CLAIMS AGAINST LAWYERS: INSURANCE COVERAGE ISSUES

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PANELISTS:

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The Insured Firm has a large unpaid receivable that it has been trying to get paid by a client. In the last call with the client, the client advised the billing partner that unless the firm lets the matter drop, the client will explore whether it has grounds for a malpractice action against the firm.

Q. Does this need to be reported to the Firm’s malpractice insurer?

Q. Does this need to be disclosed on the Firm’s renewal application for malpractice insurance?

Q. What are the consequences if it is reported before the end of the policy period, but the client does not file a malpractice lawsuit until after the policy period expires?
In a real estate transaction handled by the firm, one of the other parties to the transaction claims in a letter to the firm and its client that certain misrepresentations were made during the course of the transaction. While the firm’s General Counsel perceives the statements made in the letter to be baseless, the matter is resolved for a payment of $10,000 to the third party in order to avoid the cost of defending a claim. As the firm believes the payment resolved the matter, it doesn’t report the matter to its insurer. Two years later, the firm’s client makes a claim against the firm arising out of the same transaction alleging that the firm was negligent during the course of the representation.

Q: Was there an obligation to report the third party claim or settlement, if it was within the SIR?

Q: What are the issues in determining if the client suit is a “related” or “interrelated” claim to the settled third party claim?
A firm involved in the early stages of defending a malpractice suit has been approached by the plaintiff’s attorney regarding settlement. There is still a fair amount of discovery outstanding and the plaintiff has yet to articulate a coherent damage theory. Despite the lack of factual development, the firm feels at this stage that this is a complex matter that will be expensive to defend.

Q. What are the steps that should be taken if the firm feels that it is in its interest to settle and is prepared to commit the full amount of its retention to a possible settlement.

Q. What are the steps that should be taken if from the insurers’ point of view, the case actually looks more serious than originally envisioned and the Firm is not willing to commit its retention or consent to the settlement?