



MALPRACTICE ALERT!

OBLIC

Ohio Bar Liability
Insurance Company

February 2002 • 1650 Lake Shore Drive • Columbus, OH 43216-2708 • 614/488-7924 • Ohio Wats 1-800-227-4111

YEAR 2002: FACING NEW CHALLENGES

We are all aware of the tragic human consequences of September 11. As our nation moves forward from this disaster, many will continue to feel not only the emotional impact of this terrible loss, but also, the financial aspects as well.

The economic consequences of September 11, combined with a significant downturn in equity markets, and decreasing bond interest rates, have rattled the insurance industry and created the reality that insurance premium must now pay the expenses and losses incurred by insurers. Investment returns in the near future will not be adequate to pay for shortfalls in premiums. The medical profession in many locations is already feeling the impact of insurance premium increases, and a long-term major national medical malpractice insurer, the St. Paul Company, is leaving that market.

Almost any "primary" insurer, such as OBLIC, purchases "reinsurance" to assist it in covering large losses. OBLIC has been fortunate in having a long-term relationship with one of the strongest reinsurers in the country, General Cologne Re (formerly General Reinsurance). However, this reinsurer has been one of those hit hardest by the September 11 loss. At this time, discussions are ongoing regarding possible reinsurance price adjustments for policies issued with higher limits of liability. As we enter a new, perhaps more difficult insurance market in 2002, your Board of Directors remains committed to obtaining the best possible pricing for coverage for Ohio lawyers, but not at the sacrifice of the financial stability of the Company. As we go to the press, any possible changes in the pricing structure for policies have not been determined.

OBLIC LOSS PREVENTION SEMINAR

Mark your calendar now and plan to attend the OBLIC Loss Prevention Seminar at the OSBA Annual Convention to be held in Columbus on Thursday, May 16, 2002 from 2:00 p.m. – 5:15 p.m. titled "Practice Strategies to Prevent Malpractice." This seminar will offer tips to help you deal with some of the difficult situations in the practice of law.

CLE Credit has been requested for 1 hour of ethics, 1 hour of professionalism, ½ hour of substance abuse and ½ hour of general instruction.

This seminar will again be co-sponsored by the OSBA Solo Small Firm and General Practice Section Board of Governors, and the OSBA Lawyers' Assistance Committee. You won't want to miss this dynamic session!

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OFFICE SHARING DANGERS

A recent case from Lucas County amply illustrates potential liability involved for attorneys sharing office space.

Four lawyers shared space. One of the lawyers (no longer a lawyer) took estate funds, and eventually had a \$1,278,000 judgment entered against him. The trial court dismissed claims against the other three lawyers on the basis that they were not partners. In reversing this decision, and sending the case back to the trial court for further proceedings, the Court of Appeals noted the following:

the lawyers, at times, referred to each other as partners;

DOCKETING TIP: Don't Take Dates for Granted

common letterhead had been used;
two of the lawyers shared a phone book ad;
all had access to client files in the office;
if a potential client had a conflict with an
existing client of any one of the attorneys,
representation was declined;
attorneys would "cover" for each other on
cases at times;
office furniture and supplies were jointly
owned;
malpractice insurance covering the four had
been applied for by one attorney acting for
all.

Over the years, several claims have been reported which involve missed statutes of limitations, not because of a failure in docket control, but because the critical date provided by a client, or from other records, was incorrect. In one case, a client advised medical personnel that the date of his accident was later in time than was true. Neither the attorney hired for a worker's compensation claim, or other counsel retained for a product liability claim arising out of the same incident, discovered the error until too late. Although comparative negligence is a defense to a malpractice claim, defending such a claim becomes more difficult if some record exists that may cause one to question the critical date assumed to have been correct.

Any key date should be provided by or verified by the client, in writing. Any discrepancy between the client's statement and an accident report or other record should be reviewed with the client, or another reliable source. A lawsuit may need to be filed well in advance of *any* questionable date, if the date cannot be verified in time to avoid a potential problem.

Although at times OBLIC policyholders may question why certain office sharing issues are raised, this case illustrates why there is scrutiny regarding such arrangements by the Company. The case is Estate of Holmes vs. Ludeman, et al., No. L-00-1294, Lucas County Court of Appeals 2001.

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