

mutuallyspeaking



What Would You Do If You Lost Sensitive Client Information?

WILMIC Fall Seminar Set for October 4 in Waukesha

WILMIC's annual Fall Seminar is scheduled for Friday, October 4 at the Country Inn Hotel in Waukesha this year. The seminar will be the unofficial launch of a new product from WILMIC: Cyber Risk Liability insurance.

Whether because of a data breach due

to hackers, careless disposal of client records, theft of mobile devices or misuse of internal security protocols, lawyers need to consider how they are protecting client and employee information. Experts say law firms have become a prime target because of all

the sensitive and confidential personally identifiable information of clients stored in law firm databases.

Keynote speaker Sandy Hauserman will present – Cyber Risk: Not Just For Large Law Firms.

The consequences of a breach or lost data can be monumental, especially for solo practitioners. Hauserman will talk about the cyber exposures that arise from a Law Firm's dependence on computers and the internet and from collecting personal information on clients. He will

describe how cyber exposures effect small to medium sized law firms – what those exposures are and how he expects they will grow.

Hauserman will provide examples of actual cyber losses suffered by smaller law firms and what can be done to protect against them. Finally, he will discuss the insurance policy that will be offered by Wisconsin Lawyers Mutual Insurance Company and why law firms should consider it.

Hauserman led the Cyber Risk Initiative for Guy Carpenter and Company, a reinsurance intermediary. He placed reinsurance for a number of major cyber risk insurers and developed a unique reinsurance catastrophe product that protects insurers from an accumulation of cyber-risk exposures.

He then became a Founder and Managing Member of Digital Risk Resources ("DRe"), a product development company, creating specialty insurance products for small to mid-sized businesses and individuals. Currently, DRe offers Cyber Risk Insurance, EPLI, and an online banking protection product called EFT Guard.

Hauserman holds a J.D from Pace University School of Law, Cum Laude and a Masters of Studies in Environmental Law from Vermont Law School, Summa Cum Laude.

Look for WILMIC at this Fall's Solo & Small Firm Conference

Wisconsin Lawyers Mutual Insurance Company continues to reach out to lawyers around the state. Staff members will be on hand to meet and talk with attorneys attending the State Bar of Wisconsin's Solo & Small Firm Conference at the Kalahari Resort in Wisconsin Dells on October 24 and 25.

Staff members will offer insurance information to convention attendees and catch up with policyholders who stop by the WILMIC booth.

WILMIC also will be part of a CLE program during the conference. Senior Vice President Tom Watson and Claims Counsel Brian Anderson will be part of a panel discussion dealing with pro se parties. The program is Friday afternoon, October 25. ■

CLE credits, including ethics, have been applied for.

Stay tuned for an email notice coming soon! 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 and tom.watson@wilmic.com. ■



Sandy Hauserman

Practicing law can be fulfilling and satisfying as lawyers help people in need. However, for a variety of reasons, things can sometimes go wrong. In this edition of Mutually Speaking, we look at lawyer claim settlement considerations.

By Brian Anderson and Sally Anderson



Sally Anderson Brian Anderson

Avoid inadvertently engaging in a “prohibited transaction” with your former client after you discover you have made a mistake.

An attorney returns from vacation and discovers he did not timely file a notice of appeal. The deadline to file the appeal has passed, resulting in the waiver of his client’s right to appeal. After reporting this legal malpractice claim to his professional liability carrier, the attorney contacts his client directly to discuss the error. After the client expressed his dissatisfaction with the way his case was handled, he indicates that he would like to put this matter behind him. The client states he is willing to let bygones be bygones in return for \$5,000.

1) Can the lawyer resolve this legal malpractice claim directly with his former client?

Yes, pursuant to SCR Rule 20: 1.8(h) (2). A lawyer is allowed to settle a claim or potential claim with his now unrepresented former client, so long as that person is advised in writing to seek the advice of independent legal counsel regarding the underlying representation and provided a reasonable period of time to do so. It

is important that the lawyer consider the inherent danger of appearing to take unfair advantage of an unrepresented former client after a mistake has been made. This is especially the case when the lawyer may be the only attorney the client has ever worked with and the client has always relied on that lawyer for advice and guidance.

2) Can the lawyer condition a legal malpractice settlement agreement upon the client also agreeing not to report the lawyer’s conduct to disciplinary authorities?

No, pursuant to SCR Rule 20: 1.8(h) (3). A lawyer cannot enter into a settlement agreement with his client or former client that limits that individual’s ability to report the lawyer’s conduct to disciplinary authorities. It might be frustrating to the lawyer; however, the client has the right to file an OLR grievance even after the former client has been paid a settlement releasing his legal malpractice claim. The ethics complaint cannot be subject to any settlement terms between the parties.

3) Should the lawyer notify his professional liability carrier before settling the claim directly with his former client?

Yes, if he wants to protect his coverage. As a condition of coverage under a lawyer’s professional liability policy, the lawyer must report all claims and potential claims to the insurance carrier during the policy period. A lawyer may decide not to use the policy to resolve a legal malpractice claim; however, to protect coverage,

a lawyer must report all claim matters during the policy period in which the claim is first made or the potential claim first exists. Sometimes, what looks like a fairly straightforward issue turns out to be far more complicated than expected. Or, it is possible that the lawyer missed a change in the law that dramatically increased the claim risk. In these instances and in matters where the former client later changes his or her mind regarding the settlement agreement, the lawyer may need to involve the malpractice insurance carrier. To assure coverage, the lawyer must notify the carrier of the claim at the outset, before reaching any settlement. This is the essence of a “claims-made and reported” policy.

Conclusion

This claim scenario highlights the precarious position a lawyer occupies in potential conflict with his now former client after a mistake has been made that impacts that former client’s legal rights. Don’t complicate a legal malpractice error by inadvertently entering into a prohibited transaction with your former and unrepresented client while trying to rectify your mistake. And remember that, unlike under an occurrence insurance policy, as a condition under your professional liability policy, you must report all claim matters to your professional liability carrier in writing during the policy period in which you first become aware of the matter. ■



Wisconsin Lawyers Mutual Insurance Company President Katja Kunzke served this past year as President of NABRICO (National Association of Bar-related Insurance Companies). The primary duty of the NABRICO president is to host an annual conference. WILMIC hosted that conference recently in Madison, as more than 90 malpractice insurance professionals and guests from over a dozen companies from around the U.S. and Canada came to Madison for the two-day event. It was the first time WILMIC hosted the conference in nearly 20 years.

WILMIC Summer Seminar Tackles the Challenges of Practicing Law in Today's Environment

Wisconsin Lawyers Mutual Insurance Company held its summer seminar at the Kalahari Resort and Conference Center in Wisconsin Dells in July. More than 40 attorneys attended the program, either live in person or viewing the live webcast of the event. The program featured Madison-based attorney Kimberly Alderman, and a panel discussion that included New Richmond attorneys Tom Schumacher and Gary Bakke, as well as Superior attorney Johanna Kirk.

Alderman's presentation covered a variety of subjects relevant to solo and small firm attorneys, including administration, marketing, client relations, case management, skill development, and work/life balance. She encouraged her audience to think broadly about their practices—the ones they have and the ones they want.

Alderman encouraged the audience to consider ways to be more efficient and address their challenges by using better systems. She gave the audience the following advice:

- Use checklists (or "to-do" lists) whenever possible
- Work on "single tasking"—multitasking is overrated
- Take care of those "ugly frogs"—the distasteful tasks you usually try to avoid—and don't let them linger

The program included a panel discussion that focused on functional, day-to-day issues that lawyers must address to be successful and happy. Those issues include how to better serve clients, attract better clients, and become more financially secure.

The panel of Tom Schumacher and Gary Bakke, of Bakke Norman in New Richmond, Johanna Kirk of Torvinen, Jones, Kirk & Routh in Superior, and Alderman also discussed the need for lawyers to address clients' demands for better service at less cost, providing better value in this age of exploding internet information for clients, and becoming more mobile and accessible to clients.

If you would like to watch part or all of the seminar, visit our website at www.wilmic.com and go to the video section on the home page. ■

Need a Bond? WILMIC Can Help

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

During the past three 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 bond 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 and click on "Apply For Court Bonds." To apply by telephone, call 1-877-553-6376. ■

WILMIC Board of Directors Elected to New Three-Year Terms

Four members of the WILMIC Board of Directors were elected to new three-year terms this summer. At the company's Annual Meeting of Policyholders, four directors were up for election to three-year terms. They are:

- Atty. John E. Danner, Harrold, Scrobell & Danner, S.C., Minocqua
- Atty. John P. Miller, Miller, McGinn & Clark, S.C., Milwaukee
- Atty. Kevin J. Palmersheim, Haley Palmersheim, S.C., Middleton
- Atty. Thomas R. Schumacher, Bakke Norman, S.C., New Richmond

Atty. Danner has been a member of the WILMIC board since 1998 and is a member of the board's Audit and Investment Committees. Atty. Miller joined the WILMIC board in 1995 and is on the board's Audit Committee. Atty. Palmersheim joined the WILMIC board in 2007. He chairs the board's Audit Committee and is also on the board's Investment and Long Range Planning Committees. Atty. Schumacher has been on the WILMIC board since 2000 and is a member of the Executive and Long Range Planning Committees. ■



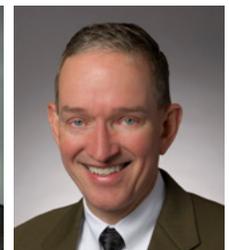
John E. Danner



John P. Miller



Kevin J. Palmersheim



Thomas R. Schumacher

CONTACT US

608-824-1700

608-824-1701 fax

800-373-3839

wilmic.com

Office hours at Wisconsin Lawyers Mutual Insurance Company are 8 am until 4:30 pm Monday–Friday. Other information also found at wilmic.com.



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2013 Risk Management Programs Available for CLE Credit

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.

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

- 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
- Facing a New Day In Court: 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

Sally E. Anderson, Vice-President - Claims

Brian C. Anderson, Claims Counsel

Joseph A. McCarthy, Director of Underwriting

Thomas J. Watson, Senior Vice President