Liability

First Party

Breach Notice Costs

- Forensic Investigation
- Crisis management/PR
- Notification costs
- Credit monitoring

First Party

Other Business Costs

- Business interruption
- Data repair /replacement
- Cyber-extortion
- Social Engineering

Third Party

Civil Lawsuits

- Consumer class action
- Corporate or financial institution suits
- Credit card brands
- PCI fines, penalties, and assessments

Third Party

Regulatory Actions

- State AG investigations
- FTC investigations
- Health & Human Services – OCR (enforcement arm)
- Foreign Privacy Entities

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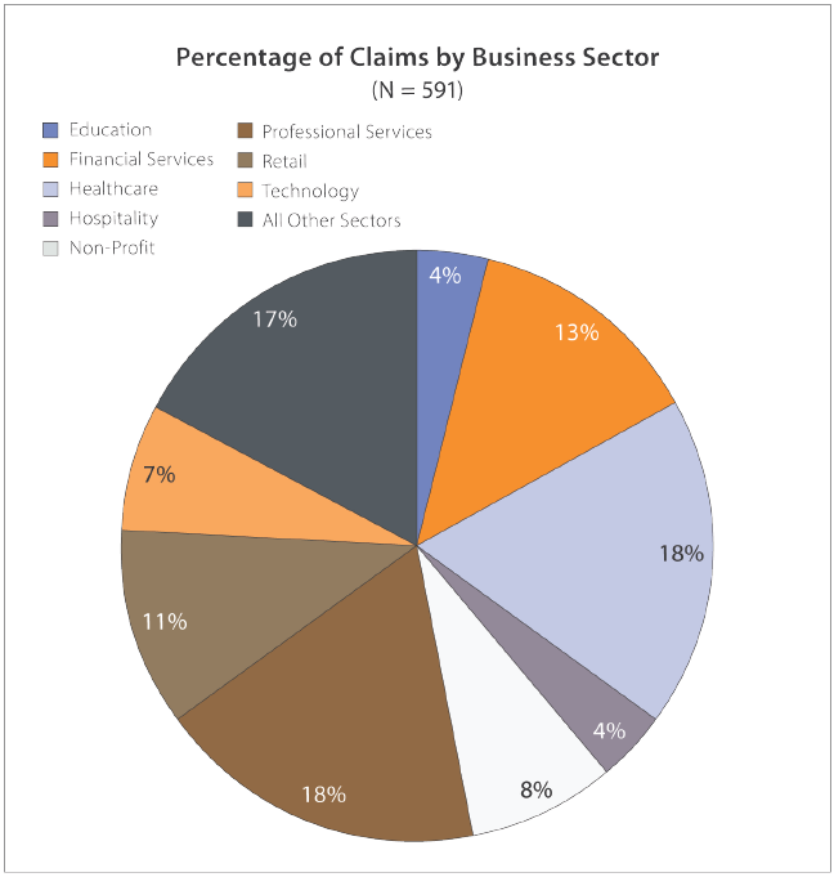
Claims Statistics



Source: NetDiligence 2017 Cyber Claims Study

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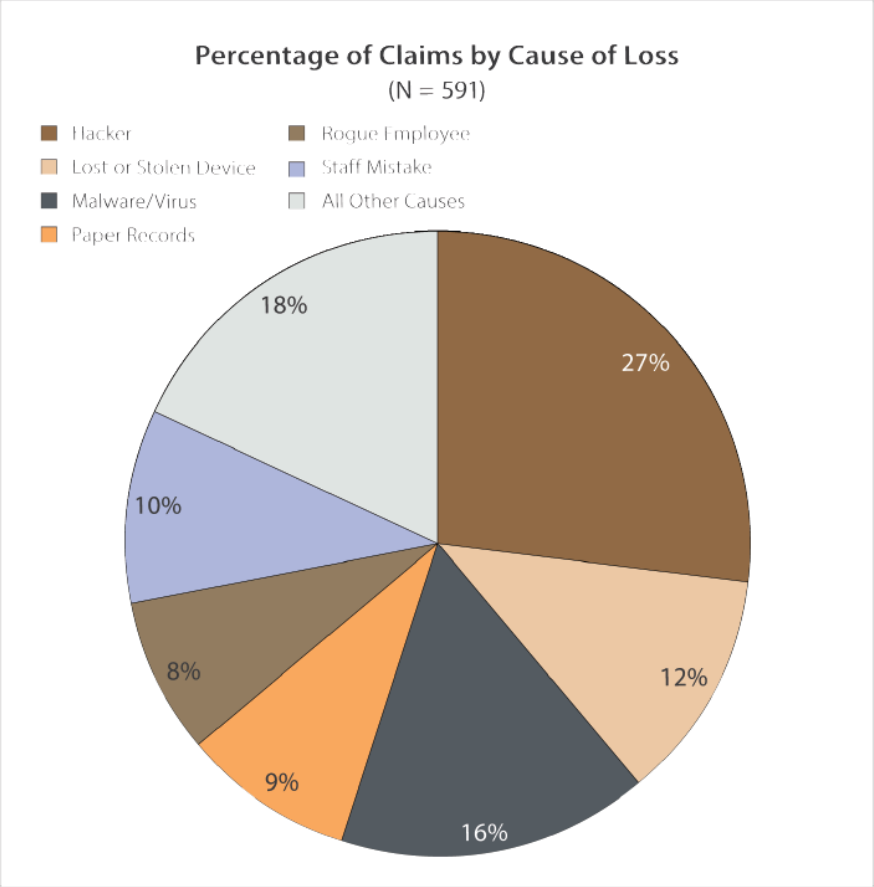
Claims Statistics



Source: NetDiligence 2017 Cyber Claims Study

- 27% - Hacker
- 16% - Malware/Virus
- 12% - Lost or Stolen Device

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Claims Statistics

Crisis Services Costs 2014–2017

	Cases	Min	Average	Median	Max
Forensics	276	265	141,479	35,175	3,860,000
Credit/ID Monitoring	118	10	112,886	5,511	2,000,000
Notification	138	14	234,011	13,323	5,520,000
Legal Guidance / Breach Coach®	341	112	53,133	14,922	2,500,000
Other	71	149	80,643	10,295	2,000,000
Total Crisis	**446**	**14**	**248,980**	**35,577**	**8,209,000**

Source: NetDiligence 2017 Cyber Claims Study

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Claims Statistics

Legal Costs—Damages Defense & Settlement 2014–2017

	Cases	Min	Average	Median	Max
Legal Damages Defense	64	319	120,606	15,500	2,500,000
Legal Damages Settlement	37	1,502	254,851	50,000	4,800,000

Legal Costs—Regulatory Defense & Fines 2014–2017

	Cases	Min	Average	Median	Max
Regulatory Action Defense	10	25,163	696,524	83,750	5,791,000
Regulatory Action Fines	2	28,943	44,634	44,634	60,324

Source: NetDiligence 2017 Cyber Claims Study

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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

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What can cause premiums to be high?

- Step Rating
- Area of Practice
- Dabbling
- Geographic Location
- Attorney to Staff Ratios
- Retainer Agreements
  - Engagement Letters
  - Disengagement Letters
  - No engagement Letters
- Docket Systems
- Fee Suits

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What features should I look for when selecting a Liability Carrier?

- Experience
- AM Best Rating
- Claims Handling
- Panel Counsel
- Distribution
- Risk Management Services
  - Website
  - Claims Hotline
  - CLE
  - Newsletter & Email Alerts

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Thank you!

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