

## It's a wonderful life

*Focus on overcoming depression and alcoholism in the legal profession*

*Carl Younger, President*

One of my annual holiday rituals is to watch "It's A Wonderful Life." Jimmy Stewart, as George Bailey, portrays a man who throughout his life has made personal sacrifices for the good of others, both family and community. Through the negligent act of his uncle, George is placed in a position of seeing his reputation and his life ruined. He strikes out at those around him, including his wife and children, until he runs away from the problem. George consumes too much alcohol and drives his car into a tree. Finally, as he stands alone on a bridge, he asks that he be removed from his difficulties, first by way of suicide and then by asking that life proceed as if he had never been born. His wish to be "unborn" is granted.

What George Bailey discovers is that, no matter how difficult the situation, he has positive things in his life that far exceed the negative things that could befall him. He learns not to fear the future. In the final scene of the movie, as the bank examiners wait to present a warrant to George and the newspaper photographer is ready to take his picture in disgrace, the people of Bedford Falls march into George's house to give him money to cover the missing funds. Even the bank examiner adds to the collection as the sheriff tears up the warrant.

We all enjoy happy endings. However, George Bailey's life is in many ways a partial mirror of what many lawyers experience. We often sacrifice for our families and our clients. We may be placed in a difficult position because of the negligence of someone in our office. When faced with difficulties, we may retreat to alcohol or may even contemplate suicide.

While George had his friends in Bedford Falls to help him, in addition to your family, you have other members of the legal profession and Lawyers Mutual available to help you. Lawyers Mutual can help with the "legal" difficulties in this equation. Our claims staff is composed only of experienced North Carolina attorneys. Their success ratio is extremely good in helping repair claims once we have been advised of a problem.

On a personal level, the North Carolina State Bar has special programs designated as PALS and FRIENDS. In our seminars, Lawyers Mutual is reminding our insureds of this resource and the need to use this Bar service when you face difficulties. Why is such a resource needed? National and State studies have shown that lawyers are the most depressed profession. Approximately one fourth of all lawyers abuse some substance, usually alcohol, while almost one fifth of all lawyers have no one to whom they can go for counsel and help.



Carl Younger  
President

Most of our readers are "in the majority;" you do not currently face a problem of depression or substance abuse. However, you may have a partner, an associate or a friend who is struggling. Their struggle may be affecting you. We at Lawyers Mutual believe that all of these struggles affect us. Certainly, we are concerned about reducing claims. However, we are North Carolina lawyers too, and we are personally concerned as fellow attorneys and friends with the impaired attorneys themselves. We strongly believe that our profession, our communities and our State are best served when undue personal burdens or addictions are removed from our colleagues in the profession.

We thus plan to continue our emphasis during this 2002 - 2003 year on the personal need for resources to help with individual recoveries. Perhaps, we will all discover the final reward given to George Bailey - that life is indeed wonderful.

**Lawyers Assistance Program**  
1-800-720-7257

January 2003

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# Weathering the storm

*LML comes through in delivering services to insureds*

*Judge Gerald Arnold, Senior Vice President of Claims*

On December 5, more than 2 million people awoke without power in the path of Wednesday night's brutal ice storm that tore down power lines across much of North Carolina. Triangle homes and businesses were hit especially hard as were those in Charlotte and surrounding areas.

Like everyone else the folks at Lawyers Mutual were without electricity and phones, but there was electricity at the N.C. Bar Center Thursday, one of the few places where there were lights.



Judge Arnold  
Senior Vice-President

We appreciated having heat and phones at our office, but the big question Thursday morning for Lawyers Mutual was what to do about the risk management seminar planned for Friday morning at the Embassy Suites in Charlotte. We were told at noon on Thursday that the Embassy Suites was without electricity and telephone service.

We made the decision that Lawyers Mutual personnel should be present if anyone did show up for the program, and to their credit, all of the LML people were able to travel to Charlotte. We recognized that it would be impossible to contact all of our insureds who were scheduled to attend the program since many, if not most, were without regular telephone service. Thus, arrangements were made late Thursday to move the program from

the Embassy Suites to the Clarion Hotel across the street, which did have power.

Amazingly, more than 50 lawyers showed up at the Embassy Suites where they were greeted by LML President Carl Younger, dressed in his heaviest top coat, who then directed everyone to the nearby Clarion where there was comfort: hot coffee, breakfast and the pleasant company of other lawyers. The seminar proceeded thanks to presenters Henry Sloane, John Parker, Lee Cumbie and to Louise Paglen and Diane Boyette of Lawyers Mutual.

During the crisis of an ice storm we certainly appreciate the power company utility crews and emergency providers, firemen, police and the like. It was also an occasion for me to applaud the character and commitment of my colleagues at Lawyers Mutual. They came through in a pinch and gave Lawyers Mutual one of its finest hours. The extraordinary efforts of all of the Lawyers Mutual personnel - both to staff the Cary office and to make special, emergency arrangements for a program - show the determination of our Company to diligently serve North Carolina lawyers, no matter what the obstacle.

## CONGRATULATIONS!

Congratulations to John M. Silverstein, recipient of the 2002 Joseph Branch Professionalism Award, presented annually by the Wake County Bar Association to a lawyer who "exhibits the highest ideals of professionalism, ethical and moral code."

## To Register:

Please mail this form to Lawyers Mutual or fax to 919.677.0131.

Name \_\_\_\_\_

State Bar No. \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Telephone \_\_\_\_\_

Fax \_\_\_\_\_

Seminar Date \_\_\_\_\_

Seminar Location \_\_\_\_\_

*Confirmations will be sent approximately 30 days before the seminar.*

## Seminar Calendar:

January 17, 2003	Greensboro
January 31, 2003	Fayetteville
<b>February 7, 2003</b>	<b>Charlotte*</b>
February 14, 2003	Winston-Salem
February 28, 2003	Raleigh
March 28, 2003	Wilmington

\*Additional Seminar added in response to the ice storm.

# Serving on the board of directors

*Are you aware of the risks?*

*Will Graebe, Claims Counsel*

Many of our insureds serve as directors on the boards of various private and nonprofit institutions throughout the state. These lawyers are able to offer valuable insight and legal expertise to the board. Often times, lawyers are asked to serve as a director with the expectation that they will provide legal advice to the board. Serving in this dual role of legal advisor and board member can have detrimental consequences. Before accepting a position as a director, a lawyer should carefully consider the potential detriments and do everything possible to protect himself and his firm.

The lawyer who serves as a director puts herself and her firm at an increased risk of being sued. Non-lawyer board members commonly ask the attorney/director for legal opinions prior to voting on matters before the board. By not only voting on board decisions but also giving legal advice to the board with respect to those decisions, the lawyer becomes a likely target for a claim by the corporation as well as third parties allegedly harmed by the board's decision. These parties will see the lawyer as a prominent deep pocket defendant, regardless of whether the lawyer has committed malpractice.

The risk to the attorney/director is increased where the attorney is sitting on the board of directors of a corporation that is also a client of the attorney's firm. The client is likely to believe that communications with the attorney/director are privileged. However, the attorney-client privilege might not be available to protect discussions between the attorney/director and the board, since the attorney might be considered to have been acting in his capacity as a director. A failure by the lawyer to disclose this risk could damage the client relationship and might even result in a claim from the client.

By serving on the board of directors of a client, the lawyer could jeopardize the firm's relationship with the client. If the attorney/director is named as a defendant in a lawsuit against the client, the law firm might be disqualified from representing the client in that litigation, because the lawyer is likely to be called as

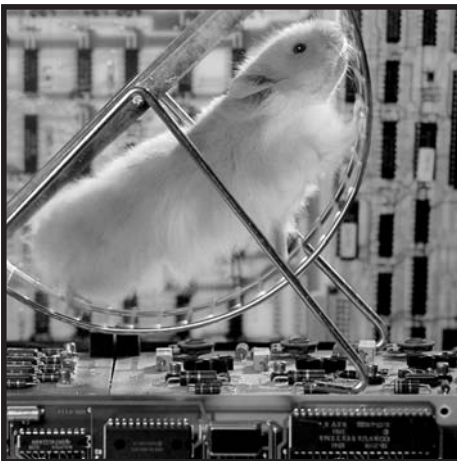
a witness. Again, the attorney/director should advise the client of this risk.

If a claim does arise as a result of the attorney/director's acts as a director, Lawyers Mutual's policy will not provide coverage for such a claim. Lawyers Mutual's policy specifically excludes coverage for "any claim or suit arising out of any Insured's act(s) or omission(s) in his or her capacity as an officer, manager, director, partner, trustee, employee, or fiduciary (other than as covered by the provisions of INSURING AGREEMENT, II. Coverage-Fiduciary) of a business enterprise."

Given this lack of coverage under our policy, we recommend to our insureds that they take certain precautions before accepting a position as a director. First, determine whether the corporation has in force a D&O policy with adequate coverage. If possible, avoid wearing two hats. Make it clear up front that you are not providing legal advice to the board. When legal issues arise, suggest to the board that it needs to retain counsel or go to its own corporate counsel. When the board votes on matters involving legal questions or litigation, it would be advisable to put into the minutes the fact that you have not provided legal advice. Where you know in advance that the board will be discussing matters with significant legal issues and consequences, suggest that the corporation's attorney attend the meeting. Be sure that the board keeps adequate minutes of the directors' meetings. Finally, be sure to consult with other members of your firm before accepting a position as director of any institution. By taking these precautions, you will substantially reduce the risk of exposure to you and your firm.



Will Graebe  
Claims Counsel



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# Understanding underwriting...

Many lawyers have misconceptions about underwriting, premiums, and professional liability coverage. Sharon Long and Jean Williams from our underwriting department provide an answer to one of the questions they have been recently asked. We invite you to contact underwriting with any questions you may have.

**Q. What do I need to do when changing firms?**

**A. If continuing in the private practice of law, your current firm should notify Lawyers Mutual that you are no longer associated with the firm. Your new firm, if insured by Lawyers Mutual, must fill out a Supplemental Application to add you to their current policy. This will provide you with continuous coverage. If your new firm is not insured by Lawyers Mutual, please contact LML regarding Tail Coverage.**

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# LML TODAY

The contents of this newsletter 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 a standard of due care for any particular situation. Rather, it is our intent to advise our policyholders to act in a manner that might well be above the standard of care in order to minimize a firm's malpractice risk.

Henry A. Mitchell, Jr.  
Chairman

Carl Younger  
President

# 4

A publication for policyholders of  
Lawyers Mutual Liability Insurance  
Company of North Carolina

# LML TODAY

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