



Claims Data & Insights



Introduction

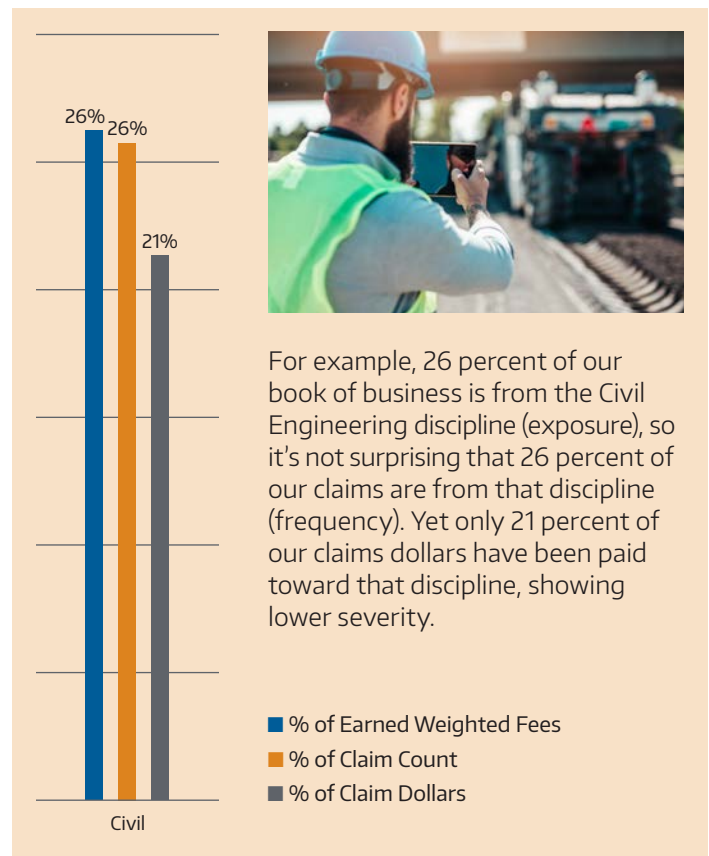
The data in this report represents all claims reported to Berkley Design Professional from April 2013–February 2021.

It's important to note that this is Berkley Design Professional's experience—not industrywide—and it reflects our careful underwriting practices and rating policies.

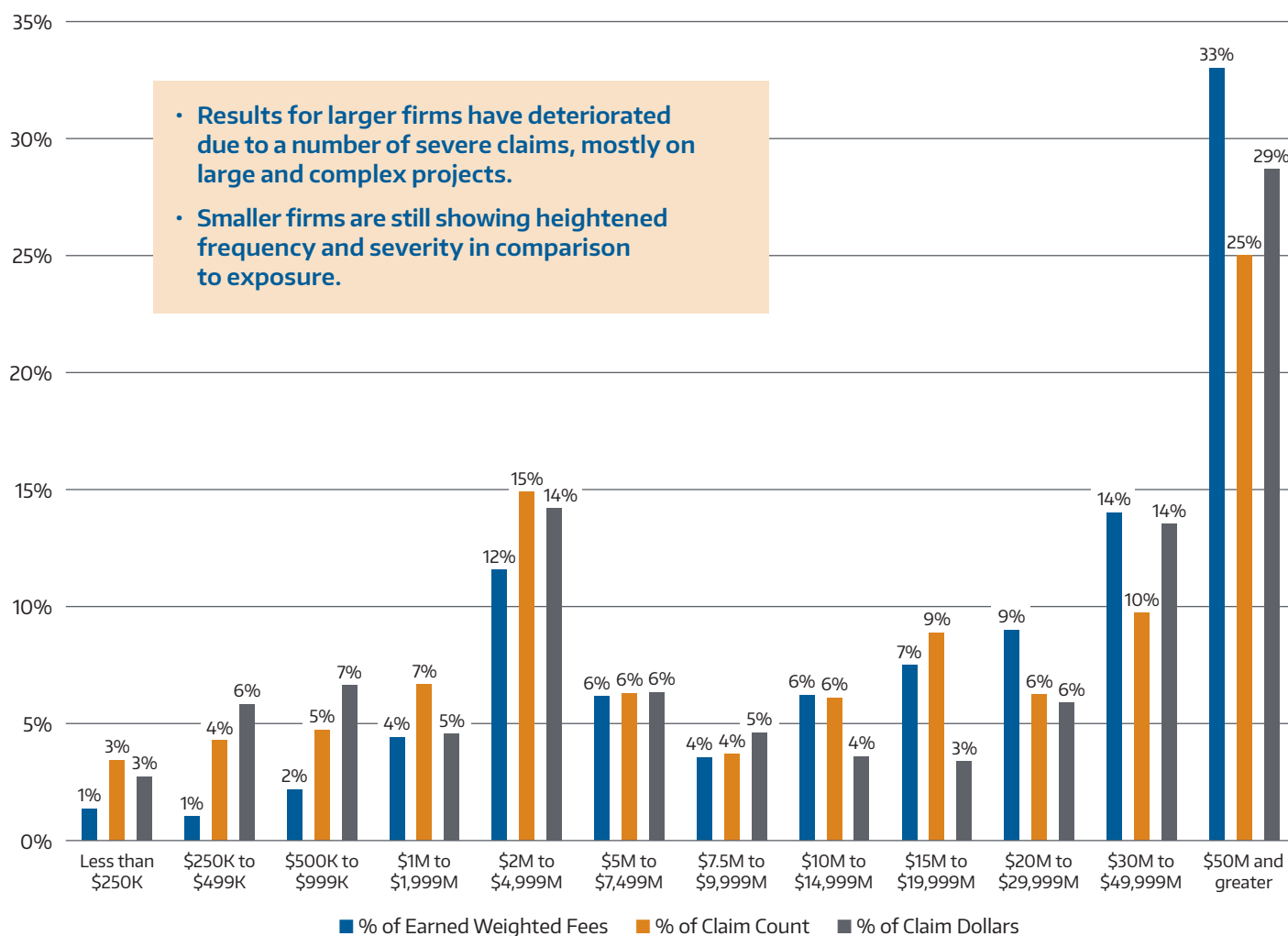
This is an update to the Claims Benchmark Data report published in 2018 and comparisons to that report will be noted where relevant.

Here is a brief explanation of the data points used: fees, claim count, claim dollars:

- **Blue** bars represent the amount of fees reported to us on the application related to each area, which is essentially the extent of exposure that puts the other two bars into context.
- **Gold** bars represent the number of claims, which is an indicator of frequency
- **Gray** bars represent the amount of claim dollars paid, which is an indicator of severity



Claims Experience by Firm Size



Insights

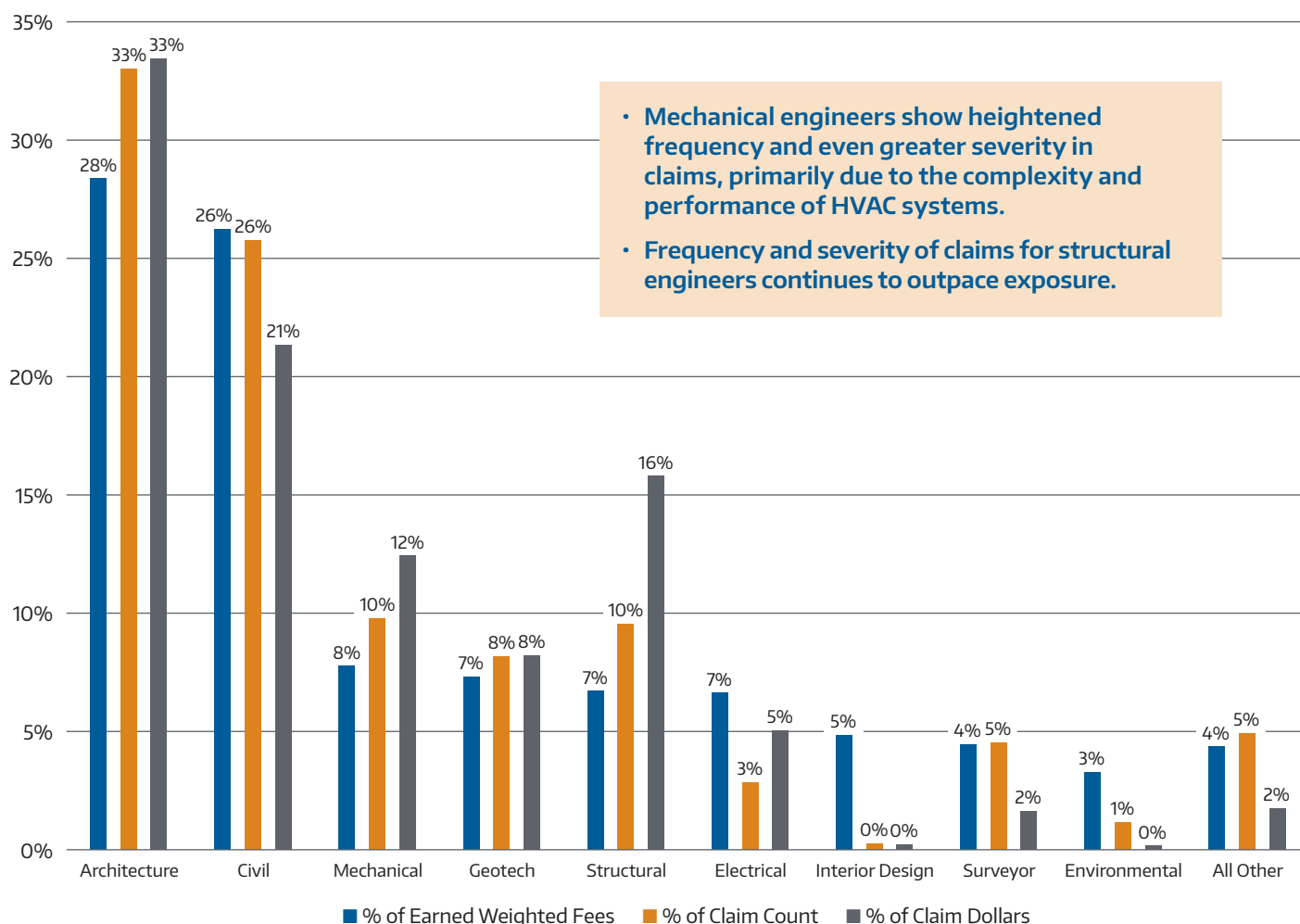
Results in the \$30 million and above categories have deteriorated since the last study (see the gray bars) due to a number of severe claims, for the most part, on large and complex projects. This is not unexpected due to the inherent risk of such projects undertaken by firms of this size.

When looking at smaller firms in comparison to the last study, it may appear that their risk has lessened. However, the nature of this chart is relative—changes in the large firm severity, as noted above, naturally results in flattening out the severity in other categories.

Smaller firms—those with up to \$5 million in annual fees—are still showing heightened frequency (gold bars) and severity (gray bars) in comparison to exposure (the firms' fees represented by the blue bars). Technical and project management issues have increased in this category.



Claims by Area of Practice



Insights

Architects can face increased risk due to the assumption of vicarious liability for the services of their subconsultants. It is interesting to note that in the last study, the frequency (gold bar) for architects was the highest but that in this study the severity (gray bar) of claims against architects has risen to match it, likely due to the severe claims noted on the previous section. (See “Vicarious Liability for Architects” on the next page for more detail.)

Civil engineers continue to be more in balance, with the exposure (blue bar) showing higher than the frequency (gold bar) and severity (gray bar). However, both frequency and severity of claims against civil engineers have risen since the 2018 study.

In the last study, mechanical and electrical engineering services were combined into a single category. They have been separated in this analysis. Mechanical engineers are showing heightened frequency and even greater severity in claims,

primarily due to the complexity of HVAC systems and client expectations for performance of those systems. Electrical engineers, on the other hand, are more in balance with the percentage of claims count and claims dollars—both less than the percentage of fees for that discipline.

Structural engineering continues to be a challenging discipline from a risk perspective, with frequency and severity outpacing exposure—factors that are considered in underwriting.

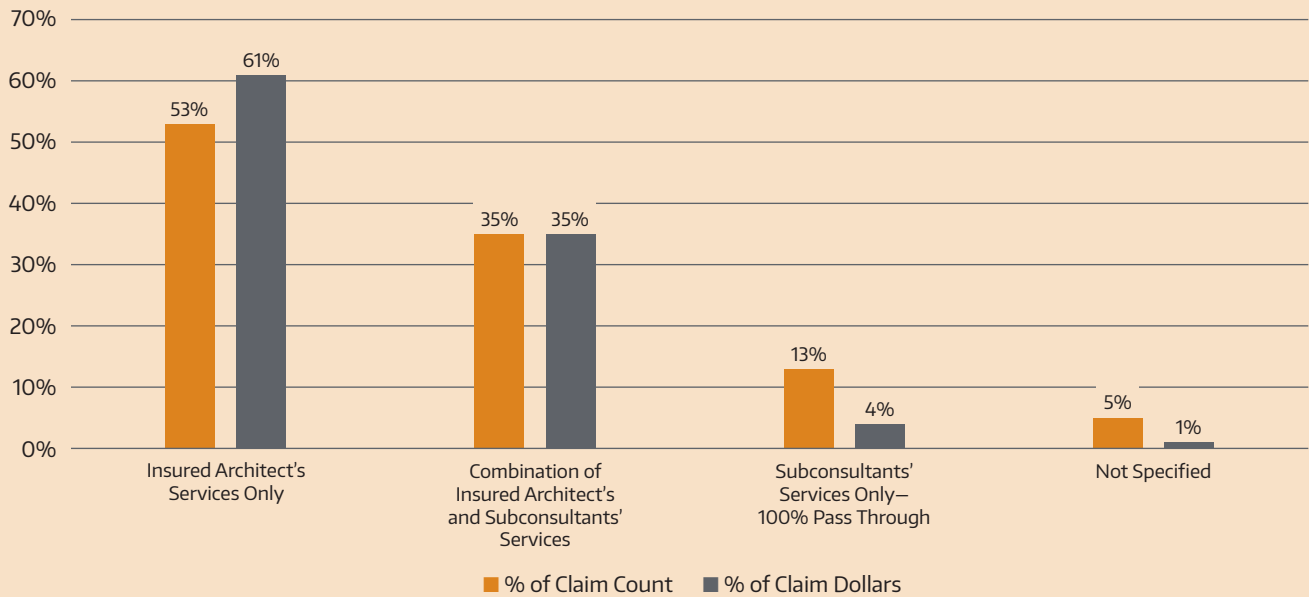
Geotechnical engineering has also historically been a challenging discipline from a risk perspective but our book of business is performing relatively well due to strong risk management strategies deployed by our policyholders.

Interior design and environmental engineering (new to this chart) as well as surveying are performing well, consistent with historic data.



Vicarious Liability for Architects

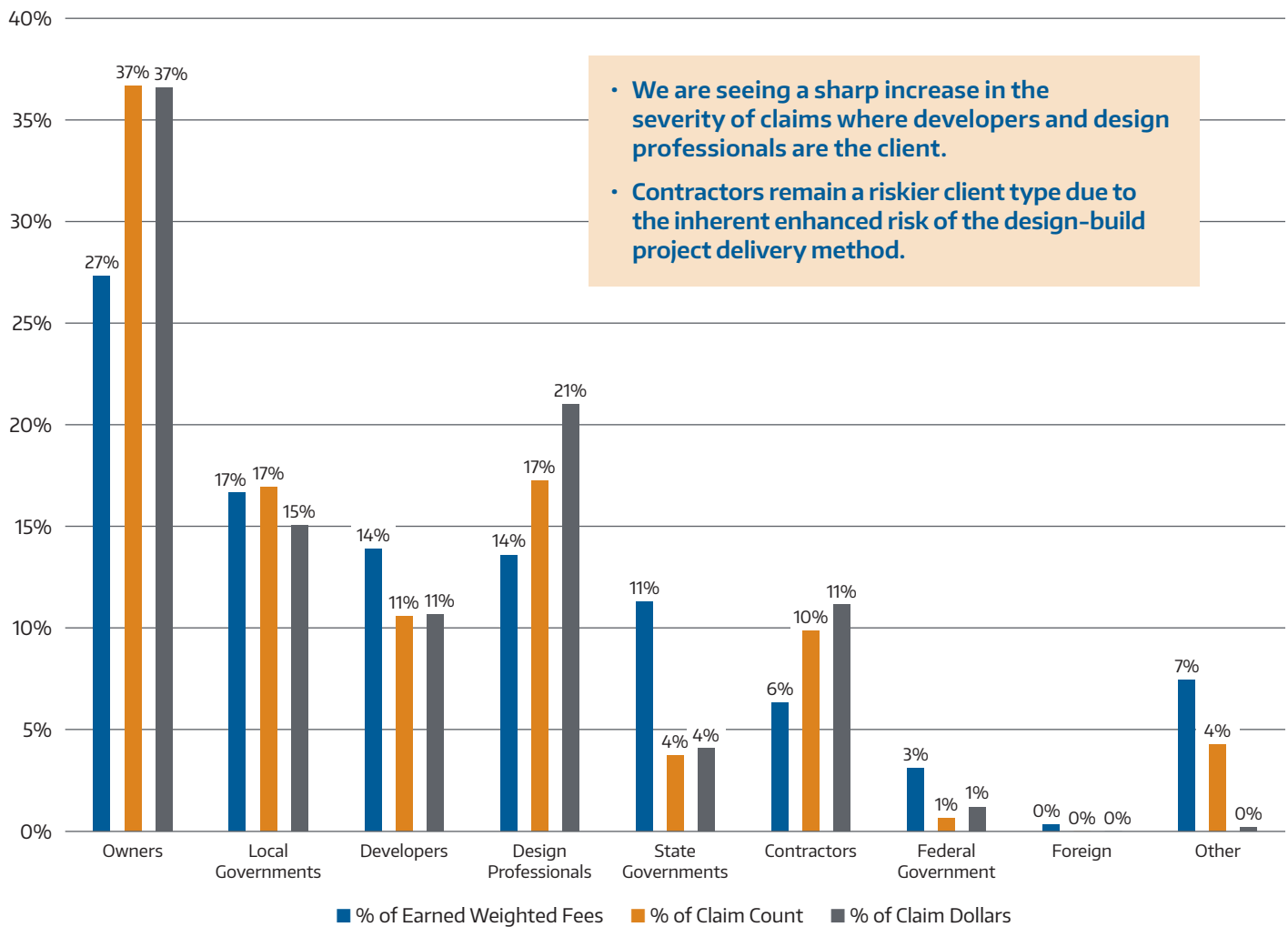
Area of Practice: Architects



When looking at the architect discipline specifically, you'll see that about half the number of claims are the result of the architects' services, alone; about one-third are due to a combination of the architects' services in combination with their subconsultants'; and just over 10% of the claims are purely vicarious arising only out of the subconsultants' services.



Claims by Client Type



- We are seeing a sharp increase in the severity of claims where developers and design professionals are the client.
- Contractors remain a riskier client type due to the inherent enhanced risk of the design-build project delivery method.

Insights

The owner category reflects a wide range of private entities, including corporations, multi-family and single-family residential and retail/restaurants, where there have been incidence of higher than expected frequency and severity of claims.

The results in the government markets (local, state, federal) continue to be favorable.

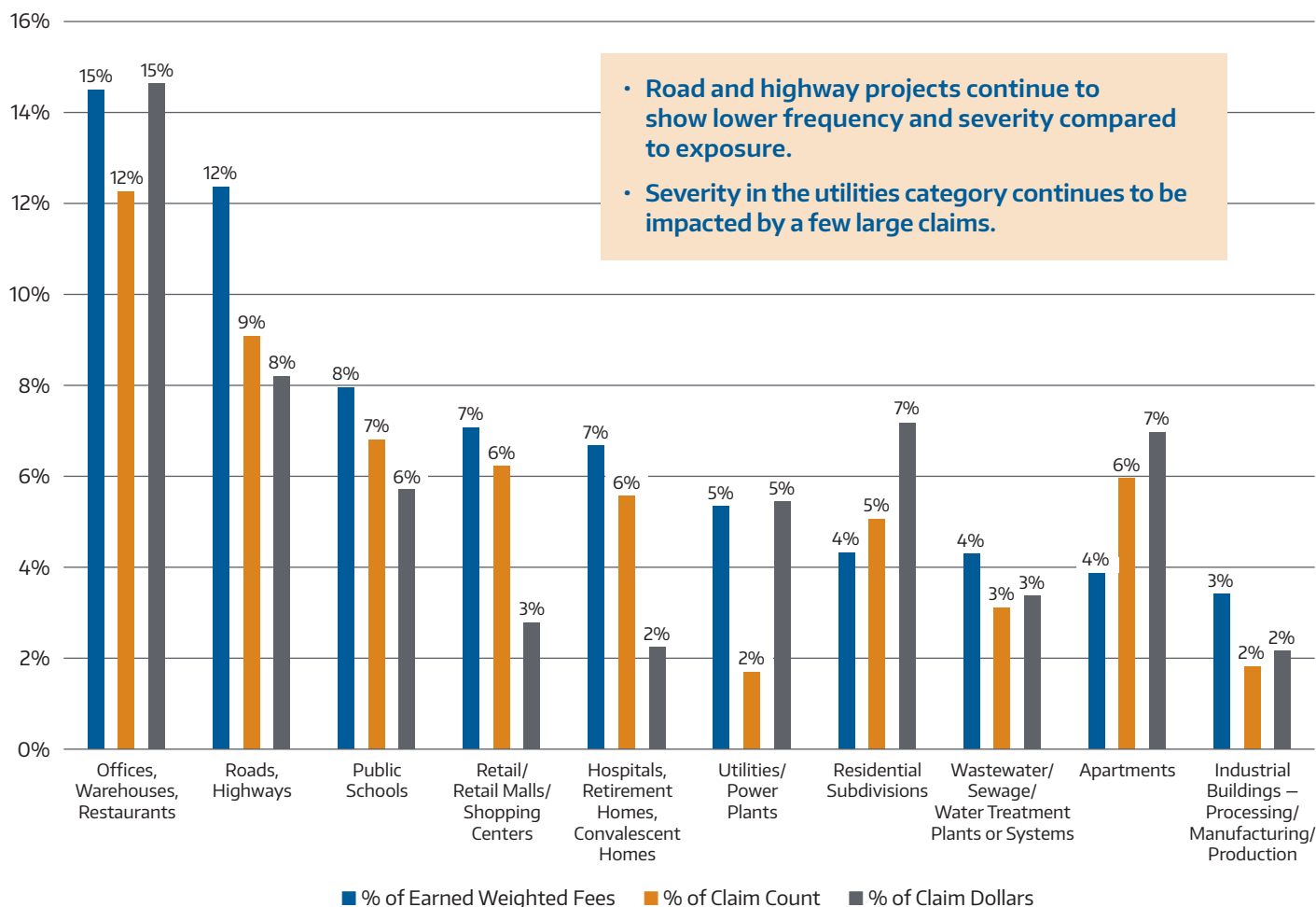
We are seeing a sharp increase in the severity of claims where developers and design professionals are the client. In these two categories, the percentage of claims dollars has doubled. We feel that developers, overall, are an acceptable client type, when quality and reputation factors are included in a design firm's client/project analysis and that the severity reflected in this chart is the result of some large claims in project types typically represented by developers.

As you'll see later in the "Claims by Contract Type" section, agreements between prime and subconsultants can pose problems. The prime agreement typically requires flow-down of terms and conditions to subconsultants. Since the prime agreement is already signed, the subconsultants may not be able to negotiate protections and have to decide whether to take on the project or walk away.

Contractors remain a riskier client type, particularly for smaller firms, due to inherent enhanced risk of the design-build project delivery method. While the severity of claims in which contractors are the client has dropped by more than half since the 2018 study, keep in mind that these percentages are relative. Severity increases in the developer and design professional categories have decreased the percentage attributable to other categories, including contractors.



Top 10 Project Types by Claim Frequency



Insights

These are the ten most frequent project types according to our application data. This chart shows the relative risk for these popular project types.

Office, warehouse and restaurant projects remain the most common projects for our policyholders and are performing consistently with the prior study. The slight uptick in severity, bringing it just about even with exposure, is due to some specific claims on large, complex projects.

Despite severe losses in some roadway traffic accident claims, road and highway projects continue to show lower frequency and severity compared to exposure. (It's also interesting to note that there were no apparent standard of care issues in those traffic accident claims. The nature of bodily injury and fatality incidents is that all parties are drawn into the claim, regardless of fault.)

Consistent with the 2018 study, hospital and retail projects continue to perform well.

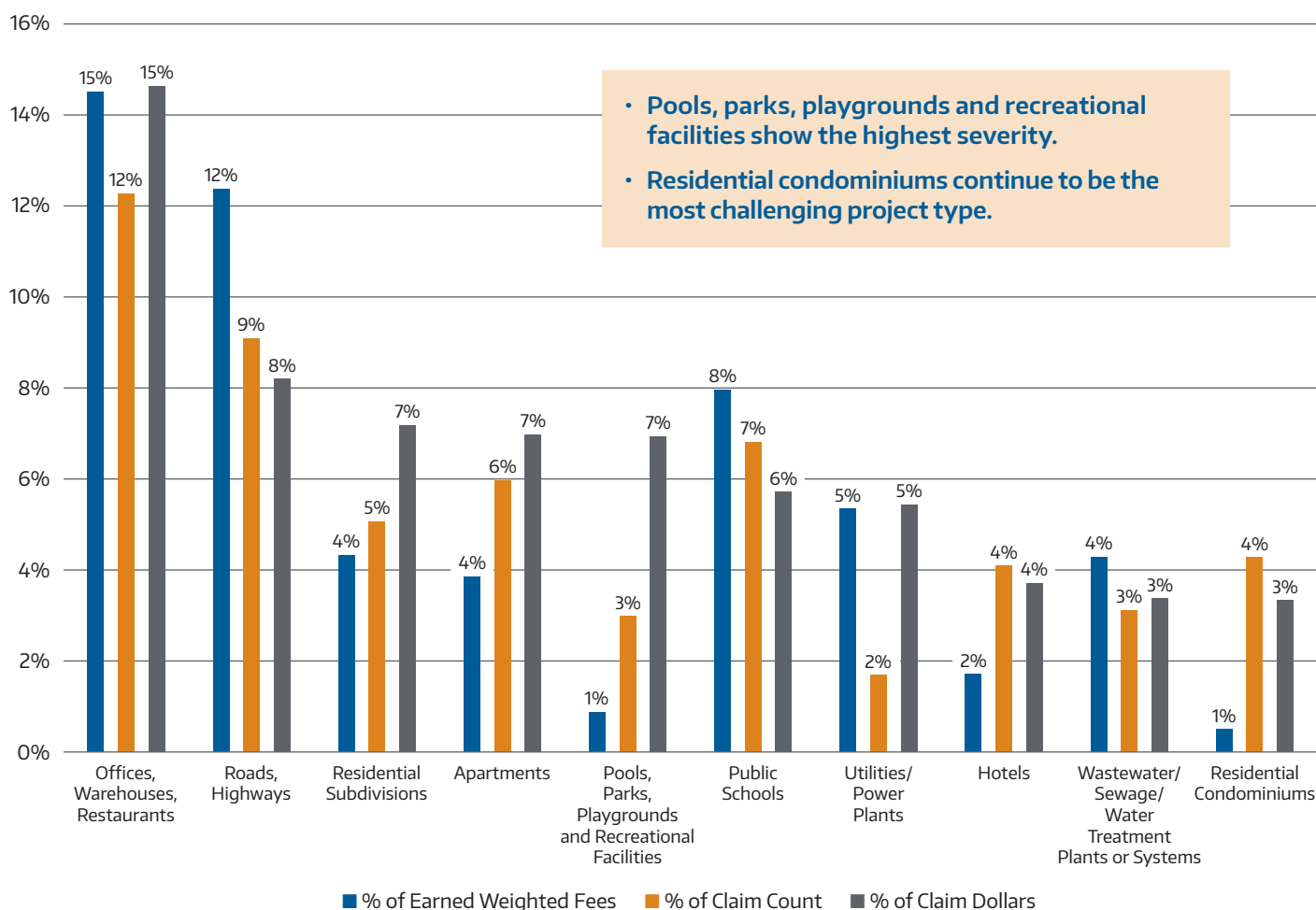


The severity in the utilities category continues to be impacted by a few large claims that are unusual for this typically lower-risk project type. With increases in the severity of claims in other project types, the percentage of claims dollars in this category has dropped by almost half.

Please see the next section for a discussion of public school and residential projects.



Top 10 Project Types by Claim Severity



Insights

The above chart shows the ten project types that have the highest percentage of claim dollars paid and it is sorted by that data point (the gray bars) from highest to lowest. There are some overlaps with the previous chart, but there are some notable project types that appear in this chart due to their high-risk nature.

The highest percentage of claim dollars paid for a project type is in the offices, warehouses and restaurants category but, as noted on the previous page, this is also the most common project type undertaken by our policyholders. It is performing consistent with our expectations and the prior study.

The pools, parks, playgrounds and recreational facilities category results, however, show the highest severity (that is, biggest gap between the percentage of fees and the percentage of claim dollars paid). This category continues to be skewed by a few severe claims.

The public schools market is performing well, although we are seeing an uptick in frequency.

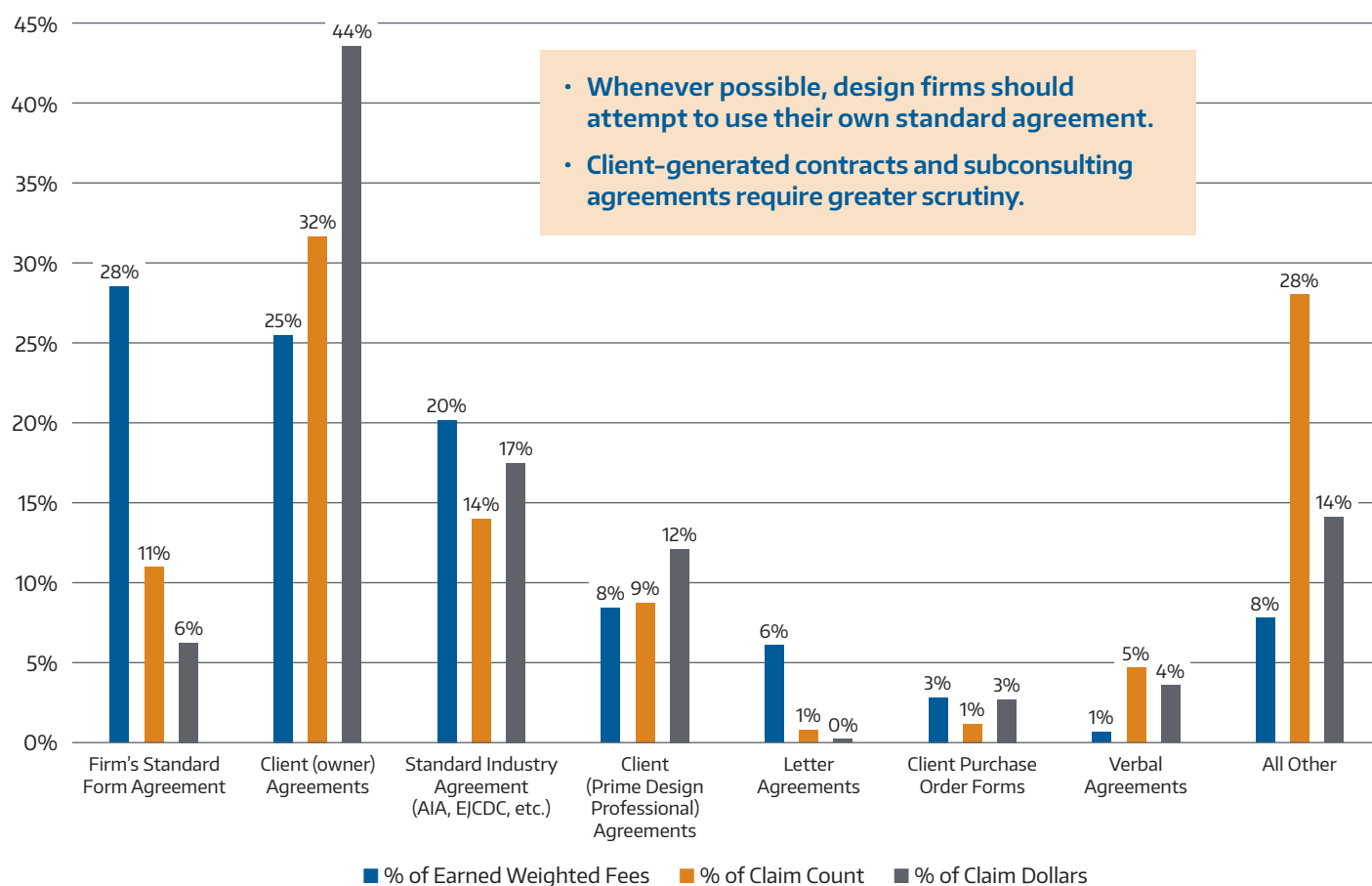
For utilities projects, as noted in the previous section, the severity is affected by a few large, atypical claims.

Residential subdivision projects have seen a sharp change from the prior study. In 2018, claim frequency was even with exposure and claim severity was much lower. Claim frequency is now outpacing exposure and severity is even higher. In part, these projects have been impacted by property damage due to flooding caused by severe weather events.

Not surprisingly, residential condominiums are the most challenging project type from a claims' perspective, consistent with historical data. But we are troubled by disproportionate risk that is emerging for apartment and hotel projects.



Claims by Contract Type



Insights

This chart examines the frequency and severity of claims by the type of contract used on a project.

Claim defense is particularly effective when a firm uses its own standard form of agreement. Whenever possible, design firms should attempt to use their own standard agreement. In Berkley Design Professional's experience, this is both the most frequent form of agreement and the most effective.

Industry standard agreements can also be effective when terms and conditions are properly negotiated and tailored for the particular project.

Attaining fair and balanced terms and conditions in client-generated agreements remains a challenge in defense of claims because these agreements are typically silent on the client's own responsibilities and lack many of the clauses that fairly apportion risk. What's more, they often include onerous and uninsurable requirements for the design professional.

Agreements between prime and subconsultants can also pose problems. Often the prime agreement requires flow-

down of terms and conditions to subs. So subconsultants may not be able to negotiate recommended protections.

Client-generated contracts and subconsulting agreements require greater scrutiny. In addition, it is critical to employ stringent project management of risks that cannot be negotiated away.

At a minimum, professional services agreements should include:

- An affirmative standard of care
- A clear scope of services and related fees
- Construction phase responsibilities
- Defined owner/client responsibilities
- Document ownership, copyright and license terms
- A favorable dispute resolution process
- Clear payment, suspension of services and termination provisions
- A limitation of liability and a mutual waiver of consequential damages



About Berkley Design Professional

Our motto is: Better By Design®. By this we mean that our policyholders are better businesses because we've designed comprehensive coverage and risk management solutions that make their practice less susceptible to loss. Berkley Design Professional is a member company of Berkley whose rated insurance company members are assigned an A+ rating by A.M. Best Company. W. R. Berkley Corporation is an insurance holding company that is among the largest commercial lines writers in the United States and operates worldwide in two segments of the property casualty insurance business: Insurance and Reinsurance & Monoline Excess.

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Practice management recommendations should be carefully reviewed and adapted for the particular project requirements, firm standards and protocols established by the design professional.

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