

# PERSPECTIVES

An attorney's guide to insurance and risk management

MSP L 09/99 "What if 'the check's NOT in the mail?'"

September, 1999

## What if "the check's NOT in the mail?"

Consider the following scenario: a law firm, Jones & Smith, sues a construction company for an outstanding bill of \$50,000. In response, the construction company files a counter-claim for malpractice. The jury awards Jones & Smith \$30,000 on its claim; however, it awards the company \$1.2 million on its counter-claim.

Because of this ruling, Jones & Smith will have to report a paid claim for the next five years on their application for professional liability insurance, severely reducing their ability to receive a competitive quote.

The increase in insurance premium Jones & Smith will pay, plus their deductible obligation, will far exceed the \$50,000 in unpaid fees they were after in the first place. More importantly, Jones & Smith's reputation as a careful provider of quality legal services has been badly damaged.

### Can this really happen?

More than 40% of all suits for fees by attorneys result in counter-suits for malpractice. These counter-suits can (and occasionally do) result in large judgments or settlements against the law firm.

Even when the counter-suits are not won by the attorneys' clients, they inflict damages on the attorneys by forcing them to waste time, deductibles and insurance limits to defend themselves in court.

For these reasons, specialists in lawyers professional liability insurance advocate the use of loss prevention-oriented procedures for managing your firm's accounts receivable to avoid reaching the point where you see suing for fees as your only option. Proper handling of accounts receivable may necessitate a shift in your firm's philosophy.

Handling accounts receivable should not be thought of as an onerous task destined to create a barrier between you and your client, but as a loss prevention opportunity that can help ensure a profitable and non-litigious professional relationship.

### Engagement Letters

Good accounts receivable management begins with a good engagement letter. Clients will find it harder to dispute your bills if they have signed an engagement letter in which you clearly state how

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you compute and bill for your fees. In this letter, you should specify which attorneys and paralegals are going to be working on the matter, and provide their respective billing rates. Furthermore, if you foresee that the rates may change during the engagement, clients should be warned ahead of time.

In addition to fees, your engagement letter should also clearly indicate how out-of-pocket charges will be handled. Include a clause in your engagement letter that clearly and specifically explains how expenses will be billed.

For example: tell the client that air travel will be at coach rates unless otherwise authorized in writing; agree in writing that necessary expenses for lodging and meals will be at reasonable rates, and stipulate that large copy jobs must be approved by the client in writing before they will be undertaken.

Finally, we suggest that you take the approach of many proactive, service-oriented firms by assuring the client that normal overhead costs, such as secretarial services, office supplies, small office copying jobs, phone or fax calls, meals and snacks, etc. are part of your hourly fees and that they will not be charged separately.

The letter should lay out a payment schedule and your firm's collection procedure. Vague wording cannot be easily interpreted, nor can it be easily enforced. It is wise to include a clause reserving your right to discontinue representation if payment is not made as agreed.

## Be Aggressive

The scenario described at the beginning of this article could be avoided for a simple reason: in general, a firm should not let a client achieve an outstanding bill of \$50,000.

Do not allow unpaid bills to accumulate. Set the standard early in your relationship with your clients by calling them immediately upon notice of an unpaid bill.

In addition, if your work for a client is progressing rapidly, there is nothing wrong with billing more often than usual. Billing frequently and making a policy of frequent calls to clients with unpaid bills will show your clients that you fully expect to be paid on time.

## Accounts Receivable Checklist

- **Identify people in your office and in your client's office to handle billing.**
- **Make sure that billing and collection responsibilities within the firm are clearly communicated.**
- **Use engagement letters that clearly stipulate the following information:**
  - **Billing rates**
  - **Out-of-pocket expenses**
  - **Payment schedule**
  - **Collection procedure**
  - **Your firm's right to discontinue service**
- **If work is progressing rapidly, bill more frequently.**
- **Provide all lawyers with a biweekly list of accounts receivable that are past due.**
- **Establish guidelines to trigger review of files at least 100 days before trial to make sure the bills have been paid before it's too late to disengage.**
- **Establish guidelines that prohibit lawyers from exceeding a certain dollar or percentage figure in their past due receivables.**
- **Don't hesitate to call clients to discuss unpaid bills and services rendered immediately upon notification that accounts receivable are past due. ▲**

## Relationship – Building Opportunity

Many legal malpractice claims are the result of poor client relations – i.e., clients sue because they don't believe their attorney listened to them or cared about their case. Instead of being a source of

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tension between you and your clients, accounts receivable can be a relationship-building opportunity.

If your accounts receivable manager notifies you that a client has declined to pay after having been sent multiple invoices, call the client to discuss the services rendered. Explain to the client that your firm believes that receivables reflect the value the client places on the work you have done, and that when receivables age, your firm takes the time to find out if the client is satisfied with your work.

Take this opportunity to review the services provided and the budget under which you have operated. Doing so will show your interest in the cli-

ent's situation and at the same time put indirect pressure on him or her to pay the fees.

In addition, such a discussion could identify areas in which your client is unhappy with your services, areas that, left undiscovered, could lead to a malpractice claim down the road.

## Summary

The checklist provided, while by no means exhaustive, suggests essential steps you can take toward mitigating your liability risk through accounts receivable management.

As lawyers professional liability specialists, we would be happy to answer any further questions that you may have about ways to ensure that your "check *is* in the mail." ▲

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*Disclaimer: "Perspectives" is published as a service to lawyers. While the information contained herein is believed to be reliable, readers are advised to consult their own legal and insurance counsel for assistance in applying it to their unique situations.*

## Extra!

### New Quarterly Newsletter for the Legal Profession

Cavignac & Associates now offers an additional newsletter, Insurance Advisory for Attorneys, edited by Lee M. Hoffman, CIC, LIC, CPIA. The newsletter will be published quarterly in an e-mail format.

Insurance Advisory for Attorneys deals with the business of insurance as it relates to the practice of law. Cavignac & Associates is pleased to provide this exceptional new publication to our clients and prospective clients in the legal profession at no charge.

If you did not receive the first edition of the Insurance Advisory for Attorneys, which was published in July 1999, and would like to be added to our e-mail publication list, please furnish your name, the name of your firm, and your e-mail address to: [gcornwell@cavignac.com](mailto:gcornwell@cavignac.com). ▲

## Home Y2K Problems Cause Inconvenience

Most home appliances do not have internal clocks and are unlikely to be affected by the Year 2000 glitch, but systems using computer chips, like security systems, garage doors and personal computers, may encounter Y2K problems.

According to the Western Insurance Information Service (WIIS), to prepare for Y2K, homeowners should verify that heating and cooling systems with built-in maintenance will not be shut down and that electric garage doors don't operate on com-

puter chips. Also, check to see if video players can be programmed beyond January 1, 2000.

For personal computers, visit the manufacturer's web site to find out about Y2K compliance issues. If you have an alarm system, call the vendor to see if they are ready for emergencies.

Other problems may occur that are not under your direct control – utility companies or banks

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may show you haven't paid your bill, so you may be assessed late fees or find your electricity has been shut off.

WIIS recommends that you keep good records so you can prove you made payments. Also, plan to

have enough cash on hand in case you are unable to access automated teller machines.

Y2K information is changing frequently as more information on the problem becomes available. Homeowners should make these inspections frequently to keep their homes as Y2K compliant as possible. ▲

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# Protecting Your Laptop at Airports

## Unwary Business Travelers Make Easy Prey for Thieves

Laptop computers are an easy target for professional thieves in airports. There are precautions you can take to make sure your laptop arrives when you do.

### The Scam

It works like this: you put your computer on the conveyor belt at the metal detector, but someone steps through the security gate ahead of you carrying metal that will set off the alarm.

This person blocks the gate as security guards check him, while a second person takes your laptop,

which has passed through the scanner. The thief, and your laptop, disappear into the crowd.

## Pay Attention — Be Aware

Before you put your laptop on the conveyor belt, make sure that you can get through quickly.

Keep your eye on your computer and don't allow yourself to be distracted. Speak up quickly if you see suspicious activity.

Once you get through the gates and on the airplane, make sure that you store your laptop in a compartment that is visible to you.

Never put the laptop in a compartment too far in front of you.

Your laptop can disappear while you're waiting to get off the plane. ▲

