



A MESSAGE FROM PETE GULLETT LAWYERS MUTUAL'S EXECUTIVE VICE PRESIDENT



As you will recall 2001 was a challenging year for Lawyers Mutual as it was for every other insurance company. As a result of a hard reinsurance market and increased claims activity

prudence required that we increase our premium rates in 2002 for the first time in eight years. Notwithstanding this increase I am very proud to report that our policyholder renewal rate for the year was a strong 93%. We were especially encouraged by our ability to add 219 new attorneys to those already insured. This increase is more than in any recent year. I believe it is a result of Lawyers Mutual's special commitment to the Kentucky Bar to be here when you need us – not just in the good times.

We have received reports that some commercial carriers are refusing to insure attorneys with real estate or plaintiffs practice. Additionally, some small firms are apparently encountering difficulty in renewing their professional liability coverage. Be assured that we have not retreated from our original pledge to the lawyers of Kentucky. Lawyers Mutual will stay in the Kentucky marketplace and will continue to provide coverage at a fair premium based on Kentucky attorney claims experience. Lawyers Mutual will redline no area of practice, size of practice, or area of Kentucky.

As a result of the large number of claim reports received in 2002, it was necessary this year to increase premium rates again. During the year, 170 new claims reports were received – a record for the company. Fortunately, we successfully closed 113 claims in 2002 and 84 in 2001 – the most claims closed in any

two-year period of the company's history. This effort reflects our determination to manage the claims docket aggressively. Our employment of Jane Broadwater Long as Claims Counsel to work with me and long time Claims Counsel Bob Breetz (who is staying with us on a part-time basis) is an additional important step in staying ahead of our claims docket.

I promise each of our insured attorneys that we will continue to give our best each day to serve you and the Kentucky Bar. I urge each of you to reexamine your office procedures, redouble your efforts to communicate effectively with your clients, and rededicate yourselves to the careful practice of law. In the final analysis, Lawyers Mutual's success is your success. Working together we will continue to make available to Kentucky attorneys the best in lawyer professional liability insurance coverage.

JOE BILL CAMPBELL LEAVES AS CHAIRMAN OF LAWYERS MUTUAL'S BOARD OF DIRECTORS



It is with great personal regret that we report the resignation of Joe Bill Campbell from his position as Chairman of Lawyers Mutual's Board of Directors. He is succeeded by John G. Prather, Jr.

Joe Bill had a long history with Lawyers Mutual. He was instrumental in raising the capital to fund the company and a key player in its establishment in 1987 as the first Kentucky mutual insurance company formed in the state in over 20 years. He served as a member of the Board from the company's inception and, until his departure, was the only Chairman of the Board in the company's history.

Over more than fifteen years, Joe Bill contributed hundreds of hours to the success of Lawyers Mutual. He provided

leadership and stability throughout his tenure as Chairman. As a member of the executive committee he was involved in every significant policy and financial decision. His advice, counsel, and direction were uniformly sound and instrumental in the company's surge to prominence as a major lawyers liability insurer in Kentucky in a short period of time. The company's staff especially admired him for his supportive and understanding approach as they worked to achieve the goals of the Board.

Joe Bill will be sorely missed, but he will always be a part of the company in spirit. He put too much of himself in it for that to be otherwise for either his sake or ours. He has our best wishes for his continued success as one of Kentucky's best lawyers. In recognition of Joe Bill's role in establishing and leading Lawyers Mutual we have made a contribution in his honor to his alma mater, the UK College of Law.

JANE BROADWATER LONG IS NEW VICE PRESIDENT- CLAIMS COUNSEL



Jane Broadwater Long joined Lawyers Mutual as Vice President-Claims Counsel on January 1, 2003. She will manage and supervise claims on a full-time basis with assistance from Pete Gullett and Bob Breetz. She succeeds Bob who, after serving as Claims

Counsel since the company's inception in 1987, has decided to slow down. We are delighted that Bob will stay with us in a claims consulting capacity and continue to be in the office on a frequent basis.

Jane holds a Juris Doctor degree with distinction from the University of Kentucky where she was a member of the Kentucky Law Journal and Order of the Coif. Her undergraduate degree is a BA with honors earned at the University of North Carolina, Chapel Hill. She is a native of Louisville. After obtaining her JD, Jane engaged in

litigation practice in Atlanta, Georgia for eight years. She then went in-house with AFC Enterprises, Inc., a global company with 3,300 restaurants, where she was corporate counsel for litigation and employment law for eight years. A desire to return to Louisville brought her to Rice Insurance Services Company, LLC where she gained valuable experience in professional liability insurance claims management.

The Board is pleased to introduce Jane to you as our new Vice President-Claims Counsel. With her outstanding academic record and legal experience, Jane is a splendid addition to our staff. By the way, she is a pleasure to work with and can talk basketball with anyone. Jane is available now to assist you – just call her at 1-800-800-6101, 502-568-6100, or e-mail her at long@lmick.com.

- Husband's Social Security Benefits Should Be Considered In Property Division (Illinois)
- Stock Options Are 'Income' For Child Support Purposes (Pennsylvania)

You get the drift – it's mostly about the money. This means the malpractice risk in all but the simplest divorce cases is mostly about the lawyer's competence in dealing with financial matters. Does the lawyer have an extensive knowledge of money, investing, property evaluation, and tax? If not, does the lawyer decline the engagement or fill the competence gap by involving experts?



MALPRACTICE RISK IN DIVORCE MATTERS CAPTURES THE HEADLINES IN 2002

A confluence of factors in 2002 increased the malpractice risk in divorce matters. The bad economy, down stock market, increasing elder-couple divorces, and ever more complicated financial considerations in splitting up marital assets made news for divorce lawyers all year. Here is a sampling of some of the headlines we spotted over the year:

- Wife Can Sue Company For Transferring Ex-Husband's Pension (Missouri)
- Tuition Loan Isn't 'Marital Debt' (Nebraska)
- Unvested Stock Options Are Marital Property (Maryland)
- Marital Assets: Law License Not In Divorce Mix (New York)
- Goodwill Not Included In Valuing Husband's Business At Divorce (Mississippi)
- Court Can Consider Husband's Abuse In Dividing Assets (Montana)
- Patents Can Be Divided At Divorce (Hawaii)
- Father Must Pay More Child Support Based On Early Retirement Pay (Georgia)
- Wife Must Pay Tax On Stock Options Received At Divorce (IRS)

BAD-ECONOMY DIVORCES

It is unclear whether a bad economy *per se* increases divorce, but it is universally agreed that many domestic disputes originate over money problems. As one Texas lawyer put it, "One good reason for being a divorce lawyer is that in ordinary times, business is good, and in bad times, business is even better!" What is clear is that divorce in bad economic times is especially hard for lower and middle-income couples. Dividing the resources of these couples often leaves them both in poverty. The situation is exacerbated when the only significant marital asset is a heavily mortgaged home that may have to be sold in a buyer's market. As Massachusetts divorce lawyer Nancy Van Tine stresses, "Lawyers have an 'absolute obligation' to hammer home the unpleasant truths about a bad-economy divorce." Advice to seek marriage counseling may make sense to the couple after they fully appreciate the financial implications of divorce.

ELDER-COUPLE DIVORCES

It is no longer unusual for couples married 30 or 40 years to divorce. If they are in the lower or middle-income bracket, they too may have to face the unpleasant specter of post-divorce poverty. If they are wealthy, a financial planner usually should be retained. Just a few of the heightened concerns in elder-couple divorce representations are:

- ➔ What medical benefits, medical insurance, and long-term care will the client receive?

- ➔ What is the status of the marital home? Is there a reverse mortgage? Is it a life estate?
- ➔ What is the impact of divorce on existing estate planning? It usually changes everything – but an irrevocable trust is just that. What do you do now?
- ➔ What is the impact of divorce on relations with other family members – especially adult children and grandchildren?
- ➔ Will remarriage affect grandparent visitation?

Representing older adults in a divorce or any other matter can involve significant issues of client competence, confidentiality, intergenerational conflicts of interest, and client communications. For a review of these issues read "Golden Oldies – The Graying of Professional Responsibility" available on our web site at www.lmick.com in the Avoid Malpractice Section, *Bench & Bar* articles.

DIVORCE FINANCIAL COMPETENCE

Lawyers often know a great deal about the financial complexities of divorce, but many only have a rudimentary knowledge of asset analysis, cash flow streams, investment instruments, and retirement plans. It is crucial to know what your level of competence is to advise on these matters and when experts should be employed.

Terri Cullen highlights these common mistakes by the unsophisticated in "Top Financial Blunders in Divorce Arise From Failure to Plan Ahead":

- ▶ Often the wife insists on keeping a house when an income analysis would show there is no way she can afford to stay in the house after the divorce. Better to sell the house and share the proceeds.
- ▶ This error can be compounded when the cost basis of a highly appreciated house is not considered. For example, if a house that has appreciated \$400,000 is sold during the marriage, up to \$500,000 in capital appreciation is excludable from taxation and thus no taxable gain. If sold by the wife

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"Marriages don't last. When I meet a guy, the first question I ask myself is: Is this the man I want my children to spend their weekends with?"

Rita Rudner

"I think knowing what you can not do is more important than knowing what you can do. In fact, that's good taste." (And good risk management too!)

Lucille Ball

after the divorce, only \$250,000 is excludable resulting in a \$150,000 taxable capital gain.

- ▶ Failure to consider "the tax-effecting of assets." A taxable savings account of \$50,000 is not identical in value to \$50,000 in a vested tax deferred retirement plan either in current or future dollars. For example there may be an early withdrawal penalty for the retirement account reducing its present value to the holder. On the other hand compound interest on \$50,000 in a tax deferred IRA adds up much more quickly than it does in a \$50,000 taxable savings account. Deciding which of these is most valuable to the client can be tricky.
- ▶ Failure to protect alimony and child support payments adequately by requiring life and disability insurance on the spouse making the payments.

We've stressed financial competence concerns for lawyers in several of our newsletters. The following articles dealing with this issue are available on our web site at www.lmick.com in the Avoid Malpractice Section, Newsletter Archives:

- *Divorce – What's Hers? What's His?*
Winter 2002
- *Nationwide Family Lawyers Struggle With Marital Assets Settlements*
Spring 2001
- *QDROs, Pensions, and Malpractice*
Winter 2001
- *Bull Markets and Malpractice*
Winter 2000

ENTER THE CERTIFIED DIVORCE PLANNER (CDP)

In "Certified Divorce Planners Help Lawyers Provide Better Client Service," Amy Johnson Conner explains that "CDPs receive special training in the intricacies of career assets, pensions, Qualified Domestic Relations Orders (QDROs), tax laws, the differences between personal and marital property, splitting assets, alimony, child support, dividing the home and social security." CDPs use computer programs to illustrate the current financial situation of the marriage and create various scenarios for asset division. The data on income, expenses, assets, retirement plans, etc. is entered. The program then applies formulas for variables such as expected income increases, inflation, return on investments, and taxes. From there negotiations begin.

Conner points out that CDPs bring fresh perspective to divorce matters in that they focus on the financial future, are good at drafting QDROs, provide neutral analysis, decrease lawyer liability risk, and usually reduce client costs. For more information about CDPs visit the web site of the Institute for Certified Divorce Planners at www.institutecdp.com. It includes a by state listing of CDPs. When we last looked there were three in Kentucky. In any event – if you can't do the numbers, get help fast!

Sources for this article include Bowden, *Bad Economy Can Mean More Divorce Cases*, *Lawyers Weekly USA*, 2002 LWUSA 785 (11/25/02); Hsieh, *Divorce Among Elder Couples Is No Longer Unusual – But Legal Issues Are*, *Lawyers Weekly USA*, 2002 LWUSA 465 (7/8/02); Cullen, *Top Financial Blunders in Divorce Arise From Failure to Plan Ahead*, *The Wall Street Journal Online* (8/29/02); and Conner, *Certified Divorce Planners Help Lawyers Provide Better Client Service*, *Lawyers Weekly USA*, 2002 LWUSA 893 (11/12/01).

"It's amazing how long it takes to complete something you are not working on."

**Arthur Bloch in
The Complete Murphy's Law**

RISK MANAGING THE ETHICAL DUTY TO PAY VENDORS

KBA Bar Counsel Ben Cowgill's article "The Ethical Duty to Pay Vendors" in the November 2002 *Bench & Bar* does a fine job of explaining a lawyer's professional responsibility for payment of litigation-related services. If you missed it, we suggest you take time to read it. What we want to do here is to tag on to Ben's timely advice by adding some risk management practices to avoid both bar complaints and liability for these fees.

- ✔ Always cover with the client in writing (preferably a letter of engagement) precisely how client funds are to be disbursed.
- ✔ Get written authority to pay creditors with an interest in the recovery. This is particularly important for those you have personally engaged such as medical services required to develop a personal injury case. If your client gets all the recovery proceeds and stiffes those people, you could be liable. Maybe as bad, it is your credibility that suffers on the next case when you try to get needed services.
- ✔ Get client approval before hiring experts and other high expense aspects of case preparation (i.e., don't surprise your client with a huge disbursement).
- ✔ Consider getting the client to pay large expenses directly while the case is ongoing and prior to final recovery disbursement. This simplifies things at the conclusion of the matter for all concerned.
- ✔ Never disburse funds to a client or vendor before checks providing funds for the disbursement have cleared.

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TENNESSEE ADOPTS NEW LAWYER DISCIPLINARY RULES IN 2002



In 2002 Tennessee joined the 44 other jurisdictions, including Kentucky, that use lawyer disciplinary rules based on the ABA Model Rules of Professional Conduct. If your practice includes

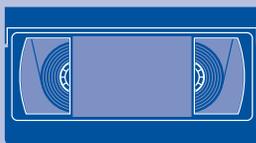
Tennessee, the good news is that the new rules are similar to Kentucky's. The bad news is that Tennessee made so many modifications of the Model Rules that only about one-third were adopted without some alteration. The most significant Tennessee modification differing from Kentucky rules is that written client consent to conflicts of interest is required in most cases including current clients, aggregate settlements, related lawyers, and former clients. This requirement is satisfied by a written document signed by the client or by oral consent confirmed in writing by

the lawyer and provided to the client. (Cf. Ky. RPCs 1.7, 1.8 (g)& (i), and 1.9). Other important differences concern when client confidential information may be revealed, a broader requirement for candor toward a tribunal, and greater authority to share fees with nonlawyers. If you are practicing in Tennessee as well as in Kentucky, we urge you to study their new disciplinary rules. The ABA/BNA Lawyers' Manual On Professional Conduct has a good overview in its Current Reports, Vol. 18, No.19, page 562 (9/11/02).

SEX, LIES, AND VIDEOTAPE

Just kidding about the sex and lies, but if a client gives you a videotape, audiotape, or a "burned" cd, do you have risk management procedures in place to protect this client property and yourself from liability or the accusation of assisting in client crime or fraud? What got us thinking about this is hearing about a lawyer who was given a videotape by a client purportedly containing evidence supporting his case. The lawyer kept the tape for several

weeks before finding time to view it only to discover that it was blank. While this could happen to any busy lawyer, it



serves as a reminder to be sure that client-provided property is adequately safeguarded to avoid an accusation of tampering or negligent safekeeping. As an extra precaution be sure to view or listen to tapes and cds as soon as possible. In addition to knowing exactly what you have, you may avoid being the repository of illegally obtained recordings – an increasing risk in this technological age.

"If someone tells you he is going to make a 'realistic decision,' you immediately understand the he has resolved to do something bad."

Mary McCarthy

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This newsletter is a periodic publication of Lawyers Mutual Insurance Co. of Kentucky. The contents are intended for general information purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is not the intent of this newsletter to establish an attorney's standard of due care for a particular situation. Rather, it is our intent to advise our insureds to act in a manner which may be well above the standard of due care in order to avoid claims having merit as well as those without merit.

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