Spidey Sense & Legal Defense: Trust Your Instincts and Report That Claim!

Legal malpractice insurance policies are typically claims-made-and-reported policies, meaning both the claim and its reporting must occur within the policy period to trigger coverage. This article focuses on what to report, when to report, and the advantages of doing so as soon as practicable.

BY MATTHEW M. BEIER

Every year, the risk management team at Wisconsin Lawyers Mutual Insurance Co. (WILMIC) presents our "Anatomy of a Legal Malpractice Policy" program to lawyers across Wisconsin. There are many nuances to claims-made-and-reported policies, and we want to be sure lawyers understand how to make the most of their legal malpractice policies – especially when it comes to securing coverage in the event of a claim.

Several years ago, I wrote a claims digest for *Mutually Speaking*, WILMIC's newsletter, about what to report and when to report it. In that article, I channeled my (and my son Leo's) admiration of Spiderman, who has a type of clairvoyance we all know as "Spidey Sense." I wrote, "Whether you are a fan of Spiderman or not, pay attention to your own lawyerly instincts when it comes to reporting claims and potential claims to your malpractice carrier. Your instincts should tell you when it's time to contact your insurance company."

WILMIC appreciates Charles Barr's recent article, *Now You Tell Me: Application of Notice-Prejudice Rules to Pure Claims-Made Liability Policies* (98 Wis. Law. 18 (March 2025)), regarding the importance of timely reporting claims under lawyers' professional liability policies and the distinctions between "claims-made" and "claims-made-*and-reported*" policies. As noted, legal malpractice insurance policies, including WILMIC's, are typically claims-made-and-reported policies, meaning both the claim and its reporting must occur within the policy period to trigger coverage. This article focuses on what to report, when to report, and the advantages of doing so as soon as practicable.

Claims-Made-and-Reported Policy: What It Is

Most legal malpractice policies, including WILMIC's, state conspicuously on the first page, "THIS IS A CLAIMS MADE AND REPORTED INSURANCE POLICY." Such a policy requires that the "claim" be made or that the "potential claim" first exists during the policy period *and* that it be reported in writing during the same policy period. Coverage under a lawyer's policy with WILMIC is triggered when two things happen: 1) the policyholder has knowledge of a claim or a potential claim ("claim made"), *and* 2) the policyholder notifies WILMIC ("reported").

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Prompt Claim Reporting

Prompt claim reporting is essential to preserve coverage. As Barr discussed in his article, although there may be confusion about notice-prejudice statutes in other jurisdictions, the Wisconsin Supreme Court in *Anderson v. Aul*[1] provided "clear sky" guidance about claims-made-and-reported policies. In that case, the court thoroughly examined WILMIC's policy language and concluded that with claims-made-and-reported policies, "a claim must be reported to the carrier by the end of the policy period — period, full stop... and reporting to the carrier in compliance with that requirement is the final act necessary to trigger coverage."[2] Further, requiring an insurance company to provide coverage for a claim reported after the end of a claims-made-and-reported policy is per se prejudicial to the insurance company.[3]

What to Report

Lawyers, like all human beings, make mistakes, which is why they have malpractice insurance. "I don't even know if this is something I need to report," say many policyholders when they call to speak with a WILMIC claims attorney. WILMIC's director of claims, Brian Anderson, responds similarly each time, "Your policy only covers what you report, so it's better to report than to run the risk of losing coverage and having to pay for what could be an expensive mistake."

Every carrier defines circumstances that require reporting to secure coverage slightly differently, but generally there are three "events" that must be reported: "claims," "potential claims," and "grievances." Under WILMIC's policy:

- "Claim" means your[4] receipt of a demand for money or services, naming any of you and alleging a wrongful act[5] (a wrongful act is any act, error, or omission that is negligent in rendering professional services to a client).
- A "potential claim" exists when any of you first become aware of facts or circumstances regarding an act, error, or omission committed by any one or more of you that a reasonably prudent lawyer would expect to be or to become a basis for a claim, regardless of whether you believe such a claim will be made.
- "Grievance" means an allegation of possible attorney misconduct received by the Office of Lawyer Regulation.[6]

An obvious claim is a lawsuit served on a lawyer by a former client — most lawyers realize they must report the suit to their malpractice carrier. Claims come in other, subtler forms as well. For example, a claim exists when a client, in a letter sent to a lawyer, expresses dissatisfaction with the lawyer's legal representation and demands a return of fees, in whole or in part.

The murky area of "potential claims" is sometimes difficult to navigate. For example, in reviewing a now-deceased client's estate planning file, a lawyer discovers a defect in the execution of the client's will. Although no party or beneficiary has made a claim related to the error, this would constitute awareness of facts or circumstances that a "reasonably prudent lawyer would expect to be or become the basis of a claim." As such, the information would need to be reported to the lawyer's carrier. Some other examples of "potential claims" include the following:

- A lawyer failed to file inheritance and estate tax returns by the applicable deadline. This was a "potential claim" notwithstanding that the lawyer was successful in obtaining abatements from tax authorities in similar situations with past clients.[7]
- A lawyer had knowledge of a potential claim when a summary-judgment motion was made by opposing counsel based on the lawyer's procedural failures.[8]
- A suit was dismissed for a lawyer's failure to comply with a deadline despite efforts to reinstate the action in the circuit and appellate courts and the client's assurance that the client had "no intention of suing" the lawyer.[9]
- A lawyer misfiled a fully executed real estate contract and did not timely return it to the other party. The lawyer disclosed the error to the other side, which was unmoved. All the while, the lawyer's firm was applying for insurance and did not report the matter to the carrier. The other party rescinded, and a lawsuit ensued.[10]
- Disciplinary proceedings might become "potential claims" even when they do not result in any disciplinary action.[11]

When a grievance is filed with the Office of Lawyer Regulation (OLR), the experience can be extremely nerve-racking. Even if such matters are entirely without merit, it is important to report them to the carrier. In most

instances, benefits exist within legal malpractice policies to retain grievance counsel to defend outside of a policyholder's limits and deductible.

Promote Repair

Reporting within the policy period is what secures coverage; there are additional reasons to report as soon as possible. Delayed reporting can hinder the insurer's ability to investigate, assess liability, and provide an effective defense. Conversely, prompt reporting helps a claims attorney get out in front of a problem to possibly repair a situation. It is likely that the claims attorney is in a good position to repair a claim because they have "been there, done that" or know other lawyers or defense counsel who can assist. Brian Anderson notes, "A big advantage of early reporting is that WILMIC has had success helping lawyers repair a potential claim issue that is timely reported. Even when it doesn't require repair, the attorney generally feels relief after discussing the situation with one of our legal malpractice insurance professionals and is provided guidance to try to help make sure that a claim never arises." If claim repair is unsuccessful, a lawyer's carrier can exercise its network of defense counsel to advocate on behalf of the lawyer, including exploring resolution by way of settlement.

Conclusion

Timely reporting under claims-made-and-reported policies is not merely a procedural requirement – it is a fundamental aspect of maintaining professional liability coverage. Failure to comply can lead to denied claims and significant financial exposure. By recognizing the importance of early reporting, understanding policy terms, and implementing best practices, attorneys can safeguard themselves and their practice from unnecessary risks. When in doubt, lawyers should err on the side of caution and report any potential claims to the insurer. Doing so can mean the difference between having coverage and facing a claim alone. **WL**

ENDNOTES

[1]*Anderson v. Aul,* 2015 WI 19, 361 Wis. 2d 63, 862 N.W. 2d 304.
[2]*Id.* ¶¶ 26, 39.
[3]*Id.*
[4]"You" or "your" means the named insured (firm), individual lawyers, and employees.
[5]"Wrongful act" means any act, error, or omission that is negligent in the rendering of or failure to render professional services to a client.
[6]SCR 22.001(5).
[7]*Estate of Logan v. Northwestern Nat'l Cas. Co.*, 144 Wis. 2d 318, 424 N.W.2d 179 (1988).
[8]*Minnesota Lawyers Mut. Ins. Co. v. Baylor & Jackson, PLLC*, 531 Fed. App'x 312 (4th Cir. 2013).
[9]*Pelagatti v. Minnesota Lawyers Mut. Ins. Co.*, No. 11-7336, 2013 WL 3213796 (E.D. Pa. June 25, 2013) (unpublished).
[10]*Koransky, Bouwer & Poracky P.C. v. The Bar Plan Mut. Ins. Co.*, 712 F.3d 336 (7th Cir. 2013).
[11]*Fishman v. The Hartford*, 980 F. Supp. 2d 672 (E.D. Pa. 2013). **WL**