

From Risk to Profit: Benchmarking and Claims Studies

Victor O. Schinnerer & Company, Inc.



Agenda

When to report claims/circumstances

Claim Statistics

How the outside world views your
project documents/documentation

Best Practices Incentives/Risk

Mitigation



Definitions

Circumstance means an event, reported to us during the policy term, from which you reasonably expect that a claim could be made.

Claim means a demand for money or services, naming you and alleging a wrongful act or pollution incident.



What You Should Do

Keep calm and act in a professional manner. Avoid any immediate or emotional reactions: counter-accusations are unproductive and could make the situation worse.

Report all relevant circumstances to your insurance broker who will then notify CNA, and make sure members of your firm do not take action without discussing the implications with the insurance company.



What You Should Do

Avoid any admission of responsibility, even if you think you have made an error.

Keep communicating with all parties in a professional and business-like manner
If work is continuing on the project, try to maintain a team environment, based on everyone's mutual interest in successfully completing the job.



What You Should Do

Assemble and organize all necessary documentation.

If the claim or incident involves a traumatic situation (collapse of a structure or serious bodily injury etc.), take photographs of the claim site if possible. Amateur photos taken promptly are more valuable than professional photos taken at a later date.



What CNA Will Do

After CNA is notified about your claim or incident, we will take the following steps: Your local CNA claims specialist, will contact you within 24 hours after being notified of your situation to begin the investigation.

An analyst from our national A/E claims office will be assigned to review your case.



What CNA Will Do

As the investigation progresses, you and your CNA claims specialist will work together to direct, monitor and assess your case.

If the situation requires legal counsel, an attorney specializing in the defense of architects and engineers professional liability claims will be retained to protect your interests.

Your CNA claims specialist and legal counsel will coordinate the defense of your claim with you.



What CNA Will Do

Your CNA claims specialist will evaluate your potential liability and advise you of the courses of action available. The specialist also will make recommendations for the defense or settlement of your claim.

In no event will we settle the claim without your consent.

Throughout the entire process, your CNA claims specialist is available to answer your questions. We're here to listen and help in any way we can.



What is Benchmarking?



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Benchmarking Defined

Initiative to analyze and translate claims data into information and knowledge.

Knowledge can be used by firms to evaluate performance, make business decisions, and improve their practices.



Steps to Benchmarking

Research of construction industry trends
Information from claims in the Schinnerer
and CNA program

- 50 years of experience
- Based on roughly 4,000 claims per year
- Schinnerer and CNA is the only organization that has this depth of information



Factors for Design Professionals to Consider

Growth patterns of
similar firms

Client types

Project types

Consultants

Construction entities

Other parties

Fees

Your firm

Contracts





How Design Professionals Can Use this Study

Benefits to Design Professionals

From Risk to Profit: Benchmarking and Claim Studies, will assist design professionals in:

- Evaluating exposures
- Comparing their firm's performance to that of other similar firms
- Providing risk management insight as firms establish their future goals



How can members of the design and construction industry use this study?

Develop practice management guidance

Develop business plan

Project target markets and future opportunities

Help manage claims frequency and severity



How can members of the design and construction industry use this study?

Allows firms to compare:

- Their limits on their professional liability policy with their peers
- A firm's loss experience
- Types of claims (and associated costs) usually made based on project types



Important Terminology to Remember

Frequency – Reported claims

Severity – CNA dollars spent

Small Firm

- Annual billings below \$500,000

Premier Firm

- Annual billings between \$500,000 and \$5 million

Large Firm

- Annual billings more than \$5 million

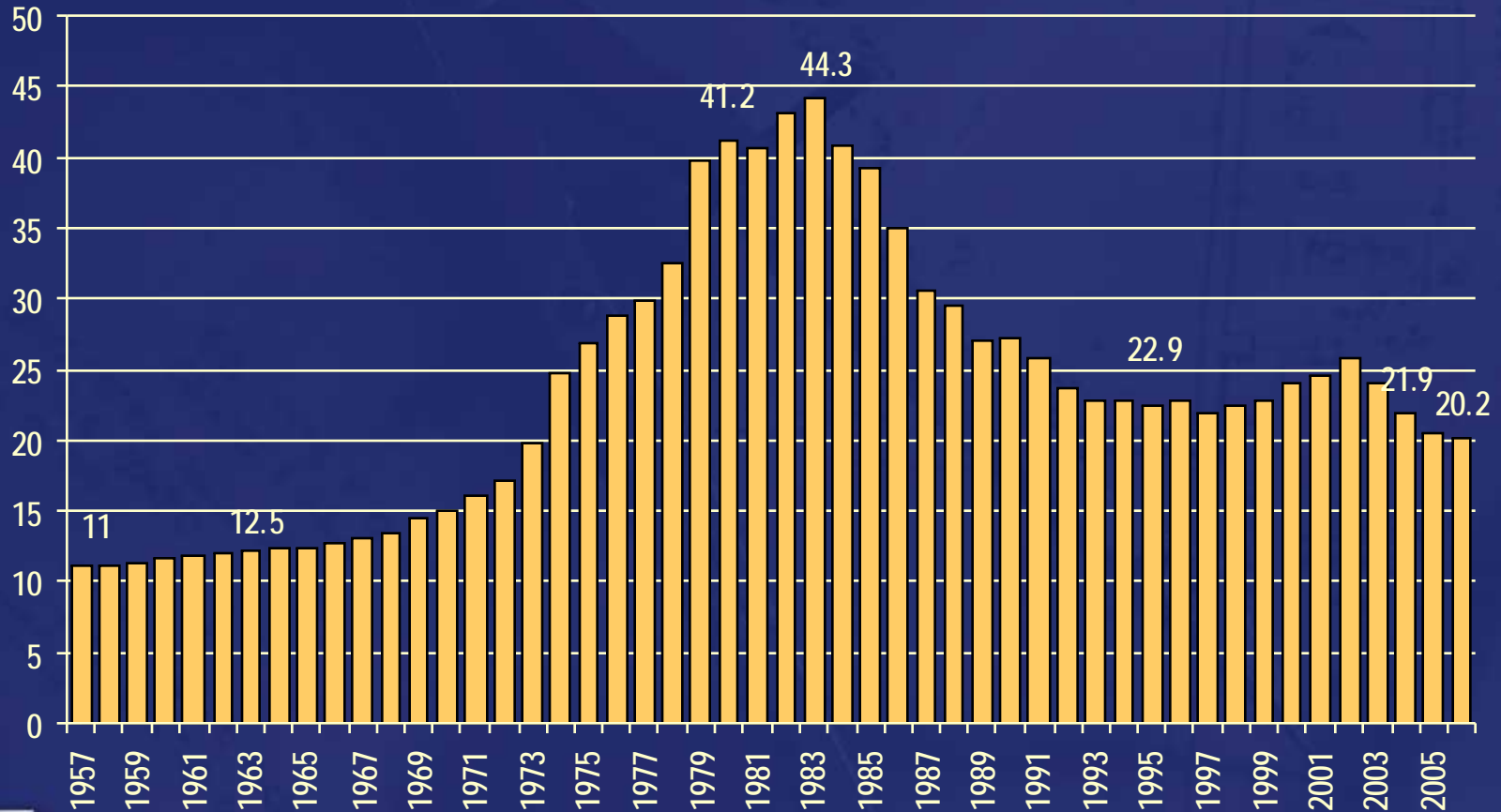




Industry Trends

Industry Trends

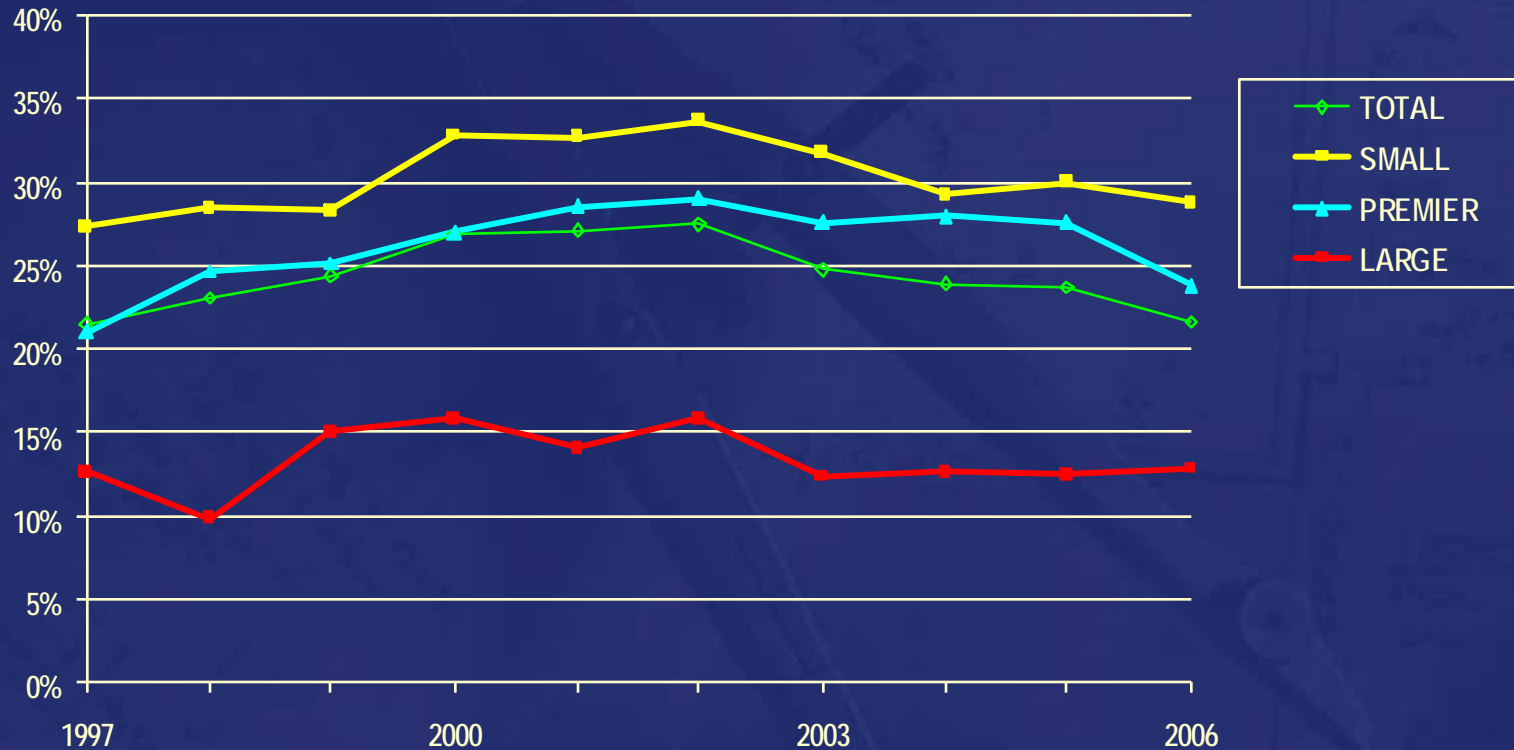
Frequency of Claims Per 100 Firms (1957 – 2004)



SOURCE: Schinnerer & CNA
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Industry Trends

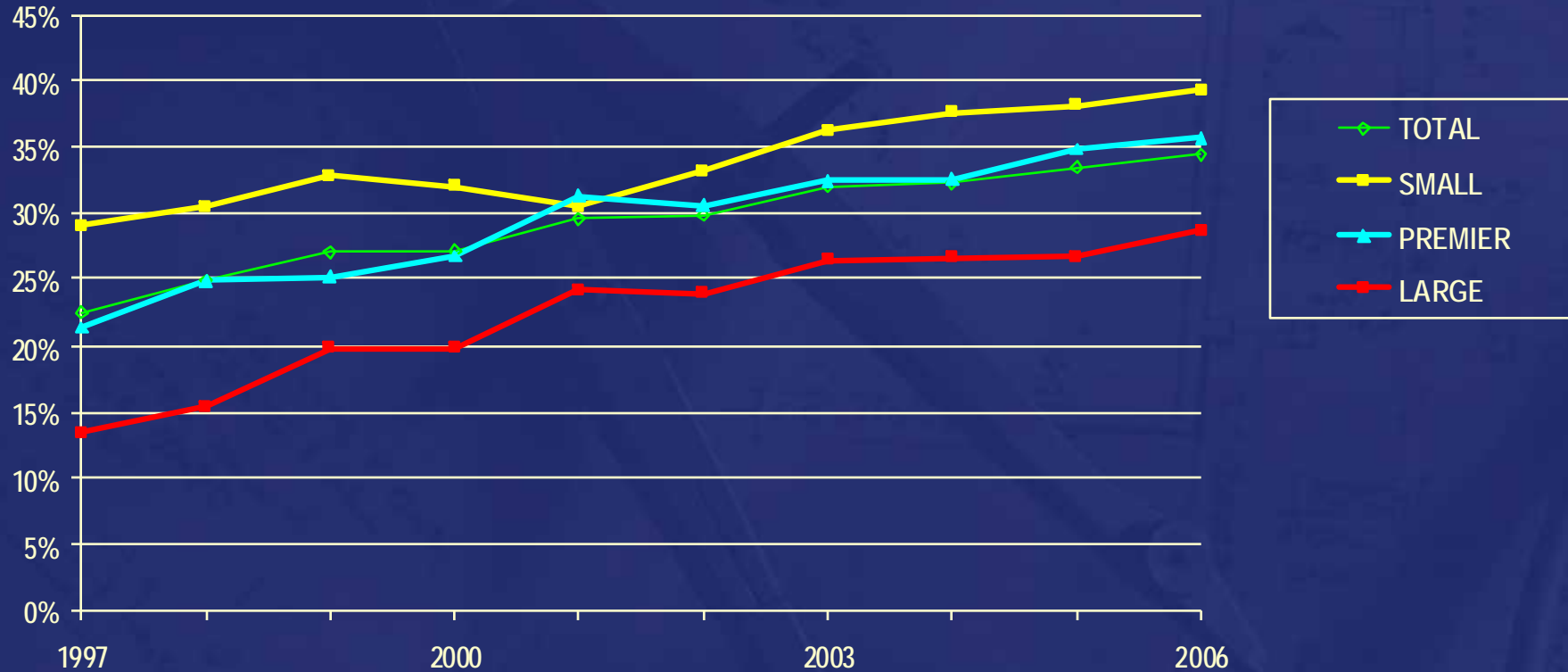
Percentage of Claims Closed with Indemnity Payments



SOURCE: Schinnerer & CNA
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Industry Trends

Percentage of Claims Closed with Defense Payment Only



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Eight Key Factors of Benchmarking

The Client

What You Need to Know

Client selection can help minimize the chances of a claim.



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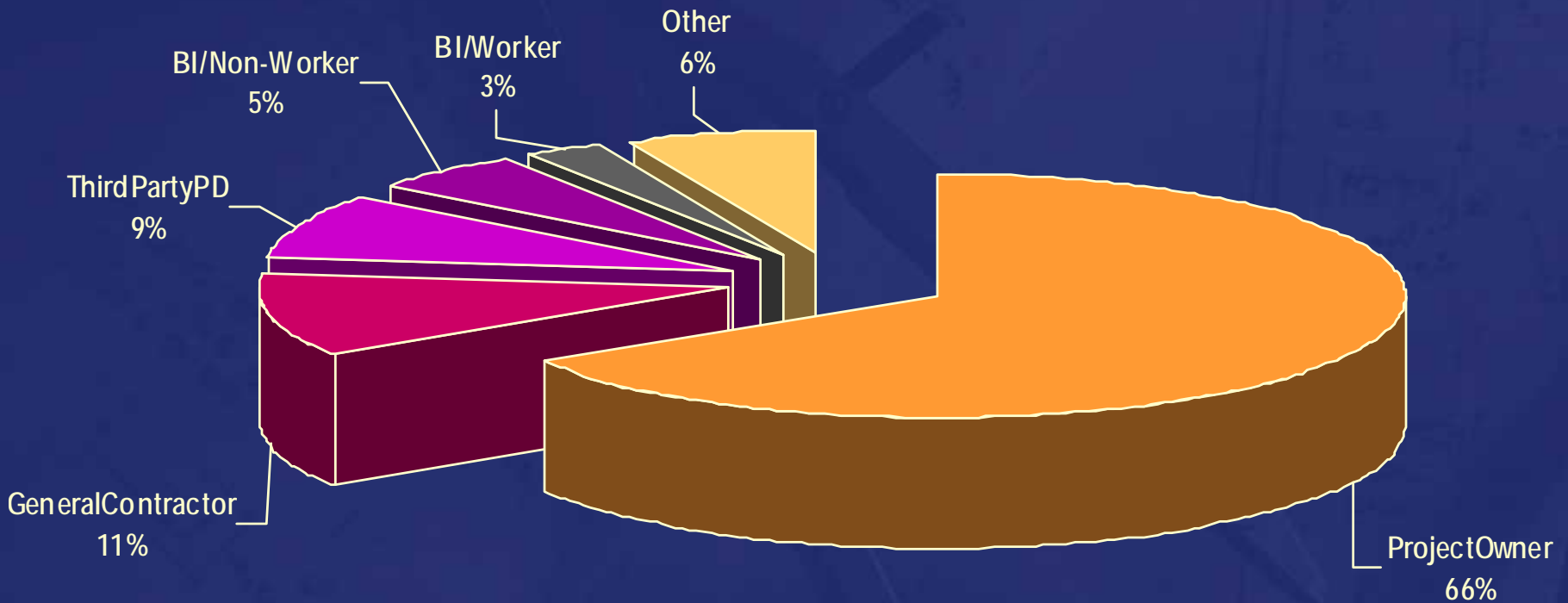
Identifying the Risks

1. Does the client have clear project objectives?
2. Do you or your peers have experience with this client?
3. What is the client's attitude toward you and the project?



The Client

Frequency of Claims by Claimant Identification (1997 – 2006)



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The Project

What You Need to Know

Some projects are riskier than others. How you respond can help control risks.



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The Project

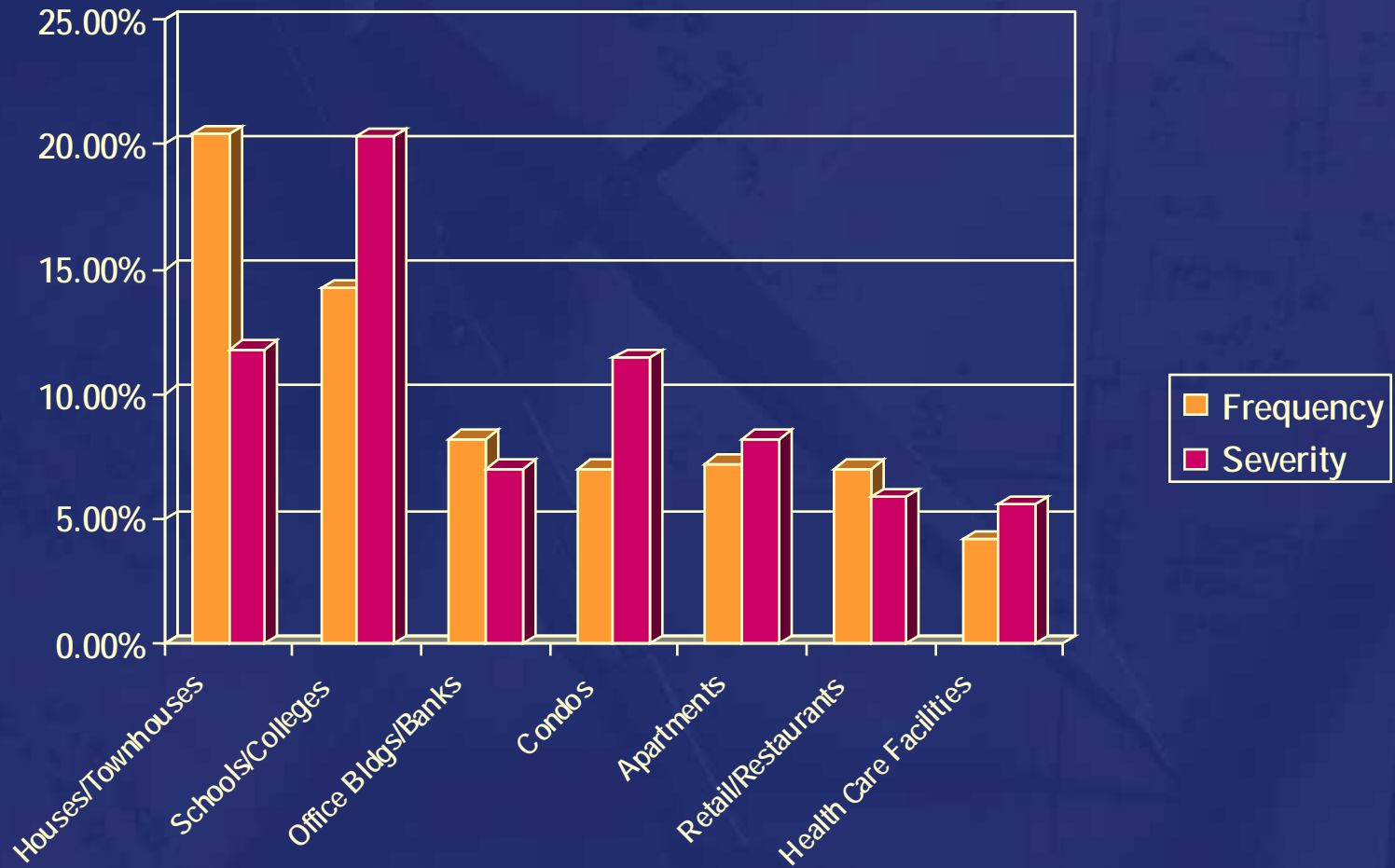
Identifying the Risks

- ✓ Have you considered the following:
 - Project type
 - Geographic location
 - Scope of services
 - Schedule
 - Construction complexity



Architect - Nationally

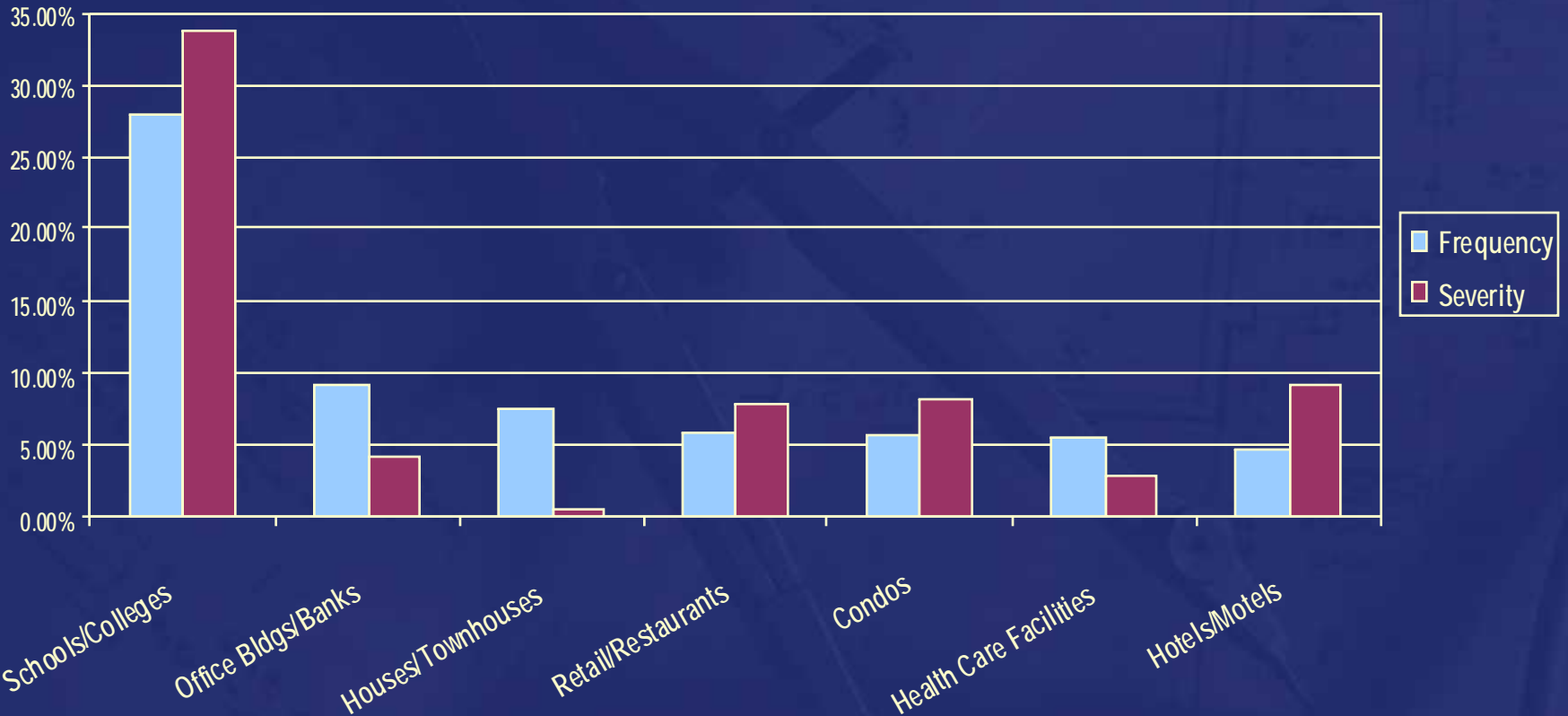
Project Type Claims by Frequency/Severity (1997 – 2006)



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Architecture Firms in the Large Firm Program

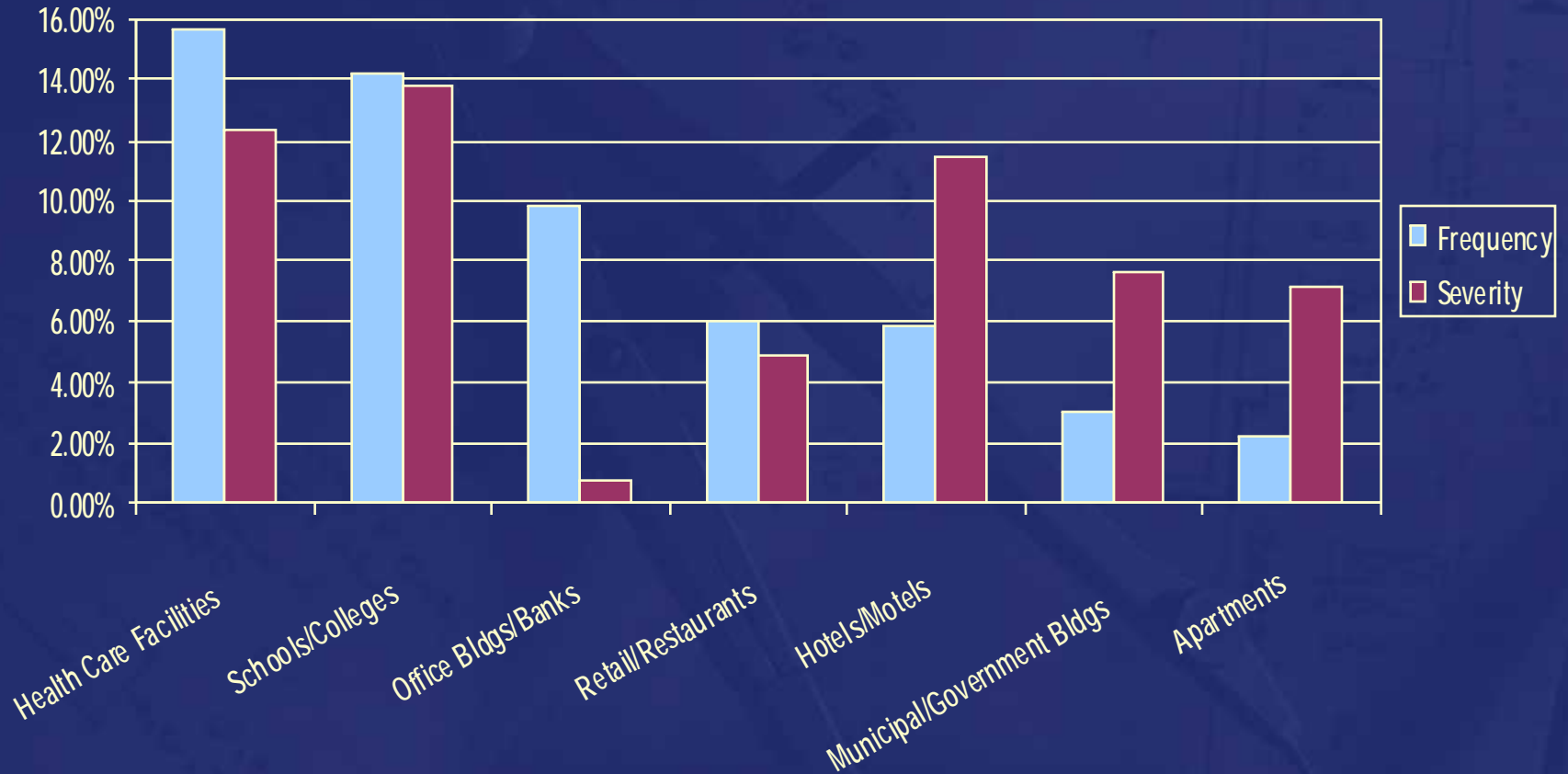
Project Type Claims by Frequency/Severity 1997 - 2006



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Architecture Firms in the Large Firm Program

South Region Project Type Claims by Frequency/Severity 1997 - 2006



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What You Need to Know

Prime design professionals are vicariously liable for the consultants they retain.



Identifying the Risks

1. What is your experience with the consultant?
2. Is the consultant available and qualified?
3. Is the consultant adequately insured?



Consultants

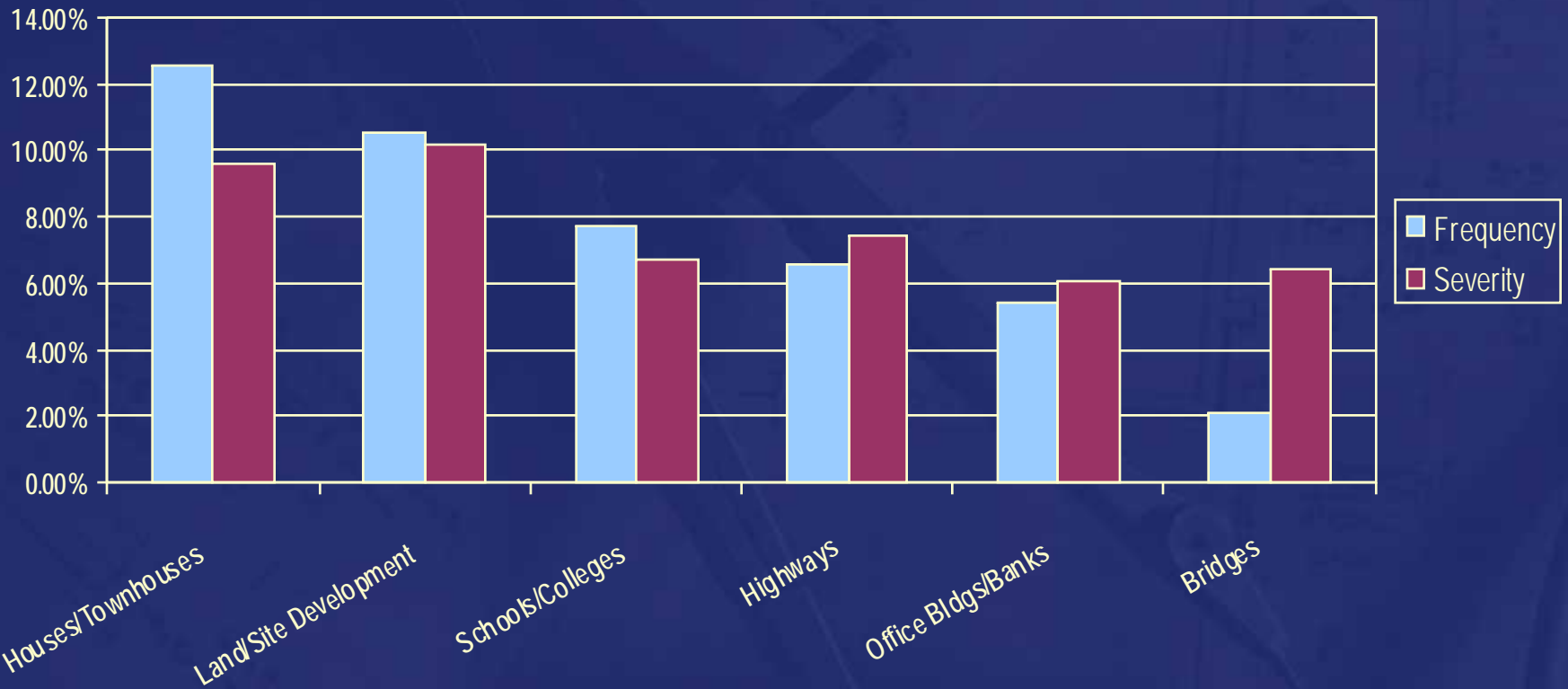
“The subconsultant paid his \$250,000 policy limit, leaving the engineer to pay the remainder of the \$2.5 million claim.”

CNA Claim Write-up



Engineers - Nationally

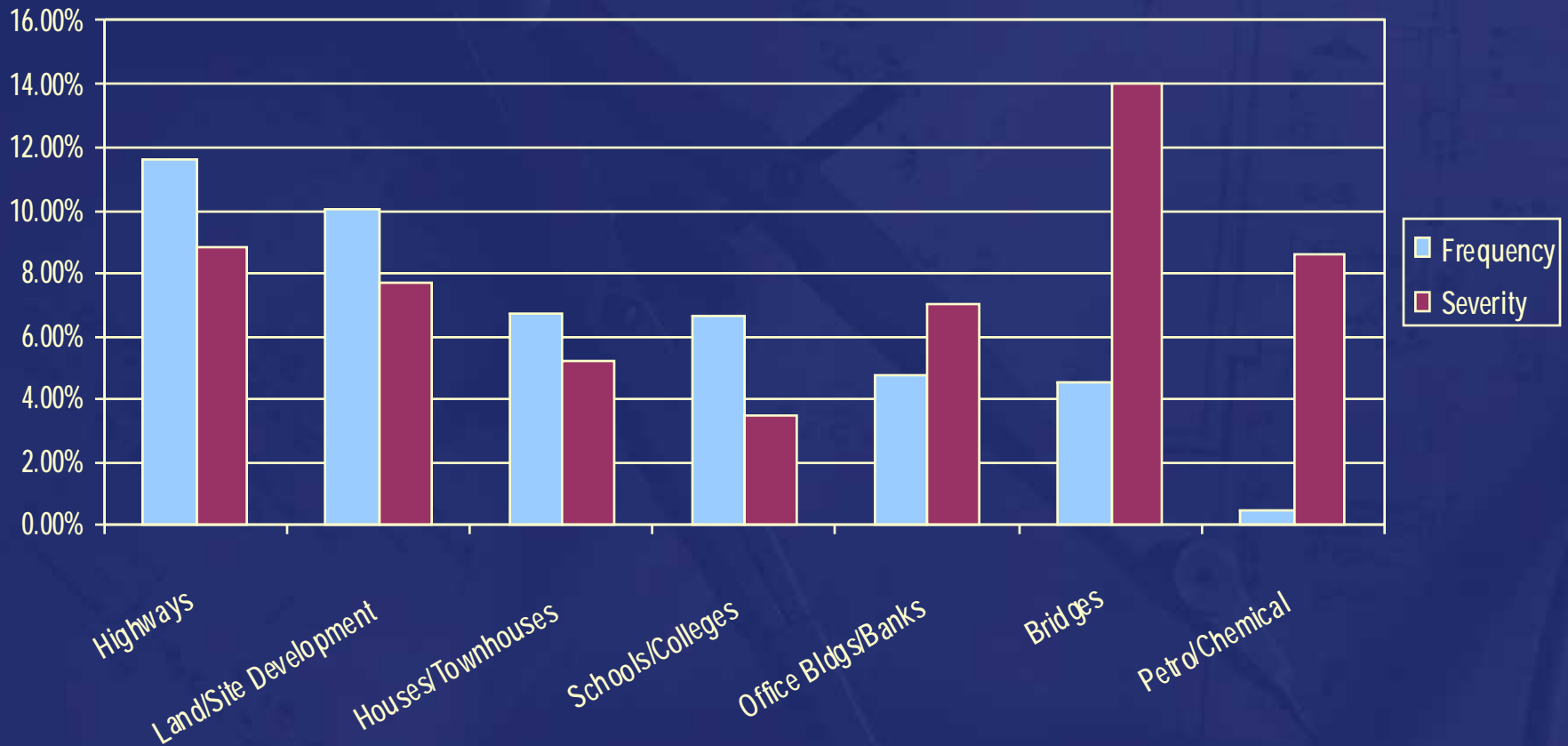
Project Type Claims by Frequency/Severity 1997 - 2006



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Engineer Firms in the Large Firm Program

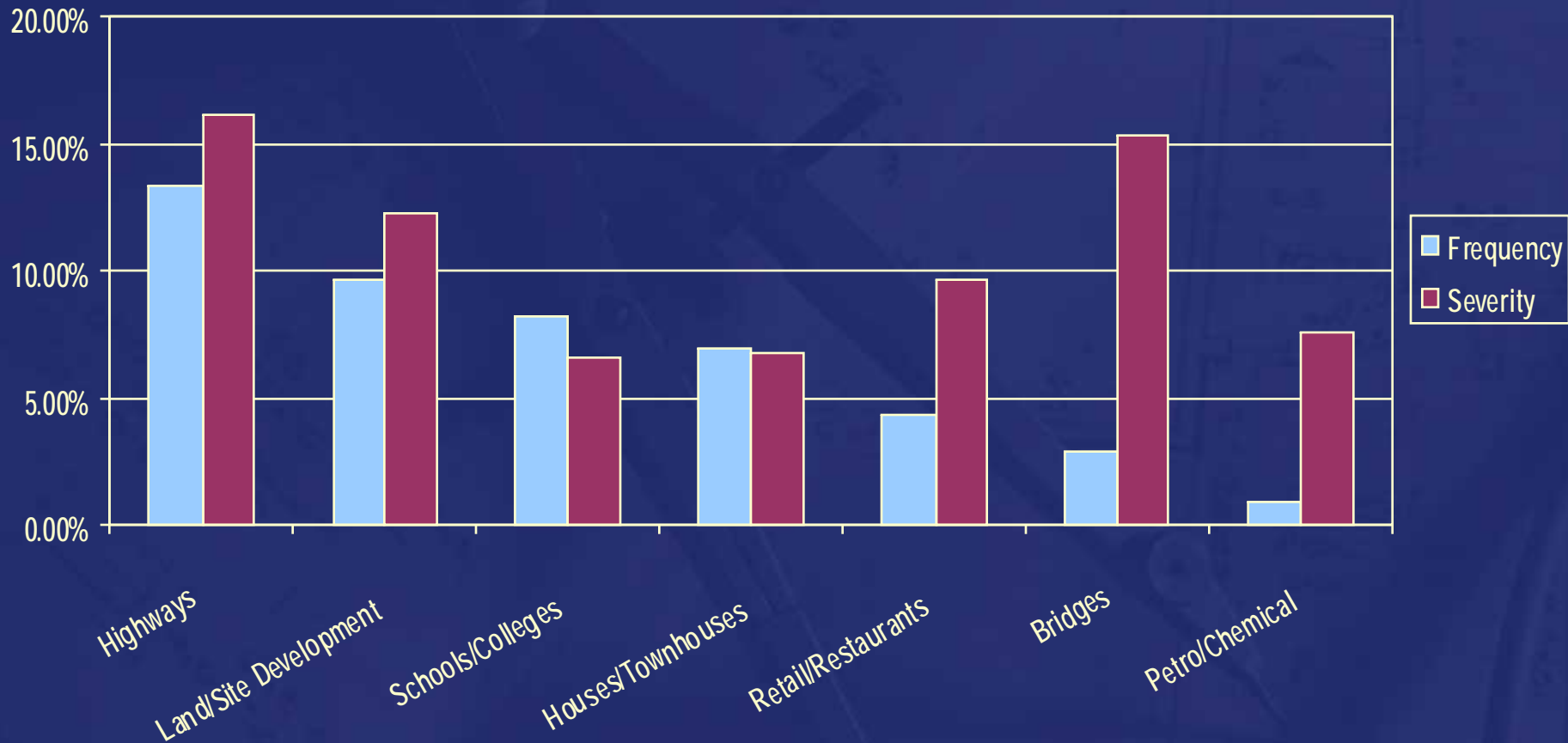
Project Type Claims by Frequency/Severity 1997 - 2006



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Engineer Firms in the Large Firm Program

South Region Project Type Claims by Frequency/Severity 1997 - 2006



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What You Need to Know

Contractors can and do file claims
against design professionals.



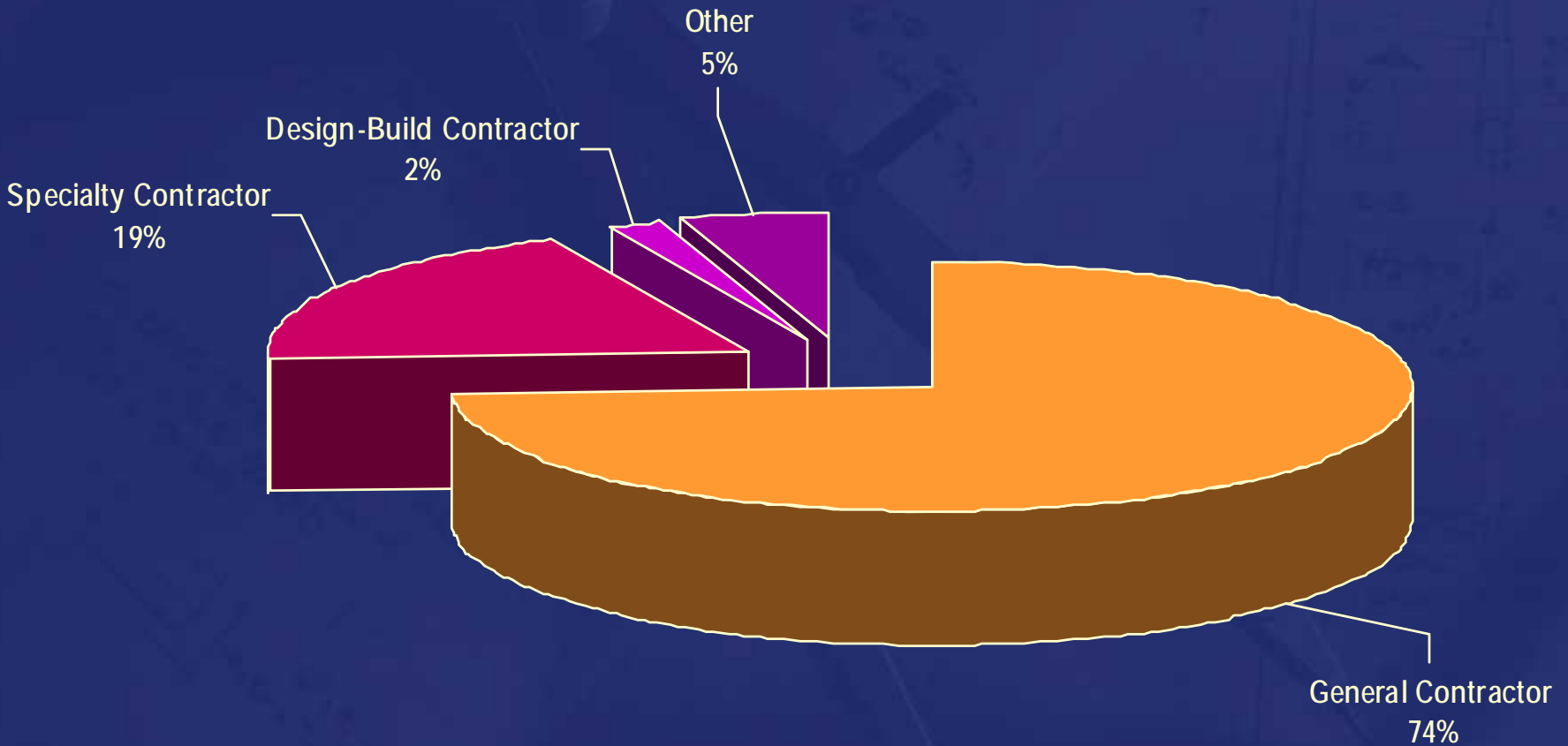
Identifying the Risks

1. Does the contractor have experience with this project type?
2. Is the bid/negotiated proposal adequate?
3. Does the contractor have the financial strength to complete the project?



Contractor

Frequency of Claims by Construction Entities (1995 – 2004)



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Other Parties

“...9% of claims against design professionals come from third parties for property damage...”



Other Parties

What You Need to Know

Claims can be filed against design professionals by those that have not been involved in the design and construction process.



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Identifying the Risks

1. Has another party been introduced into the project (i.e., construction manager) after the agreements have been signed?
2. Are there “interested” third parties that have a stake in the outcome?



“Inadequate fees for professional services ultimately go against the client’s interest for a successful project.”



What You Need to Know

Fee disputes can lead to claims
against design professionals.



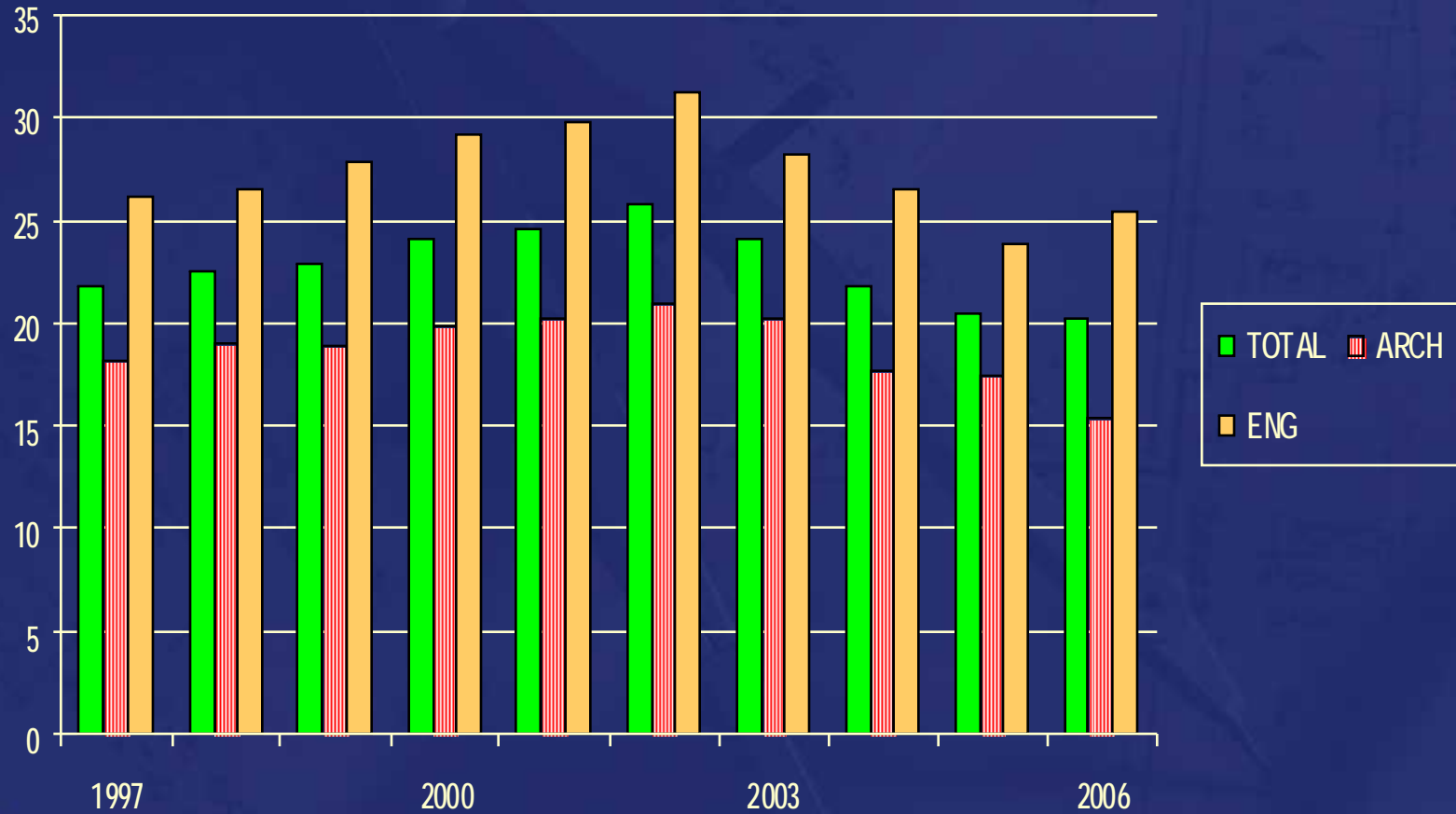
Identifying the Risks

1. Is your fee adequate for the services to be provided?
2. Does your agreement have clear payment terms?
3. Do you have a "collection strategy?"



Your Firm

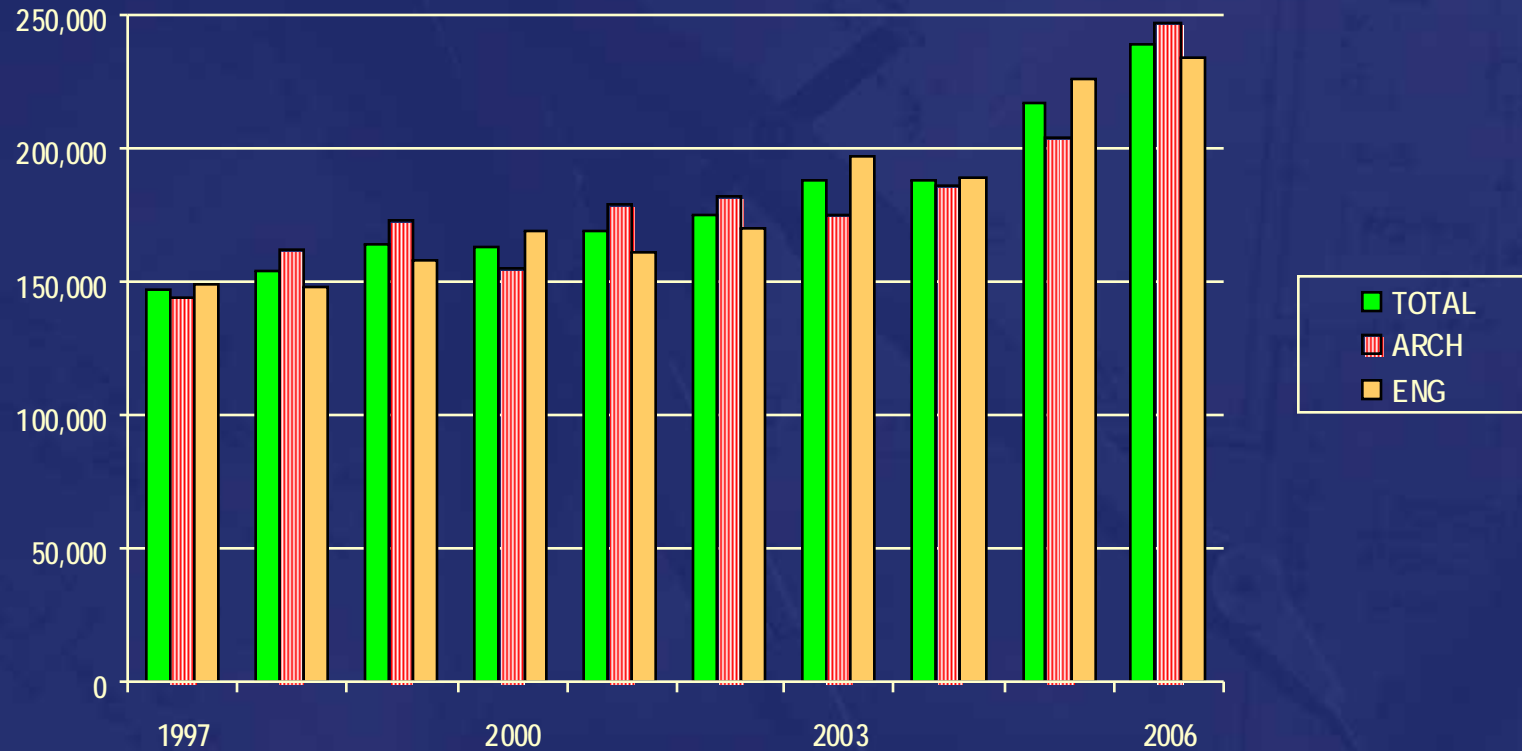
Claims Frequency Per 100 Firms



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Your Firm

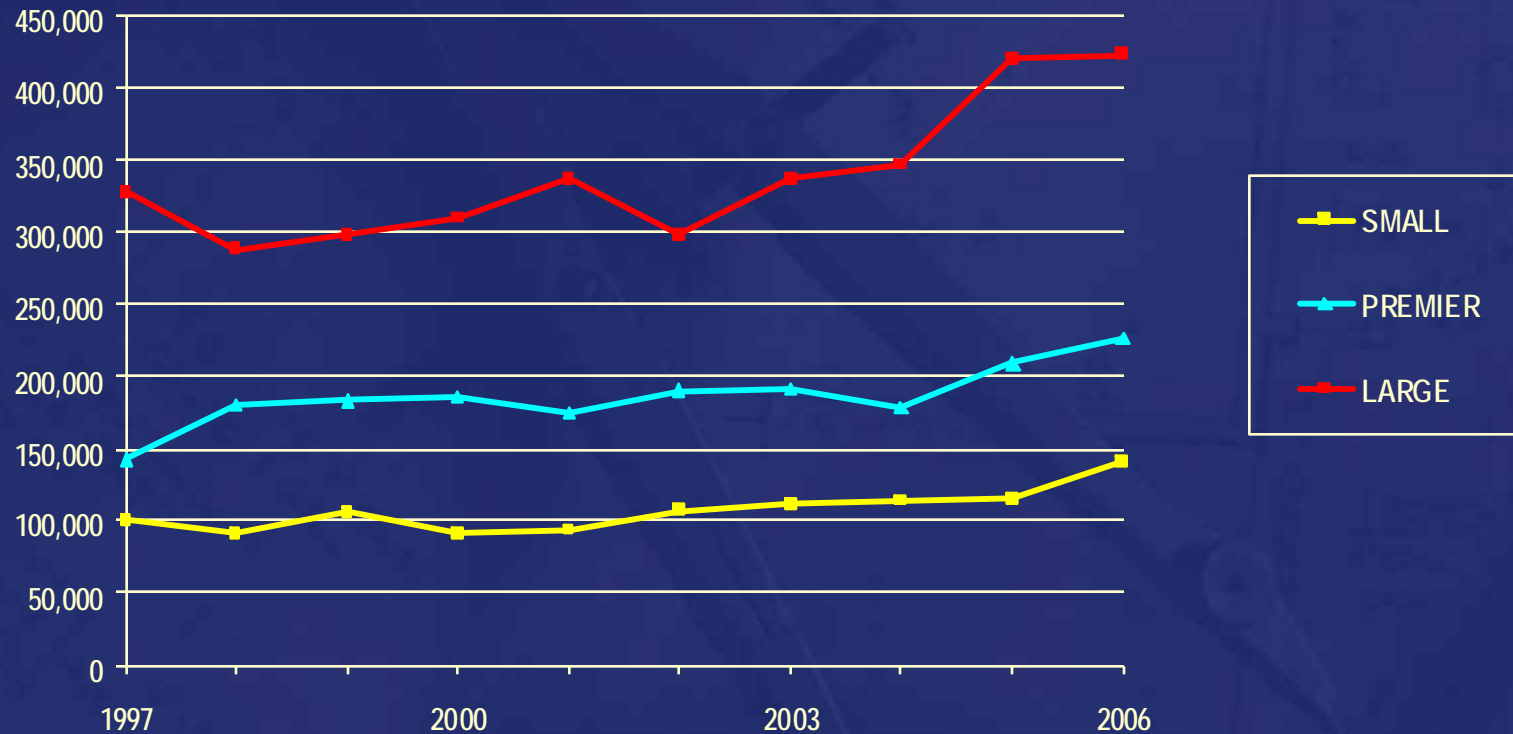
\$1M Average Severity



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Your Firm

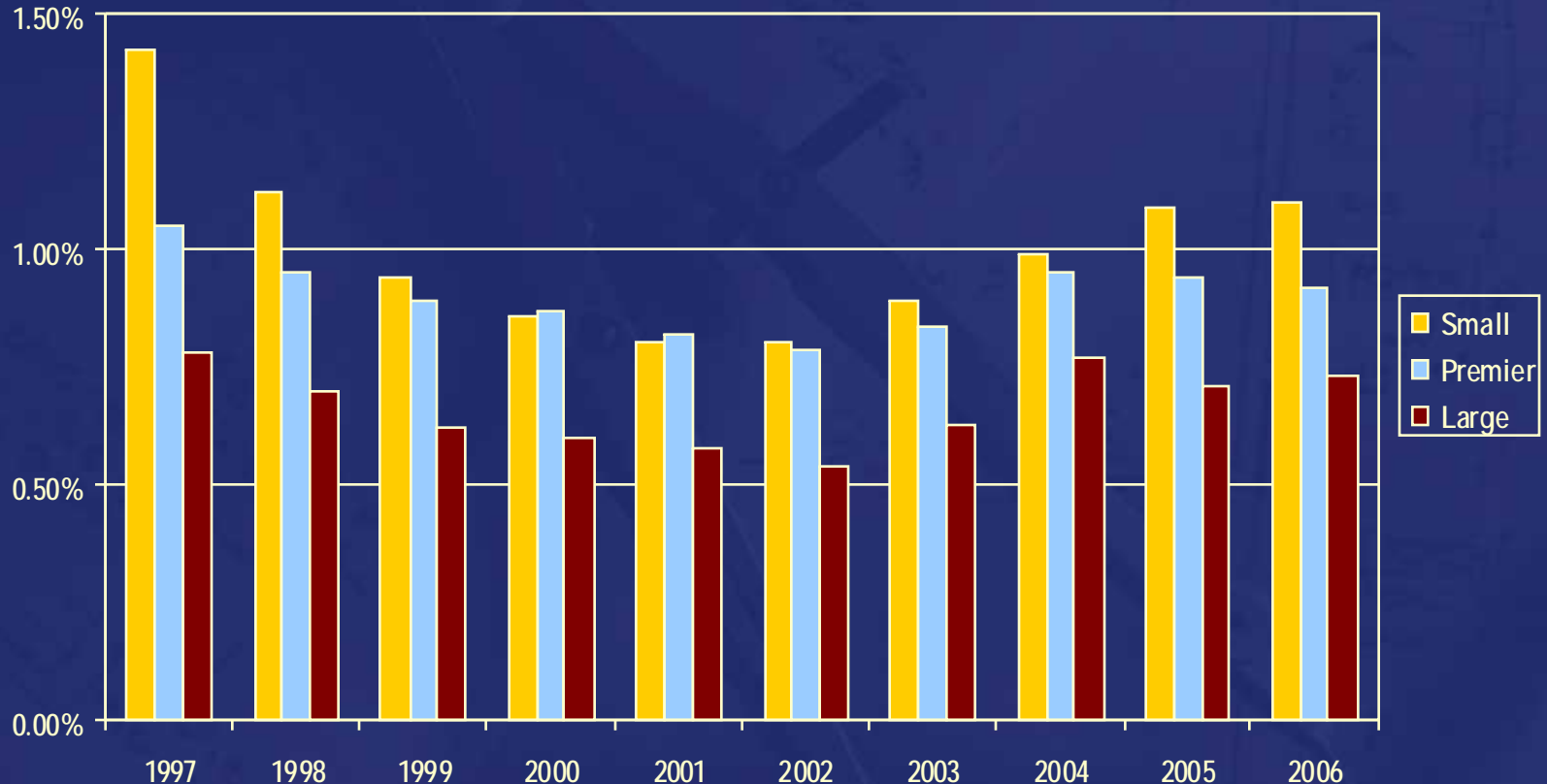
\$1 Million Average Severity: Small/Premier/Large



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Your Firm

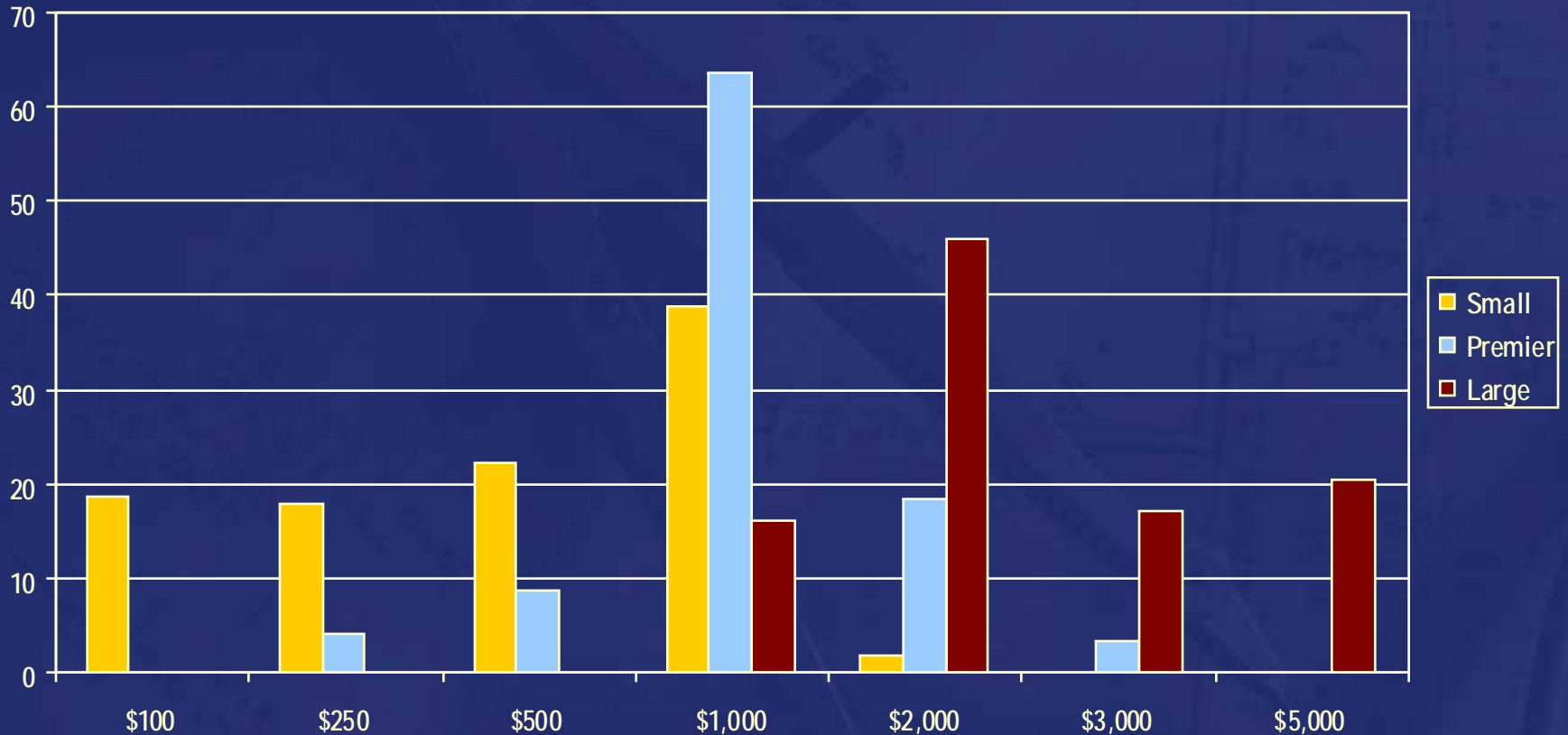
Percentage of Deductible to Gross Billings (1997 – 2006): Architects



SOURCE: Schinnerer & CNA
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Your Firm

Per Claim Limit (in thousands) (June 2007): Architects



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What You Need to Know

Many claims may be avoided if
firms would take a
“hard look” at themselves.



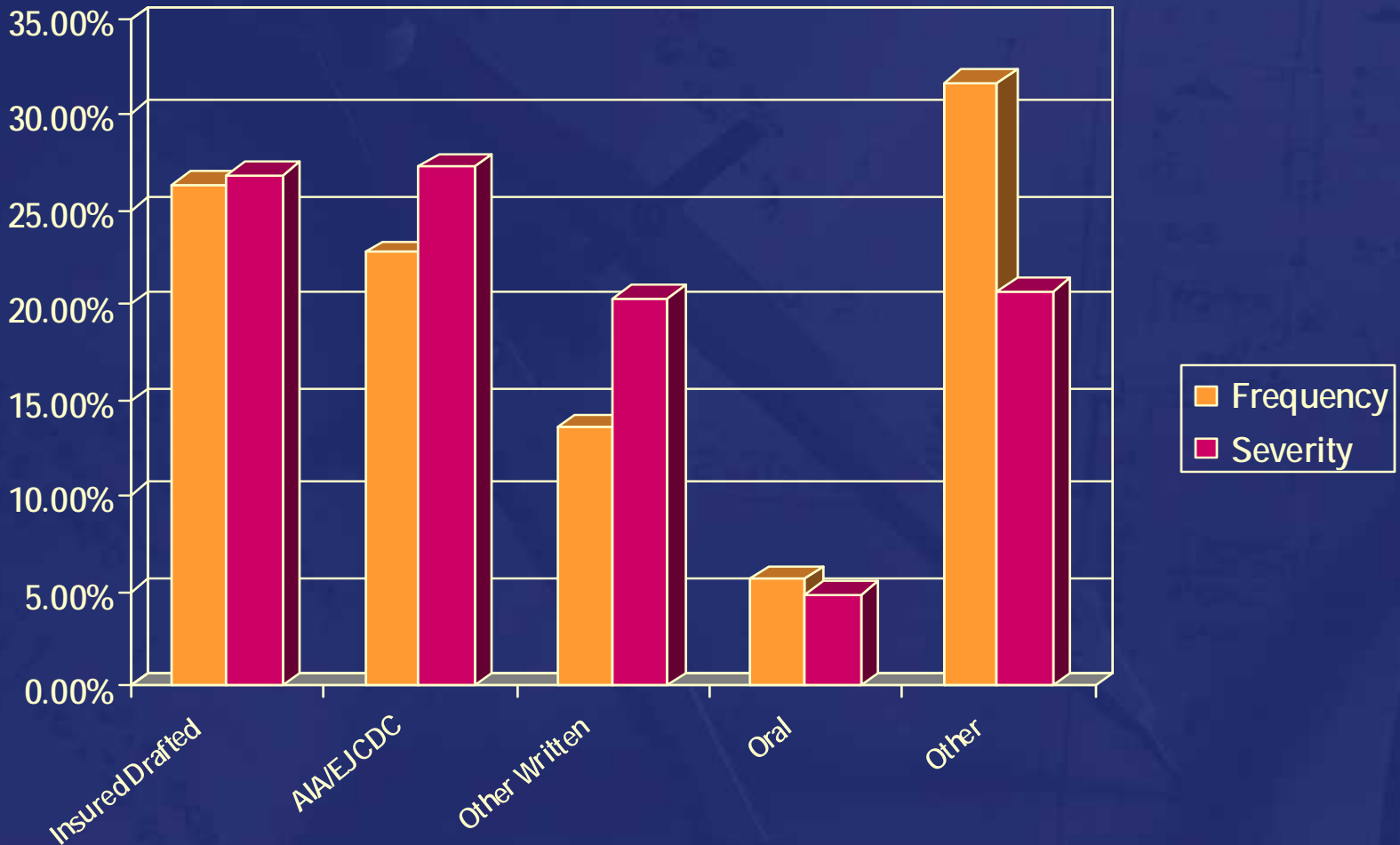
Identifying the Risks

1. Does your firm have experience with this project type?
2. Have you identified the potential problem areas with this project?
3. Does your firm have the “capacity” to take on this project at this time?
4. Is your firm adequately insured?



Contracts

Frequency and Severity of Select Contract Types (1997 – 2006)



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What You Need to Know

A well-drafted contract can be
your best risk management tool.



Identifying the Risks

1. Does your agreement have a clear scope of services?
2. Does your agreement fairly allocate risks by:
 - Assigning risks to the entity in the best position to manage those risks?
 - Assigning risk with proper authority?
 - Assigning risk to only one entity?



Conclusions

Benchmarking and claims/case studies are valuable risk management tools.

Examining factors such as the client, the project, and the contract, among others, can help you identify risks.

Identifying risk is the first step in managing risk. Schinnerer has info to help!





Risk Mitigation Credit Best Practice Incentives

RMC Compliance Document Checklist

The following checklist is for your use and includes the submittals in each category. Once the baseline criterion of a written agreement is met, three of the six Performance Criteria needs to be included in the application for the RMC to apply.



RMC Compliance Document Checklist

“Baseline” Criterion (Written Agreement)

- A written agreement executed prior to the performance of the agreed to services giving rise to the claim.



RMC Compliance Document Checklist

Practice Criterion I (Payment Terms/Invoicing)

- An agreement executed prior to the performance of the agreed-to-services giving rise to the claim (per the "baseline" criterion) containing payment terms and a payment schedule;
- Dated invoices or a spreadsheet reflecting dated invoices; and
- Dated unpaid balance reminders or other documents reflecting the policyholder's attempt(s) to resolve payment problems, if any.



RMC Compliance Document Checklist

Practice Criterion II (Interprofessional Agreements/Insurance Certificates):

- Interprofessional agreements executed prior to the performance of the agreed-to-services giving rise to the claim, and
- Certificate(s) of insurance evidencing professional liability (PL) and general liability (GL) coverages (or a spreadsheet reflecting all such certificate information) obtained prior to the performance of the agreed-to services giving rise to the claim.



RMC Compliance Document Checklist

Practice Criterion III (Pre-Project Planning):

- Project definition document(s) addressing the applicable parameters ("a" through "c" or "a" through "e");
- Agreements annotated to address the applicable project definition parameters; or
- Reports prepared as deliverables addressing the applicable project definition parameters.



RMC Compliance Document Checklist

Practice Criterion IV (Internal/External Peer Review)

- Documents reflecting peer review activities, such as meeting minutes, memoranda, reports, completed checklists, and notations on design documents (at the conceptual/schematic and final design phases; and
- For external peer reviews, a peer review agreement or engagement letter and documents evidencing the completion of any such external peer review.



RMC Compliance Document Checklist

Practice Criterion V (Constructability Review):

- Documents reflecting participation in constructability review activities by representatives of the client and the design and construction teams, such as meeting minutes, memoranda, reports and notations on design documents, during the pre-construction phase of the project or applicable portion of the project.



RMC Compliance Document Checklist

Practice Criterion VI (Submittal Management):

- A documented submittal log or spreadsheet reflecting as planned and actual receipt and response dates and actions taken.



QUESTIONS?



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