

# mutuallyspeaking



## Thanks at 30! WILMIC Marks 30 Years Serving Wisconsin Lawyers

**D**o you remember where you were 30 years ago? That's when a small Wisconsin homegrown legal malpractice insurance company was born. In 1986, legal malpractice rates in Wisconsin had doubled and even tripled in many cases and coverage was becoming scarce for many law firms.



State Bar leaders, most notably Don Heaney, the President of the State Bar at the time, and Milwaukee attorney Bill Mulligan, led the charge. Almost miraculously, they, along with other Bar leaders, raised \$3.5 million by selling bonds to Wisconsin lawyers to help launch a new company named Wisconsin Lawyers Mutual Insurance Company. They weren't sure it would last. "It was supposed to be a stop-gap measure, only temporary, really," says Mulligan.

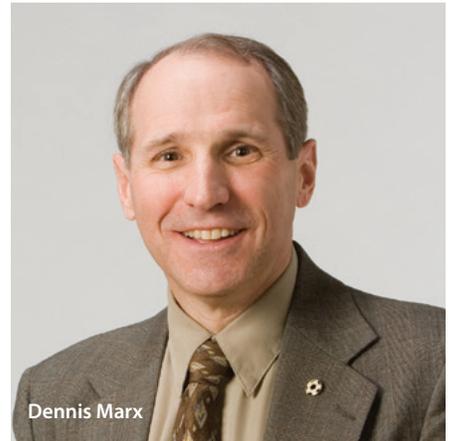
Heaney passed away several years ago. Mulligan served as the chair of WILMIC's Board of Directors from its inception until 2014, when New Richmond attorney Tom Schumacher succeeded him. Mulligan remains on the board to this day.

WILMIC wrote a little more than 600 policies in its first year. Today that total has grown to about 1,600.

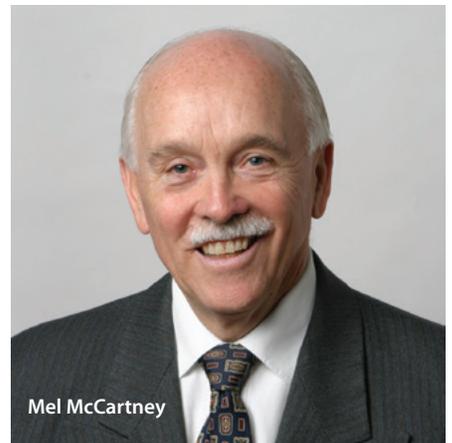
WILMIC operated in the red, with no real unassigned surplus to its name for the first six years of operation. In 1989, for the first time, the board hired in-house staff, including President and CEO Mel McCartney, Director of Claims Katja Kunzke and Underwriter Dennis Marx. The company was off and running. "We weren't sure if we'd be able keep our jobs or the company would continue," Kunzke says, "but those were exciting days and we knew we were doing something really good and important for Wisconsin lawyers." Of course, Kunzke not only kept her job, today she is the company's President and CEO. McCartney retired in 2004, and Kunzke has served as President and CEO since then. Marx retired in 2011.

The early 1990's were difficult, as national commercial carriers, responding to the competition for business that WILMIC provided, re-entered the Wisconsin legal professional liability market. WILMIC's presence brought those carriers' premiums down considerably and the crisis of the 1980's was over. By 1993, WILMIC began offering to pay back the interest accumulated on the bonds lawyers purchased to capitalize the company in 1986. ■

*In the next Mutually Speaking issue—the last half of the 1990's brings dramatic technological innovations, the company experiences financial health and stability, bonds are paid off, and by the end of the decade, WILMIC begins paying dividends to its policyholders.*



Dennis Marx



Mel McCartney



Katja Kunzke



*Practicing law can be fulfilling and satisfying as lawyers help people in need. However, for a variety of reasons, things can sometimes go wrong.*

*By Sally Anderson*

### **Perils of out of state practice**

Clients today travel and transact business freely, sometimes causing problems for lawyers who are called upon to help them with legal issues they have encountered along the way. Consider these situations, all of which have resulted in legal malpractice claims made against the lawyer.

### **Statute of Limitations**

Good clients of the lawyer were planning to winter in the south when they were in an automobile accident in Tennessee while driving through that state. They asked their Wisconsin lawyer to represent them in connection with their personal injury claim. The lawyer unsuccessfully negotiated with the insurance company to settle the matter. He then brought suit in Wisconsin. The case was dismissed for lack of jurisdiction over the Tennessee driver. When the lawyer tried to bring suit in Tennessee, he learned the statute of limitation in that state is only two years, and the claim was filed too late.

### **Beware When Referring**

Another lawyer was asked to recommend a personal injury lawyer in Florida, and did

so, based on a directory available through a national plaintiffs' bar group. The Florida lawyer sent a letter to the Wisconsin lawyer, thanking her for the referral and confirming their agreement to split the fee. It turned out the Florida lawyer missed a deadline for putting the government on notice of a claim and the case was lost. It also turned out that the firm in Florida was breaking up and did not report the claim in a timely manner to its professional liability insurer, who denied the claim. The Wisconsin referring lawyer got stuck with liability because of the fee-splitting arrangement. (Note: Any time you refer a case but maintain a financial interest in the matter, the case is treated as if you and the other lawyer were partners in the same firm for ethical and malpractice issues. There is a risk there whether the referral firm is in-state or somewhere else.)

### **Not Just Out-of-State, But Which States?**

A lawyer was asked to draft a lease for a good corporate client in Wisconsin who also owned real estate in California. It turned out the terms drafted, which would have been fine in Wisconsin, did not comply with California real estate law, and the client suffered a financial loss as a result.

Lawyers drafting company purchase and sale agreements with out of state parties can also run afoul of that state's requirements. Be especially careful with covenants not to compete and tax issues that can be very different from state to state.

Another lawyer did estate planning work for a client for many years. The client decided there were business opportunities in Florida and started a business in that state, traveling back and forth to Wisconsin. At some point, lured by the tax benefits of a Florida home, the client relocated his state of residence to Florida, but still used the Wisconsin lawyer for some of his work. On a trip to Florida, the client asked for changes to some property ownership, which the Wisconsin lawyer

provided. Only after the death of the client some years later did a beneficiary claim the work had been done in error and claimed title to the real estate in Florida that had been transferred in documents prepared by the Wisconsin lawyer.

Lawyers need to consider at what point you may not be the best lawyer to accomplish the client's goals in a foreign jurisdiction in which you are not licensed to practice. A possible solution may be to co-counsel with a local out of state lawyer, but the question remains: Are you best serving your client's needs by staying involved? These are difficult issues when a relationship of trust has been nurtured between client and lawyer, but are best handled at the outset of the out of state work, not when the issue arises. Even though the lawyer is not appearing in a court or other official "proceeding" of some sort, the Wisconsin lawyer should know the rules in the foreign state as to its standards for out of state lawyers transacting business in the state.

Some states have reciprocity rules that work fine with Wisconsin's ethics rules; others work hard to exclude out of state lawyers from doing legal work within their borders. Some states (Florida, for example, but there are others) are very unfriendly to practitioners from outside their states providing legal services to their state residents. Lawyers practicing in the areas of contract, corporation law, real estate and estate planning need to be especially sensitive to these issues. ■

## Another WILMIC Cash Dividend Coming to Policyholders

Over Eight Million Dollars in Dividends Has Been Paid Out Since 1999

For the 18th consecutive year, WILMIC will be sending out dividend checks to policyholders. The Board of Directors declared the dividend at its recent spring meeting after reviewing the company's 2015 financial results. Cash dividends equal to six percent of annual premiums will be sent to law firms currently insured by Wisconsin Lawyers Mutual, bringing the total dividend payments to policyholders since 1999 to more than \$8 million. Katja Kunzke, WILMIC President and Chief Executive Officer, says, "I'm proud that we've been able to give back over \$8 million since we started this company 30 years ago. Thanks, policyholders, for trusting us to do this right."

Kunzke says investment income contributed to WILMIC's financial success in 2015. "Cash dividends are a mutual company's way of sharing its success with policyholders. Although we continued to experience some claims losses last year, we've been able to hold our own and remain financially strong. We're grateful, and we want to share that with our policyholders."

Kunzke says WILMIC policyholders are the backbone of the company. "A dividend is what the mutual concept in insurance is all about. Our board of directors believes it is important to return money to the policyholders, when appropriate."

The company began dispersing cash dividends in 1999. The latest dividend payments will total more than \$300,000. Kunzke says the cash dividend, together with premium credits (the lower the indemnity payments for each policyholder, the higher the premium credits) helps lower the overall premium costs for many policyholders. "We want to return money to policyholders once we're reasonably sure we won't need it to pay losses and fund operations," Kunzke added.

Total Cash Dividends Paid by WILMIC (1999 – 2016): \$8,219,971 ■

## Need a Bond? WILMIC Can Help

WILMIC's bond agency, Wisconsin Lawyers Bond Agency LLC has now been in operation for about two years. The probate and court bonds are available from The Bar Plan of Missouri.

During its first two 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](http://www.wilmic.com) and click on "Apply For Court Bonds." To apply by telephone, call 1-877-553-6376. ■

## Look for WILMIC at the State Bar's CLE Conferences Later this Year



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 key CLE conferences in 2016. The Young Lawyers Division Leadership Conference is April 1 in Madison. WILMIC is presenting a program on work-life balance.

WILMIC will also be at the State Bar's Biotech and the Law Global Conference May 5-7 at Monona Terrace Convention Center in Madison, the Bar's Annual Meeting & Conference in Green Bay June 16 – 17, and the Solo & Small Firm Conference at the Kalahari Resort in Wisconsin Dells October 20 – 22. Staff members will offer insurance information to convention attendees and catch up with policyholders who stop by the WILMIC booth. ■

## Need a CLE Program for a Lunch Meeting? 2016 WILMIC 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).

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| <ul style="list-style-type: none"> <li>• Legal Malpractice – A Primer</li> <li>• Common Pitfalls In Law Practice</li> <li>• Help Yourself: What Malpractice Claims Teach Us</li> <li>• Protecting Your Practice: Preparing a Disaster Recovery Plan</li> <li>• Avoiding the “M” Word: Managing Malpractice Risks</li> <li>• Starting a Law Practice</li> <li>• Setting Up a Solo Practice</li> </ul> | <ul style="list-style-type: none"> <li>• Malpractice Considerations With Unbundled Legal Services</li> <li>• What Keeps You Up At Night? Getting Peace of Mind In Your Law Practice</li> <li>• Using Office Staff Effectively</li> <li>• Dealing With Pro Se Litigants: More Art Than Science?</li> <li>• Top Ten Ways to Avoid Spending Your Deductible</li> <li>• Avoiding the Malpractice Minefield in Real Estate</li> </ul> | <ul style="list-style-type: none"> <li>• Litigation Risk Management: What Malpractice Claims Teach You</li> <li>• Legal Malpractice Claims – The Wisconsin Experience</li> <li>• Facing a New Day In Court: The Pros and Cons of Delivering Unbundled Legal Services and Practical Solutions for Dealing with Pro Se Litigant</li> </ul> | <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• <b>Katja Kunzke</b><br/><i>President and Chief Executive Officer</i></li> <li>• <b>Sally E. Anderson</b><br/><i>Vice-President - Claims</i></li> <li>• <b>Brian C. Anderson</b><br/><i>Claims Counsel</i></li> <li>• <b>Joseph A. McCarthy</b><br/><i>Director of Underwriting</i></li> <li>• <b>Thomas J. Watson</b><br/><i>Senior Vice President</i></li> </ul> |
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## WILMIC Board of Directors Elections and Annual Policyholder Meetings Schedules

The WILMIC Annual Meeting of Policyholders is scheduled at the company’s Madison office, 725 Heartland Trail, Suite 300, June 3, 2016. Policyholders are invited to participate in person or by proxy. Proxy statements will be sent to policyholders soon.

Candidates for seats on the Board of Directors will be elected. Seats held by the four directors below are open for election to three-year terms:

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

For more information about the meeting or proxy statement, contact Stephanie Williams, Executive Assistant. The local Madison phone number is 824-1700. Long distance callers may call toll-free at 1-800-373-3839. ■



John E. Danner



John P. Miller



Kevin J. Palmersheim



Thomas R. Schumacher

## WILMIC a Source For Cyber Liability Insurance

WILMIC offers a cyber liability insurance policy. It includes three types of coverages:

1. Breach Notice Coverage which provides coverage for costs incurred by a lawyer or law firm to comply with Wisconsin’s privacy breach notice law, as well as notice fulfillment services and credit and fraud monitoring for clients whose confidential information has been lost or stolen;
2. Privacy Liability Coverage which covers third party liability for loss of Personally Identifiable Information; and
3. Security Breach Liability Coverage which covers third party liability and damages from computer security breaches such as virus and hacker attacks if those breaches were within the law firm’s information system.

If you are interested in getting more information about cyber risk coverage, call WILMIC at 800-373-3839. We can walk you through the process. ■