Anatomy of a Malpractice Lawsuit

Introduction
• Client Acceptance
• Documentation of Expectations
• Self-Preservation 101: Put Your Job In Writing
• Self-Preservatiion 102: Put Your Clients’ Job In Writing

What To Do When You Discover Your Own Mistake

The Demand Letter: What To Do
• When to Contact Your Insurer
• Contact with the Client?
• Self-Investigation?

Company
• Duty To Defend and Reservations of Rights
• Impact of Reservations of Rights
  – Duty to settle within policy limits?
  – Duty to allow insured to select defense counsel?
  – Liability for excess exposure?
• Underinsured
• Multiple Claims Created By Plaintiffs to “stack” coverage
• Ineffective Reservations and waiver of policy defenses
• Self-Preservation 101: Retain Insurance coverage counsel

Pre-lawsuit negotiations
• What the complaint means
• Publicity
• How It Feels to Be Sued
• Self-Preservation 101: Consider An Arbitration Agreement

Jurisdiction: Why Am I Being Sued in Oshkosh?
• In Personam Jurisdiction: sufficient minimum contacts or personal jurisdiction
• Self-Preservation 101: consider a forum selection clause

Removal To Federal Court
• Liability to non-client third parties
• Self-preservation 101: Minimizing Exposure to Non-Clients
• Preparing the Answer / Motion to Dismiss
• Role of the Defendant; gathering documents and identifying witnesses
• Role of the Defense Counsel, Develop a strategy, develop a theme, execute the plan.

Case Management By The Court
• Disclosures
• Interrogatories
• Requests To Produce
• Requests To Admit
• Depositions

Dispositive Motions
• How Cases Get Thrown out of court
• Why Cases Don't Get Thrown Out of Court

Gut Check: How and Why Attorney Fees Climb
• Expenses to this point
• Who pays? Recovery of Attorney Fees
• The Effect of Self-Liquidating Policy

Mediation: What It’s All About
• Why Mediation?
• Setting Goals For Mediation
• Who Is the Mediator?
• Can you “win” in Mediation?
• Is the Mediator Your Friend?
• Who decides whether to settle?
• Liability Assumed By Contract
• Dishonest, Fraudulent Acts (but coverage for innocent insureds)
• Claims from services to co-owned enterprises

Trial
• Jury Selection/ General Instructions
• Opening Statements
• Examination of Witnesses
• Presentation of Documents/ Use of Courtroom Technology
• The Importance of Theme
• What Life Is Like During Trial
• Trial to the Bench
• Jury Instructions
• The Verdict
• Post Trial Motions

Appeal
• How The Appeals Process Differs
• Post Trial Mediation
• The Record on Appeal
• Briefs
• Oral Argument
• The Decision: Permanent Publicity

Coverage Disputes
• When coverage disputes may become litigation
• Insurer’s right to seek reimbursement for excess coverage provided.
• Against whom may the insurer seek to recoup its losses?
• May subrogation be sought by the insurer against an insured under any circumstances (example, if a partner engages in fraudulent activity)
• What are the Policyholder’s duties in the event of subrogation?

Bankruptcy Basics
Asset Protection Basics