

# mutuallyspeaking



## Cyber Crime Doesn't Seem to Be Slowing Down: Lawyers are Still a Target



A year ago we wrote about cyber crime in our winter newsletter. A year later, the threat is still just as real to lawyers and law firms. We thought we should provide an update and caution lawyers about the risks still out there.

Recently, a Wisconsin lawyer had his email address hacked. This lawyer is not alone. Others have suffered a similar fate. It is important to take as many precautions as possible to avoid this potential risk.

Cyber criminals are specifically targeting you because they want your data. Law firms are very appealing and sought-after targets for cyber criminals. Law firms have large amounts of sensitive and confidential information that can be very valuable. In addition, there is a common belief, whether true or not, that law firms tend to have weaker network and system

security protection in place.

Dan Pinnington, Vice President Claims Prevention and Stakeholder Relations at Lawyers' Professional Indemnity Company (LAWPRO®) in Toronto, Ontario, Canada, wrote this a year ago: "Cyber criminals will use every tool at their disposal to attack law firms. They will send spam and phishing messages. They will try to install malware and create backdoors into your firm's computers. They will look for weaknesses in security configurations and exploit them in order to access firm networks. In very devious ways, they will try to trick you or your staff into helping them. It is quite possible they would target you individually, including attacking your home computer to hack into your office systems."

Wisconsin law firms should work to understand the cybercrime risks they

are exposed to and take steps to reduce the likelihood they will experience a data breach at the hands of cyber criminals.

### How Prepared Are You?

Pinnington's security tips checklist is a good one:

- Are your passwords secure enough?
- Would you or your staff be duped by a phishing message?
- How would your firm respond if one of its servers was hacked?
- Is your anti-malware software the most current version and is it updated?
- Could you tell if your computer had malware on it?
- Are your computer's security settings adequate?
- Is there a backdoor into your network?
- What would happen if a firm laptop or smartphone were lost or stolen?
- How would you deal with a major data theft by an ex-employee?
- Is your home computer safe?

### Cyber Liability Risk

What would you do if you lost sensitive client information? Whether because of a data breach due to hackers, careless disposal of client records, theft of mobile devices or misuse of internal security

*Cyber Crime continued on page 3*



*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 some of the issues that arise for even the best intentioned lawyers.*

By Brian Anderson  
WILMIC Claims Attorney

### **When have you done enough?**

Legal malpractice claims asserted against attorneys practicing in the area of plaintiff bodily and personal injury have consistently been the number one area of claims reported against Wisconsin lawyers, both from a frequency and severity standpoint. Over 35% of all of the personal injury claims reported involve missed deadlines. Practicing in this area of law is fraught with peril for lawyers, as the legal malpractice statistics indicate. A hidden risk that many lawyers often do not appreciate until after a deadline has been missed involves the situation where there is a misunderstanding about what the lawyer's role is, what the scope of retention entails or even if the lawyer was formally retained to handle the personal injury claim in the first place.

If you agree to assist a client in the "review" or "evaluation" of a personal injury case, there are some important efforts that need to be made early on in the process. It is often not until after the statute of limitations has expired and a

legal malpractice claim is asserted that an attorney first discovers that the underlying claim was viable or had a greater value than was originally anticipated. Filing or notice deadlines may be much shorter than anticipated when the underlying accident occurs in another state, involves a municipality, the Federal Government, the State of Wisconsin or individuals employed by the federal, state or local government. The failure to independently verify facts relevant to the statute of limitations or notice dates, to include identifying the correct defendant or all of the potentially responsible insurance carriers, is the source of many claims in this area.

The following claim example highlights this risk:

A lawyer was contacted by his neighbor to "look into" a possible personal injury claim on behalf of his son. The lawyer was provided very sketchy details regarding a one car accident that took place in Illinois. The injured client was an unrestrained passenger in his friend's car. He had a lot to drink on the evening in question and did not realize the extent of his injuries when he denied that he had been hurt and refused ambulance transport at the scene of the accident. After reviewing the accident report, it did not appear that there was any insurance coverage available. Furthermore the client's injuries were not well documented. Based upon this preliminary background information, this "potential client" became a very low priority matter for the lawyer.

The client moved out of state and the lawyer eventually lost touch with him. He assumed that he would be kept abreast of any treatments received or difficulties that the client was experiencing related to the injuries sustained in this accident. A little over two years after this accident, the lawyer was contacted by his neighbor asking for a status update regarding his son's injury claim. He was concerned about the fact that his son was having issues with headaches and memory loss that he attributed to the automobile accident. It was at this point that the lawyer realized the applicable

Illinois statute of limitations had been missed and that the claim against the driver of the car was no longer viable. It was miscalculated as having a three year statute of limitations in the firm's calendar system.

Unfortunately for the lawyer, this low priority claim had a much greater value than he ever anticipated when it was asserted against him as a legal malpractice claim. As it turned out, there was insurance coverage available covering the driver, with substantial policy limits. The lawyer had never sought out or made any attempt to discover whether there was any insurance coverage relying on an inaccurate police report and the client's mistaken belief that there was no coverage. The medical treatment records, which were never requested, confirmed that the son had incurred significant medical and special damages, to include treatment related to a traumatic brain injury. The records confirmed that this brain injury was suffered as a result of this accident and that the client would continue to experience problems with permanent cognitive impairment issues. The permanent brain injury component of the claim was fully developed by the plaintiff's legal malpractice counsel, with expert support, when a policy limits legal malpractice claim was asserted against the lawyer.

The lawyer was found to be negligent for failing to timely prosecute the plaintiff's underlying personal injury claim. This claim involved an informal retention, an automobile accident that occurred outside of the state of Wisconsin, a failure to find all relevant insurance policies, a failure to timely gather and evaluate the client's medical records/injuries and a failure to maintain contact with the client. An early assessment of an injury claim is important and could save a cause of action for the client and the lawyer from the malpractice claim. If the lawyer does not have the time or resources to take on the task, the matter should be declined or referred to a lawyer skilled in taking on that type of assignment in the jurisdiction where the accident occurred. ■

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 stored in law firm databases.

The consequences of a breach or lost data can be monumental, especially for solo practitioners. Sandy Hauserman, a lawyer from Vermont who became a Founder and Managing Member of Digital Risk Resources (“DRe”), an insurance product development company, says there are cyber exposures that arise from a law firm’s dependence on computers and the internet and from collecting personal information on clients. He says cyber exposures can significantly impact law firms—and he expects those exposures to grow. “Every law firm is now dependent on technology and the internet,” he says. “This dependency creates business risk not covered in standard Errors and Omissions or Property/Casualty policies.”

Client records and credit/debit card processing make up a significant portion of the overall risk profile. Law firms gather and transmit Personally Identifiable Information (PII) of clients, employees, vendors and others. Law firms collect a lot of very sensitive information which could severely damage a client’s reputation.

In addition, cyber criminals want to steal data or damage IT systems. They often plant harmful software (viruses, malware, etc.) on a computer and hope it is accidentally transmitted to others.

Aside from the hackers with bad intent, you could lose sensitive client information very innocently. What if you mistakenly left your laptop, tablet or your smartphone at the courthouse, in an airport, or at the local coffee shop and it contained client information? Some lawyers have already experienced this. There are numerous ways that private client or employee information can be compromised:

- An attorney or employee checks their personal email and unwittingly downloads malware onto the



company network,

- A company laptop containing PII is stolen from an attorney’s car,
- Customers credit card/bank/health information is stolen by someone hacking into the law firm’s system,
- Paper records containing PII are not shredded before disposing and are retrieved by criminals (dumpster diving),
- An attorney researching online is directed to a website that automatically downloads a worm which turns the computer into a spamming machine.

### How Big Is The Risk?

Why is cyber risk something to which lawyers should pay attention? First, most states have enacted breach notice laws that require a business suffering a security breach or losing PII to notify victims so they can take action to protect themselves from identity theft. In addition, any law firm storing medical information is subject to the notification rules of HIPAA. Notification costs can grow rapidly. The average cost is between \$50 and \$100 for each affected person. Even a modest sized breach can result in a huge legal liability that could potentially bankrupt a small law firm. At the very least, notification of a security breach is expensive and disruptive to your practice.

Second, if an individual who has been notified actually suffers a monetary loss or more importantly if financial or medical information collected by the law firm gets in the wrong hands, the law firm can get sued.

### WILMIC a Source For Cyber Liability Insurance

Lawyers can turn to WILMIC’s insurance agency to get help obtaining 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. ■

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**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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## WILMIC a Good Source for Court Bonds

**W**isconsin Lawyers Insurance Agency is in its fourth year of operation and many lawyers who have taken advantage of the service have found very competitive bond prices. Any Wisconsin lawyer who needs a bond can turn to the agency, a subsidiary of WILMIC.

Through the agency, lawyers are directed to The Bar Plan of Missouri, which offers attorney-managed underwriting and provides the bonds at a very competitive cost. The Missouri company handles all processing and claims as well.

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

The Missouri company has a 24-hour turnaround policy after obtaining all necessary information and resolving any questions with applicants.

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. ■

## WILMIC Once Again Part of This Year's Young Lawyers Division Leadership Conference

**F**or the fourth consecutive year, Wisconsin Lawyers Mutual Insurance Company is providing support to the State Bar's Young Lawyers Division. The YLD's annual Leadership Conference is scheduled for Friday, March 20 at the Italian Community Center in Milwaukee.

In addition to providing a sponsorship, WILMIC will be at the conference to provide young lawyers with best practice advice, and talk to them about starting and maintaining a law practice and malpractice insurance "in-and-outs," including typical costs and benefits. WILMIC representatives will also have copies of the "Law Practice Toolkit: A Lawyer's Guide to Better Law Practice".

More than 75 young lawyers are expected to attend the conference. ■