

Anatomy of a Malpractice Lawsuit

Introduction

- Client Acceptance
- Documentation of Expectations
- Self-Preservation 101: Put Your Job In Writing
- Self-Preservation 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