

Not to Panic—Suits Happen

Bring your malpractice insurance carrier into the case upfront

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Face it: In today's law practice environment, the chances are good that a disgruntled client is going to sue you for legal malpractice.

Once lawyers accept the possibility, if not probability, of being sued, they can become better prepared to respond appropriately when the possibility becomes reality.

As any client could tell you, it is almost impossible to plan for the onslaught of a suit. But at the very least, you should be familiar with your professional liability insurance policy. When the lawsuit is already in hand is not the time to pull out the policy to see what it says.

At least be familiar with these policy elements: the limits of liability, the deductible amount, whether the deductible applies to claims expenses and costs, whether the cost of defense is included in the limits of liability, whether fines or sanctions are covered, and whether pre-judgment interest is covered.

If a lawsuit is filed against you, your initial response will be crucial. Your first step should be to locate your file on the underlying case, organize it and protect it. Second, prepare a statement of the facts as completely and as objectively as you can. Finally, notify your insurance carrier as soon as possible.

During this emotional and traumatizing time, it is essential to remain calm and objective. Do not try to deal with the claim yourself. Under no circumstance should you discuss this matter with the plaintiff—even though that party is (or was) a client—or the plaintiff's attorney. Your insurance company's counsel should deal with them.

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Above all, do not ignore the suit because it will not go away.

Reporting the claim immediately provides opportunities for repair or mitigation. Reporting should be done with a telephone call to the carrier followed by a confirming letter.

Report as much detail as possible, even if some of the information

the impact of a settlement on your rights and responsibilities under your malpractice insurance policy.

For instance, does the insurer need your approval to reach a settlement, or do you have a right to reject it? What is the impact of a "hammer clause" in a policy (which provides that, if you do not agree to the settlement, the proposed amount of the settlement becomes the new policy limit)? Can a carrier's decision to settle be appealed? How will a settlement affect your future premium costs or insurability?

If the claim against you alleges vicarious liability arising out of dishonest acts of a partner, most policies cover you as an innocent partner.

You need to take steps immediately, however, to prevent further actions by this partner, and review all of his or her files for further ex-

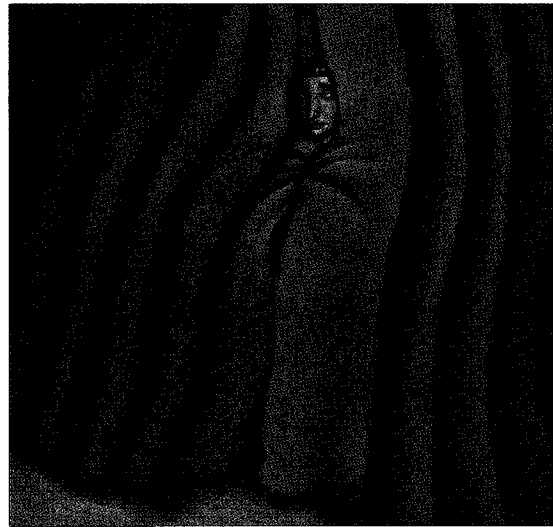
posure. If there has been publicity on the case, other former clients of the partner may file additional claims alleging dishonest acts, and there even may be some frivolous claims of negligence.

Obviously, such an occurrence affects your insurance record, and you may consider purchasing an extended reporting endorsement.

An extended reporting endorsement designates some specified period of time after the termination of the policy during which a claim can be reported. In all cases, the professional services that give rise to the claim must have occurred prior to the termination of the underlying policy for the insurer to defend it.

The extended reporting endorsement, or "tail" coverage, is, however, one of the aspects of your malpractice insurance policy that should be evaluated before a claim makes it an imperative.

By addressing questions about your policy coverage before any claims are filed, you may not be able to avoid a claim, but at least you will be prepared for it. ■



in your file is adverse to your case. After you have reported the lawsuit to your carrier, cooperate with it in preparing your defense.

Stay Involved in Your Case

Lawyers have a tendency to either completely avoid involvement in their cases or to become overly involved. Neither response is productive.

Instead, discuss with your insurance company who your defense counsel will be and whether you have any say in the selection. You are entitled to copies of pleadings and correspondence. The insurance company should not object to your input if you think your representation has been sloppy or inadequate.

On the other hand, do not assume that your defense counsel cannot handle your case because he or she has not practiced in the area of the underlying matter. An experienced malpractice defense lawyer will rely on you and experts to explain the underlying intricacies.

You should be closely informed of any serious settlement discussions. You should also be aware of