

# mutuallyspeaking



Bill Williams



David Krekeler



Matt Beier



Tom Watson



Brian Anderson

## Registration Open for WILMIC Summer Seminar Estate Planning, Bankruptcy and Collections and FDCPA work—areas of practice with risk—the many challenges and potential pitfalls

Registration is open at [www.wilmic.com](http://www.wilmic.com) for WILMIC's Summer Seminar. This year's half-day, three-hour morning seminar is scheduled for Friday, August 4 at the State Bar Center, 5302 Eastpark Blvd. in Madison. Three CLE credits, including ethics, have been approved. The seminar is also being offered as a live, online webcast.

The program will include two 75-minute panel discussions, moderated by WILMIC Senior Vice President Tom Watson. The first panel will discuss bankruptcy, collections and FDCPA work, and will feature long-time bankruptcy attorney David Krekeler of the Krekeler Strother firm in Madison, and WILMIC Claims Attorney Matt Beier.

The second panel will cover estate planning practice, featuring Madison estate planning

practitioner Bill Williams, a shareholder in the Madison law firm of Bell, Moore & Richter, and senior claims attorney Brian Anderson.

The program is titled, "Avoiding the Mistakes – Debt Collection, Bankruptcy and Estate Planning: Lawyers Face Many Potential Landmines."

For more information, call Stephanie Williams or Tom Watson at 608-824-1700. They also can be reached by email at [Stephanie.williams@wilmic.com](mailto:Stephanie.williams@wilmic.com) and [tom.watson@wilmic.com](mailto:tom.watson@wilmic.com). ■

### Seminars now available on all mobile devices

You can now watch WILMIC seminars anywhere on your tablet or smart phone! Previously, the seminars were live streamed only for desktop access. WILMIC Senior Vice President and Director of Communications, Tom Watson, says the company has been working to get this access for a while. "Lawyers, like everyone else these days, are on the go more than ever, so this just gives them one more option to help them tune into these seminars without having to blow up their schedules. We thank the State Bar of Wisconsin video department for making this possible for us."

## WILMIC to be a part of 3 CLE presentations at this fall's solo & small firm conference

Wisconsin Lawyers Mutual Insurance Company will be part of three important CLE sessions at this year's State Bar Solo and Small Firm Conference at the Kalahari Resort in Wisconsin Dells. One program will deal with the issue of violence against lawyers. The panel will include a lawyer who has been physically threatened and stalked as well as a police officer and others with expertise in personal safety issues.

WILMIC will also be part of a session on cyber security risk as lawyers continue to confront the issue of cyber breaches and general technology security.

Finally, WILMIC senior claims attorney Brian Anderson will be speaking as part of a joint program on bankruptcy practices with Madison bankruptcy attorney David Krekeler.

The conference is scheduled for October 26 – 28. WILMIC staff members will be on hand to meet and talk with attorneys and to provide insurance information and to catch up with policyholders who stop by the WILMIC booth. ■





Matt Beier

*Practicing law can be fulfilling and satisfying as lawyers help people in need. However, for a variety of reasons, things sometimes go wrong. In this edition of our regular Claims Digest, Claims Attorney Matt Beier explores the question of when to report something to your malpractice carrier.*

By Matt Beier

## When Should You Notify Your Malpractice Insurance Carrier?

Spiderman is one of my five-year-old son, Leo's favorite superheroes because he has "Spidey Sense," a type of quasi-clairvoyance that allows him to detect and avoid hazards with speedy reflexes before they occur. Leo is not convinced, but I tell him that Daredevil (a.k.a. Columbia Law graduate and Spiderman's lawyer, Atty. Matt Murdock) has a far more powerful "radar sense" whereby his loss of sight due to a radioactive accident is compensated by the enhancement of ALL of his other senses. Whether you are a fan of Spiderman or Daredevil, pay attention to your own lawyerly instincts when it comes to reporting claims and potential claims to your malpractice carrier. Your instincts should tell you when it's time to contact your insurance company.

Lawyers make mistakes. That's why you have malpractice insurance. But it

only works when you notify your carrier of claims and potential claims. "I don't even know if this is something I need to report," say many of the attorneys insured by WILMIC when they call to speak with one of our claims attorneys. My response is similar each time, "Your policy only covers what you report, so, it's better to report than to run the risk of having to pay for what could be an expensive mistake."

### What is a claims made and reported policy?

On the first page of WILMIC's professional liability insurance policy it states in big, bold letters, "THIS IS A CLAIMS MADE AND REPORTED INSURANCE POLICY." Such a policy requires that the "claim," be made or that the "potential claim," first exists during the policy period AND reported in writing during the same policy period. Coverage under your policy with WILMIC is triggered when two things happen: 1) you have knowledge of a claim or a potential claim ("claim made"), AND; 2) you notify WILMIC ("reported").

The Wisconsin Supreme Court recently described a claims-made-and-reported policy as follows: "A claims-made-and-reported policy, as its name suggests, provides coverage for claims both made and reported during the policy period. To trigger an initial grant of coverage, the injured third party must make a claim against the insured during the policy period and the insured must report that claim to the insurance company within the same period. The event upon which the claim is based can, and often does, occur before the policy came into existence."

Requiring an insurance company to provide coverage for a claim reported after the end of a claims-made-and-reported policy is per se prejudicial to the insurance company.

### What do I report?

If there is one take-away from this article for WILMIC insureds, let it be that you should absolutely contact one of WILMIC's Claims Attorneys to discuss any set of

circumstances that sets off your "Spidey Sense" regarding legal malpractice. The obvious "claim" is the lawsuit you were just served with – most lawyers realize they have to report the suit to their malpractice carrier. Claims come in other forms as well. For example, a claim exists when a client, by letter, expresses dissatisfaction with the legal representation and that the lawyer was responsible for a poor outcome. It is extremely important to report a claim within the policy period in which the claim is made in order to trigger coverage.

WILMIC's policy also requires you to report a "potential claim," regardless of its merits. Here are some examples where courts have found circumstances that a reasonably prudent lawyer might expect to become the basis of a claim, potential claim or grievance:

- Failure to file inheritance and estate tax returns by the applicable deadline even if the lawyer was successful in obtaining abatements from tax authorities in similar situations with past clients;
- Lawyers had knowledge of a potential claim when summary judgment motion was granted against the client due to lawyer's procedural failures;
- Suit dismissed for lawyer's failure to comply with a deadline despite efforts to reinstate the action in the trial and appellate courts and the client's assurance she had "no intention of suing" the lawyer;
- Lawyer misfiled a fully executed real estate contract and did not timely return it to the other party. The lawyer disclosed the error to the other side, who was unmoved. All the while, the lawyer's firm was applying for insurance and did not report the matter to the carrier. The other party rescinded and a lawsuit ensued;
- Disciplinary proceedings may become "potential claims" even when they do not result in any disciplinary action.

## How do I report a claim, potential claim or grievance?

Your application (and each reissue application) will ask whether any lawyer named in the application is aware of any claim not previously reported or of any circumstance, act, error, or omission that a reasonably prudent lawyer might expect to become the basis of a claim, potential claim or grievance, regardless of its merits. This is, by far, the most common means of reporting a claim. But, it should not be the only way you report claims.

Many policyholders will call Brian Anderson or me to chat about the claim, potential claim or grievance, and then follow up with a letter. Other reporting options include: mail, fax, e-mail, or via WILMIC's website ([www.wilmic.com](http://www.wilmic.com)). Typically, you would need to report:

- Your firm name
- Name of lawyer(s) involved
- Claimant/grievant name
- Date of alleged wrongful act
- Date you first became aware of the matter
- Description of claimant/grievant's allegations
- Your description of the matter, including potential damages, if known

## What happens if you don't report a claim or potential claim?

The failure to report a claim or a potential claim during the policy period in which you first become aware of it may result in loss of coverage, leaving you alone to bear the cost of what could be a very expensive mistake, or even if there was no mistake, the cost of defending against the allegation.

## What are some tips to avoid coverage disputes?

Be aware of your policy's reporting requirements and make sure all other insureds (lawyers and non-lawyers) are, too. Encourage discussion of problems sooner rather than later. Identify contacts, both to

take the lead on reporting and representatives of your carrier. And, Report. Even if you feel that you can "fix it," or that the claim is meritless, notify us to be sure coverage is there when you need it. Pay attention to your "Lawyerly Radar Sense," and call us. We're nice. We are happy to discuss your matter and will provide an answer or point you in a better direction. ■

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For the Lawyer/Superhero Top Ten List, check out <http://www.abajournal.com/gallery/LawyerComics>

"Claim" means your receipt of a demand for money or services, naming any of you and alleging "Wrongful act" means:

A. any act, error or omission that is negligent in the rendering of or failure to render professional services to a client; or

B. while rendering professional services to a client, you commit personal injury.

"Potential claim" exists when any of you first become aware of facts or circumstances regarding

an act, error or omission committed by any one or more of you that a reasonably prudent lawyer would expect to be or to become a basis for a claim, regardless of whether you believe such a claim will be made.

Anderson v. Aul, 2015 WI 19, ¶26.

Id., at ¶105.

Id., at ¶12.

Estate of Logan v. North-Western Nat. Cas. 144 Wis. 2d 318, 424 N.W.2d 179 (1988).

Minnesota Lawyers Mutual Insurance Company v. Baylor & Jackson, PLLC, 531 Fed. Appx. 312 (4th Cir. 2013).

Pelagatti v. Minnesota Lawyers Mutual Insurance Company, 2013 WL 3213796 (E.D. Pa. June 25, 2013).

Koransky, Bouwer & Poracky, P.C. v. The Bar Plan Mutual Ins. Co., 712 F.3d 336 (7th Cir. 2013).

Fishman v. The Hartford, 2013 WL 5429272 (E.D. Pa. Sept. 27, 2013).

## Need a bond? WILMIC can help

WILMIC's insurance agency, Wisconsin Lawyers Insurance Agency LLC continues to offer good, competitively-priced court bonds. The probate and court bonds are available from The Bar Plan of Missouri.

During the past four years of operation, most of the bonds sold to Wisconsin lawyers were for estate planning cases.

Any Wisconsin lawyer who needs a bond can turn to the agency for help. The Bar Plan offers 24-hour turnaround, very competitive rates, and easily accessible representatives to handle the application and underwriting process.

Bonds available to Wisconsin lawyers include:

- Fiduciary Bonds (Administrator, Executor, Conservator, Estate)
- Court Bonds (Appeal, Replevin, Injunction, etc.)
- Notary Bonds
- License and Permit Bonds
- Lost Instrument Bonds
- Public Official Bonds
- ERISA Bonds

For access to the online application process, go to WILMIC's website, [www.wilmic.com](http://www.wilmic.com) and click on "Apply For Court Bonds." To apply by telephone, call 1-877-553-6376. ■

## 2017 WILMIC Risk Management Programs available for CLE credit

### WILMIC Speakers Available To Present Free CLE Programs

Looking for speakers who can deliver real-life examples of practical, use-it-now information? The following risk management programs are available free from Wisconsin Lawyers Mutual Insurance Company to local bar associations and legal groups. CLE credit can be applied for with each program.

- Legal Malpractice – A Primer
- Common Pitfalls In Law Practice
- Help Yourself: What Malpractice Claims Teach Us
- Protecting Your Practice: Preparing a Disaster Recovery Plan
- Avoiding the “M” Word: Managing Malpractice Risks
- Starting a Law Practice
- Setting Up a Solo Practice
- Malpractice Considerations With Unbundled Legal Services
- What Keeps You Up At Night? Getting Peace of Mind In Your Law Practice
- Using Office Staff Effectively
- Dealing With Pro Se Litigants: More Art Than Science?
- Top Ten Ways to Avoid Spending Your Deductible

- Avoiding the Malpractice Minefield in Real Estate
- Litigation Risk Management: What Malpractice Claims Teach You
- Legal Malpractice Claims – The Wisconsin Experience
- The Pros and Cons of Delivering Unbundled Legal Services and Practical Solutions for Dealing with Pro Se Litigant

#### Speakers:

- Katja Kunzke, President and Chief Executive Officer
- Brian Anderson, Senior Claims Attorney
- Matt Beier, Claims Attorney
- Joseph McCarthy, Vice President – Underwriting and Claims
- Tom Watson, Senior Vice President

Continuing legal education and ethics and professional responsibility credits are subject to approval by the Board of Bar Examiners. If you would like to schedule a speaker, please contact Tom Watson by calling 800-373-3839 (if calling from the Madison area, please use our local number, 824-1700). ■

### WILMIC honors Director Mark Pennow



At its June meeting, the WILMIC Board of Directors paid tribute to outgoing director Mark Pennow of Green Bay. Pennow, who served on the WILMIC board since 2004, decided not to seek re-election to the board this year.

Pennow was a strong and vital contributor to WILMIC's growth and success during the past 13 years, not only serving on the board, but also chairing the Long Range Planning Committee and serving various terms on the Executive, Audit and Investment Committees.

WILMIC President and CEO Katja Kunzke said, “Mark was a calming, steady voice who helped keep us moving in the right direction. I counted on Mark for wisdom and insight into many very difficult issues. Mark was very supportive of the company and of staff, and never wavered in his desire to do what was best for the company and ultimately what was best for our policyholders. He was one himself. We will miss him greatly on the board and will be forever grateful for his years of service.”

### WILMIC board of directors elected to three-year terms

Four lawyers were elected to new three-year terms on the WILMIC Board of Directors at the company's Annual Meeting of Policyholders. Three of them were re-elected to new terms, and one was elected to the board for the first time.

Linda de la Mora, von Briesen & Roper SC in Elm Grove, Noreen Parrett, Parrett & O'Connell, LLP in Madison, and Marna Tess-Mattner, Schmidt, Rupke, Tess-Mattner & Fox SC in Brookfield were all re-elected.

Rich Orton, Crivello Carlson in Milwaukee, was elected to serve on the board for the first time. Orton replaces Attorney Mark Pennow of Green Bay, who stepped down after serving on the board since 2004.

de la Mora has been on the WILMIC board of directors since 1999. She also serves on the Executive and Investment Committees. Parrett was first elected to the board in 2010. She also serves on the Governance Committee. Tess-Mattner joined the board in 2013 and also serves on the Audit, Governance and Long Range Planning Committees. Orton has served on the board the past two years as liaison to the State Bar of Wisconsin Young Lawyers Division, before his election this year as a director. Orton is also a member of the board's Long Range Planning Committee. He graduated from U.W. Law School in 2012, when he then joined Crivello Carlson in Milwaukee. ■



Linda de la Mora



Noreen J. Parrett



Marna M. Tess-Mattner



Richard T. Orton