



ALFA International
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IN THE EYE OF THE BEHOLDER:

Viewing Insurance & Professional Liability Legal Issues from Modern Perspectives

2022 Insurance & Professional Liability Seminar

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The Logan

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www.ALFAInternational.com

Presenters



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Agenda for Today

- Legal malpractice claims:
- Where we have been and where we are going
- New claim trends
- Advice to take back to the office

Where We Have Been: Claims in 2020 - 2021

- What occurred since we last met in person?
- Legal Malpractice claims increased in 2019, but leveled off in 2020
- Claim severity remains at all-time highs

Claimants be like ...



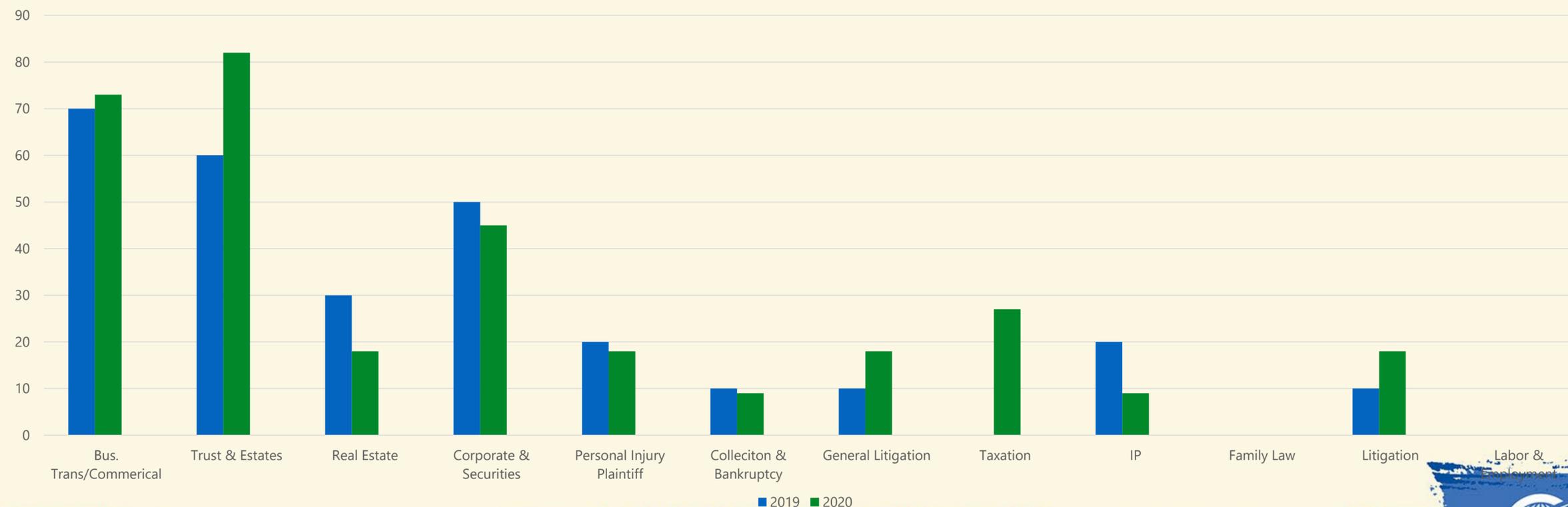
Where We Have Been: Claims in 2020

- In 2020 Insurers Paid:
 - 4 claims over nine figures
 - \$1 billion in total costs
 - 9 of 11 insurers polled paid a claim in excess of \$50 million,
 - 2 insurers between \$150 – \$300 million

Common Claims 2020

- Top 3 Types of Claims:
- Trust & Estates
- Business Transactions
- Corporate & Securities

Claims 2019 - 2020



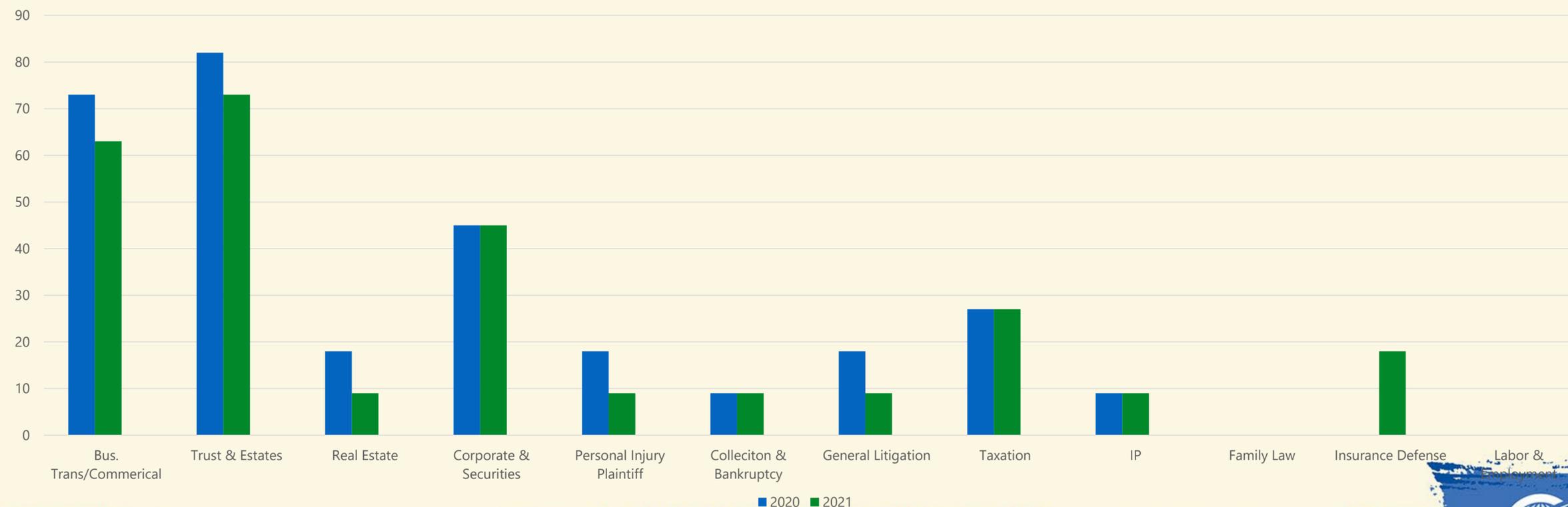
2021 Claim Trends

- Legal Malpractice Claims Remained Flat to Somewhat Higher in 2021
- Severity Continues to Trend Higher
- 10 of 11 insurers had participated in payout over \$50 million
 - 2 additional insurers paid over \$300 million
 - 5 cases settled for over nine figures

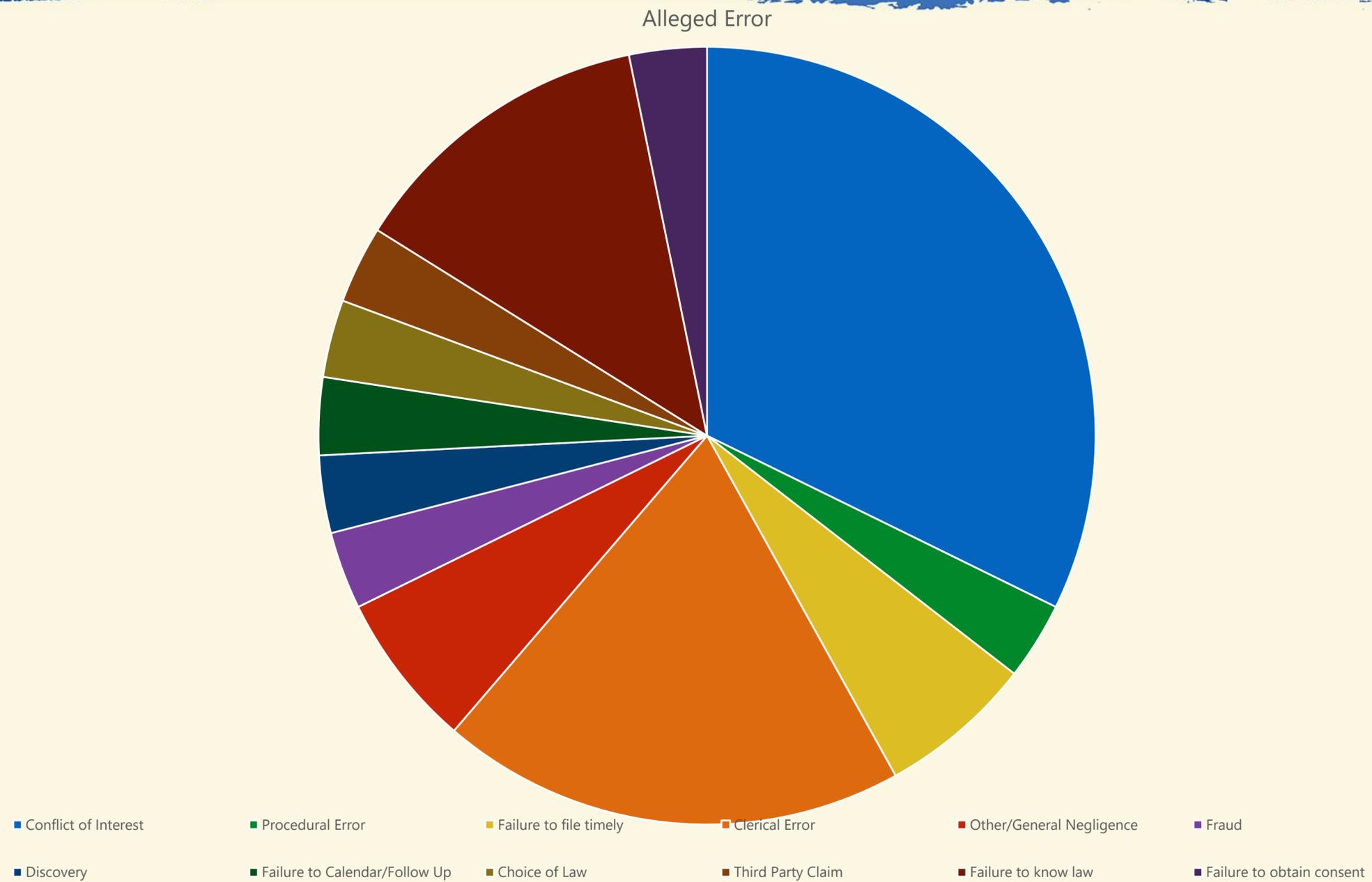
Common Claims 2021

- Top 3 Types of Claims:
- Trust & Estates
- Business Transactions
- Corporate & Securities

Claims 2020 - 2021



Common Legal Malpractice Errors



New Trends & Claims



Claims Against Insurance Defense Counsel

- Increase in claims for legal malpractice by the insurer against its assigned counsel
- Duty and Legal Theory Differs by State:
- Tripartite Relationship Theory
- Equitable Subrogation Theory
- Third Party Beneficiary Theory
- The Restatement of Law Governing Lawyers Theory

Arch Insurance Co. v. Kubicki Drapper, LLP, 318 So.3d 1249 (2021)

- Kubicki Draper defended Arch's insured accounting firm in accounting malpractice case
- Accounting Malpractice case settles for Arch's \$3.5 million policy limits on eve of trial
- Arch files lawsuit against Kubicki alleging claims for:
 - Legal malpractice
 - Breach of fiduciary duty
 - Subrogation
 - Assignment
 - Third-party beneficiary
 - Breach of contract

Arch Insurance Co. v. Kubicki Drapper, LLP, 318 So.3d 1249 (2021)

- Trial court grants summary judgment to Kubicki Draper, finding no privity of contract, thus no duty of care
- Appeals court agrees with trial court's reasoning that Arch was not in privity with the insurer and lacked standing and disregards Arch's public policy concern that defense firms would be shielded from liability
- Appealed to the Florida Supreme Court

Arch Insurance Co. v. Kubicki Drapper, LLP, 318 So.3d 1249 (2021)

- Florida Supreme Court rephrased the issue from:
 - “Whether an insurer has standing to maintain a malpractice action against counsel hired to represent the insured where the insurer has a duty to defend.”
- To:
 - “Whether the insurer has standing **through its contractual subrogation provision** to maintain a malpractice action against counsel hired to represent the insured where the insurer has a duty to defend.”
 - Holds that Arch has standing to sue where the insurer is contractually subrogated to the insured’s rights under the policy

PA. Supreme Court to Reconsider Legal Malpractice Suits Over Settlements

- The Supreme Court of Pennsylvania indicated it would reconsider a 1991 decision barring most legal malpractice claims over settlement agreements.

Cyber Liability Issues

- Legal malpractice risks for not following established standards for the practice

Client May Recover as Damages in Legal Malpractice Action Attorney's Fees Paid to Successor Counsel

- The Eight Circuit, applying Arkansas law, held that in a legal malpractice action, a client may recover as damages the legal fees paid to successor counsel

Questions?



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