



# Going Ugly Early:

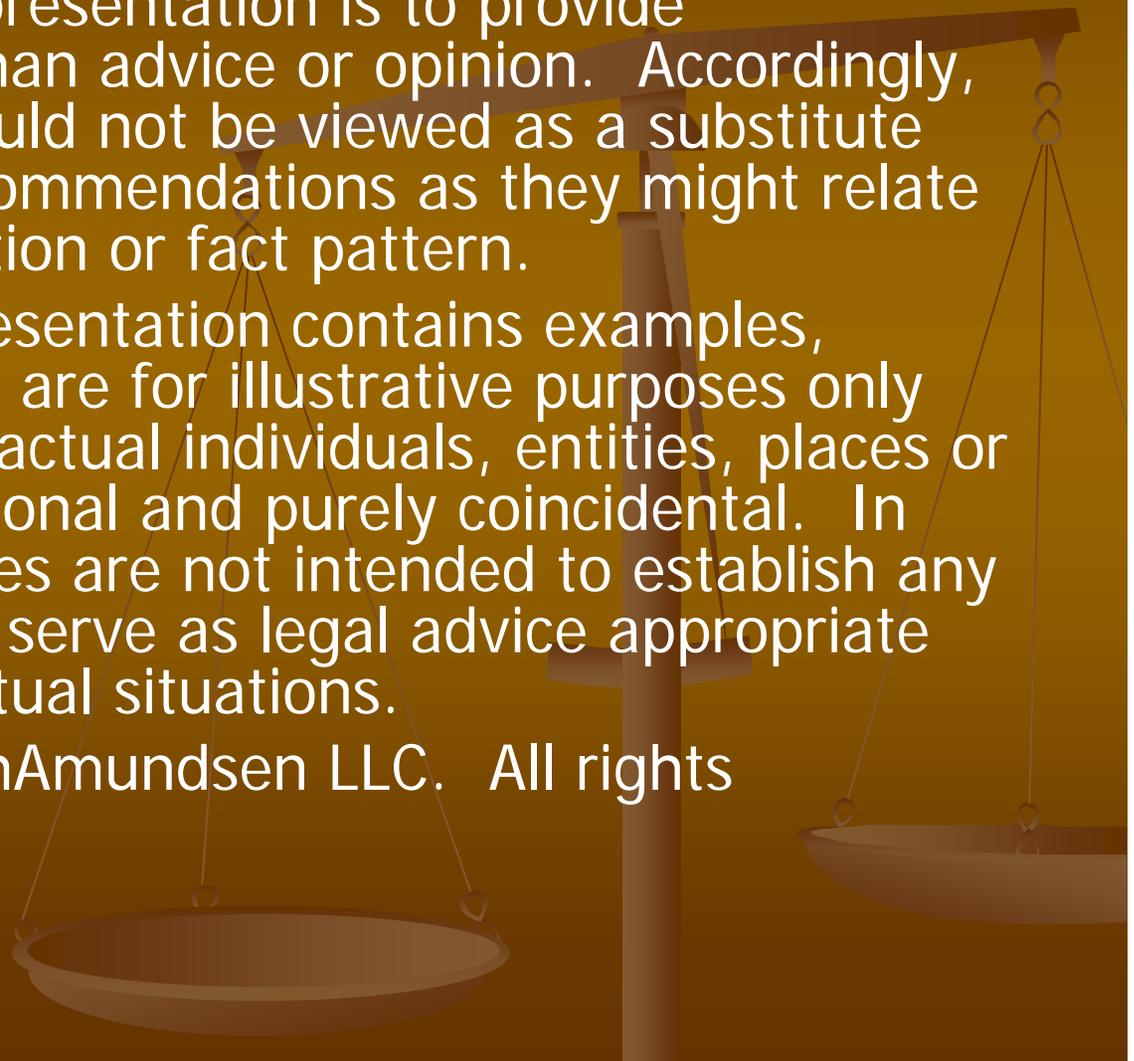
The Benefits and Implications if  
you do, and Potential Problems if  
you don't

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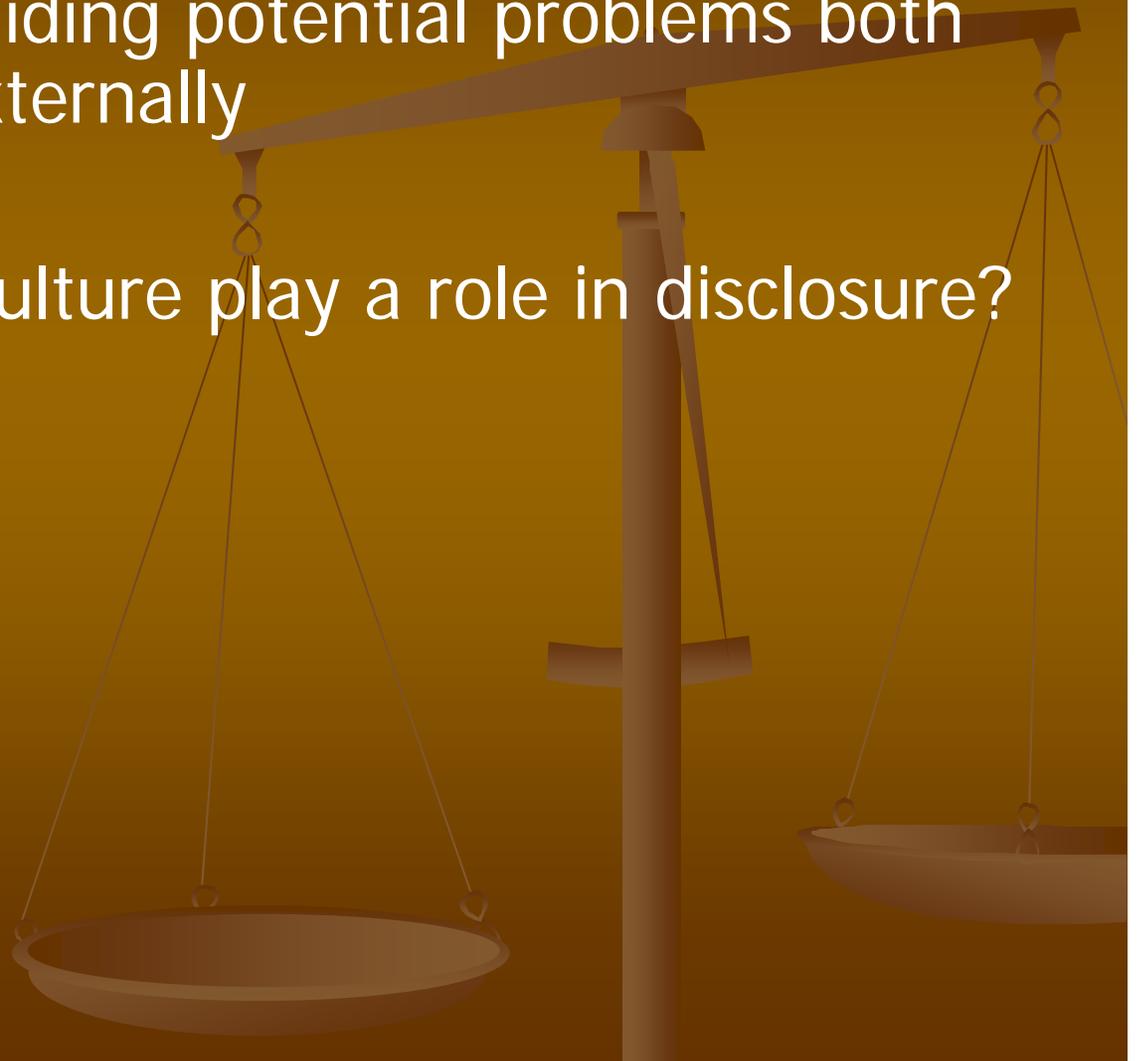
# Disclaimer

- The purpose of this presentation is to provide information, rather than advice or opinion. Accordingly, this presentation should not be viewed as a substitute for guidance and recommendations as they might relate to your specific situation or fact pattern.
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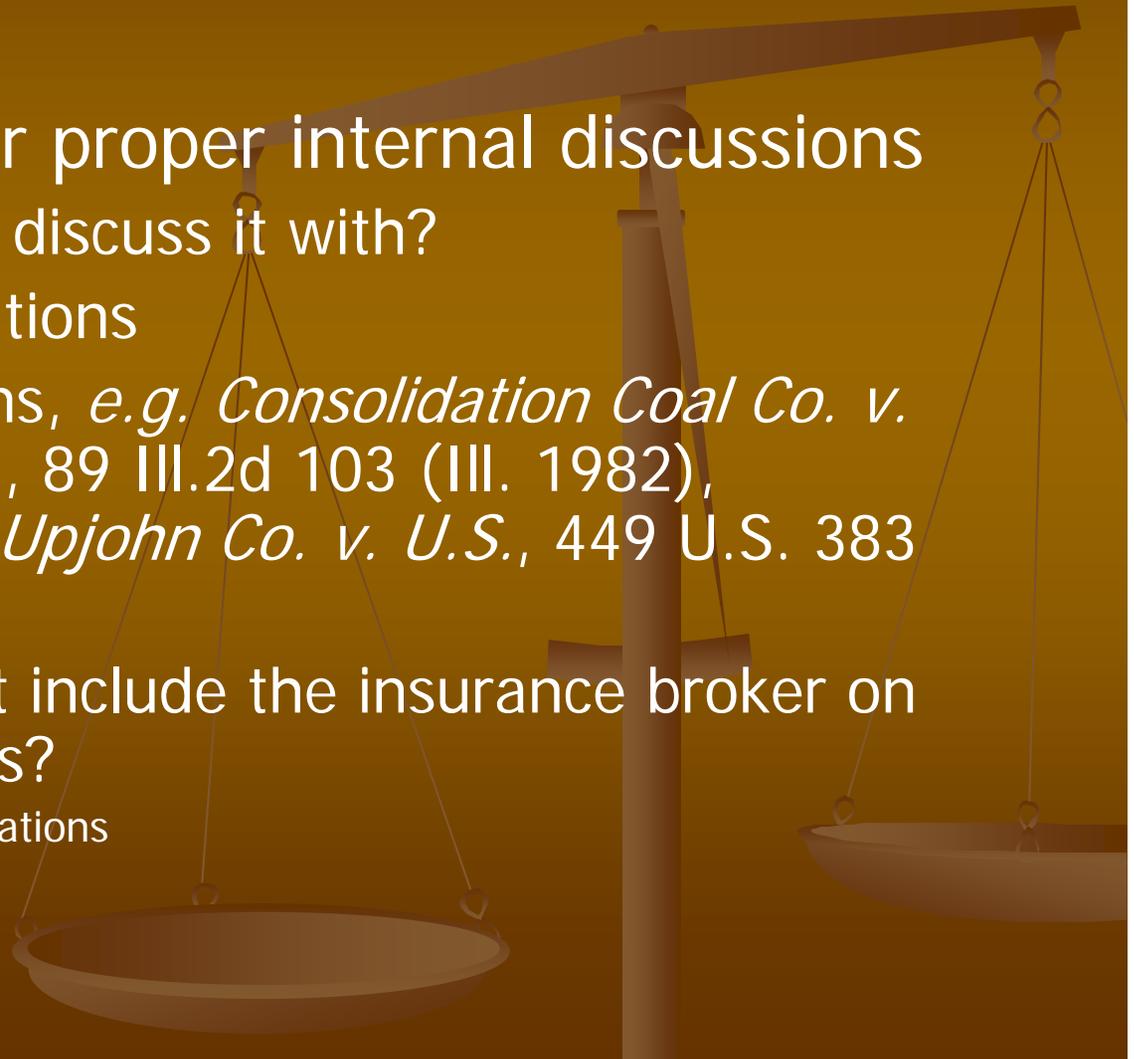
# 1. Internal Communications/Risk Management

- Benefits of not hiding potential problems both internally and externally
- How does firm culture play a role in disclosure?



# 1. Internal Communications/Risk Management

- Best practices for proper internal discussions
  - Who should you discuss it with?
  - Oral Communications
  - Privilege concerns, *e.g. Consolidation Coal Co. v. Bucyrus-Erie Co.*, 89 Ill.2d 103 (Ill. 1982), compared with *Upjohn Co. v. U.S.*, 449 U.S. 383 (1981)
  - Should the client include the insurance broker on these discussions?
    - Privilege implications



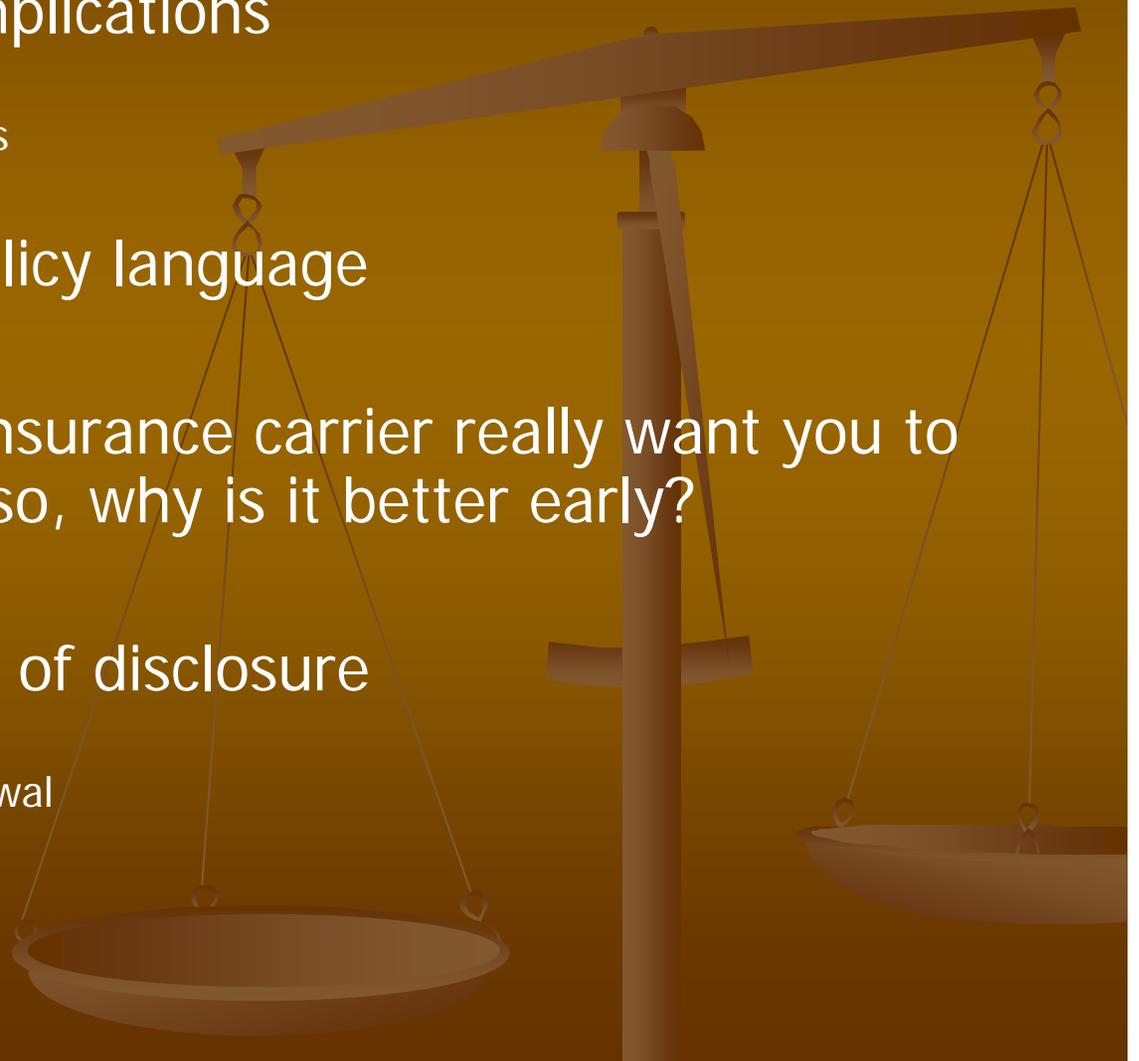
## 2. Viability in the Insurance Market

- Benefit of the “realistic” insured to present to the market
- Impact on renewal/policy procurement
- Financial implications
  - Policy Premiums
  - Renewal costs



# 3. Policy Implications

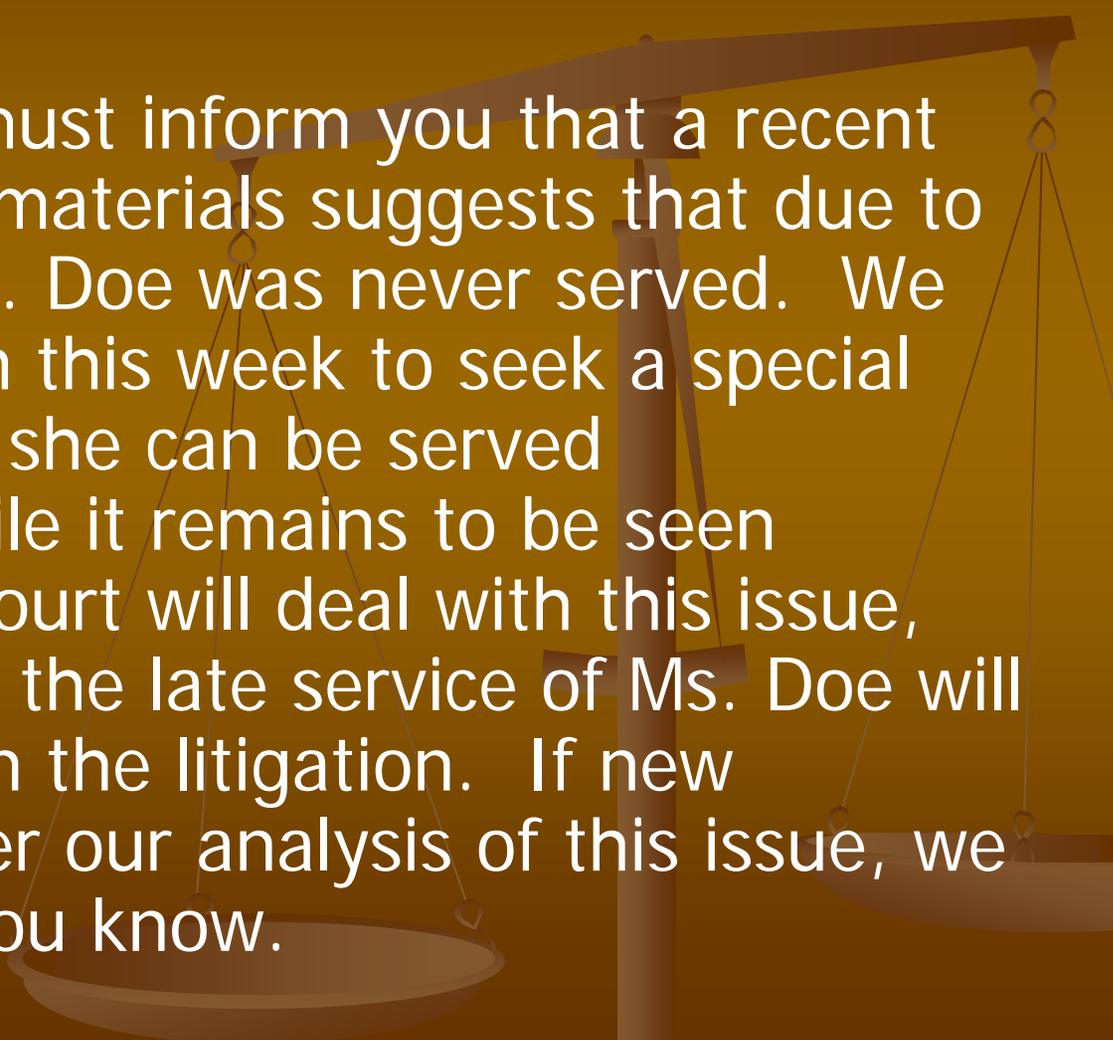
- Potential coverage implications
  - Late reporting issues
  - Application implications
- Relevant/common policy language
- Question: Does the insurance carrier really want you to report claims, and if so, why is it better early?
- Financial implications of disclosure
  - Deductible
  - Future premiums/renewal



## 4. Ethical/Defense Implications

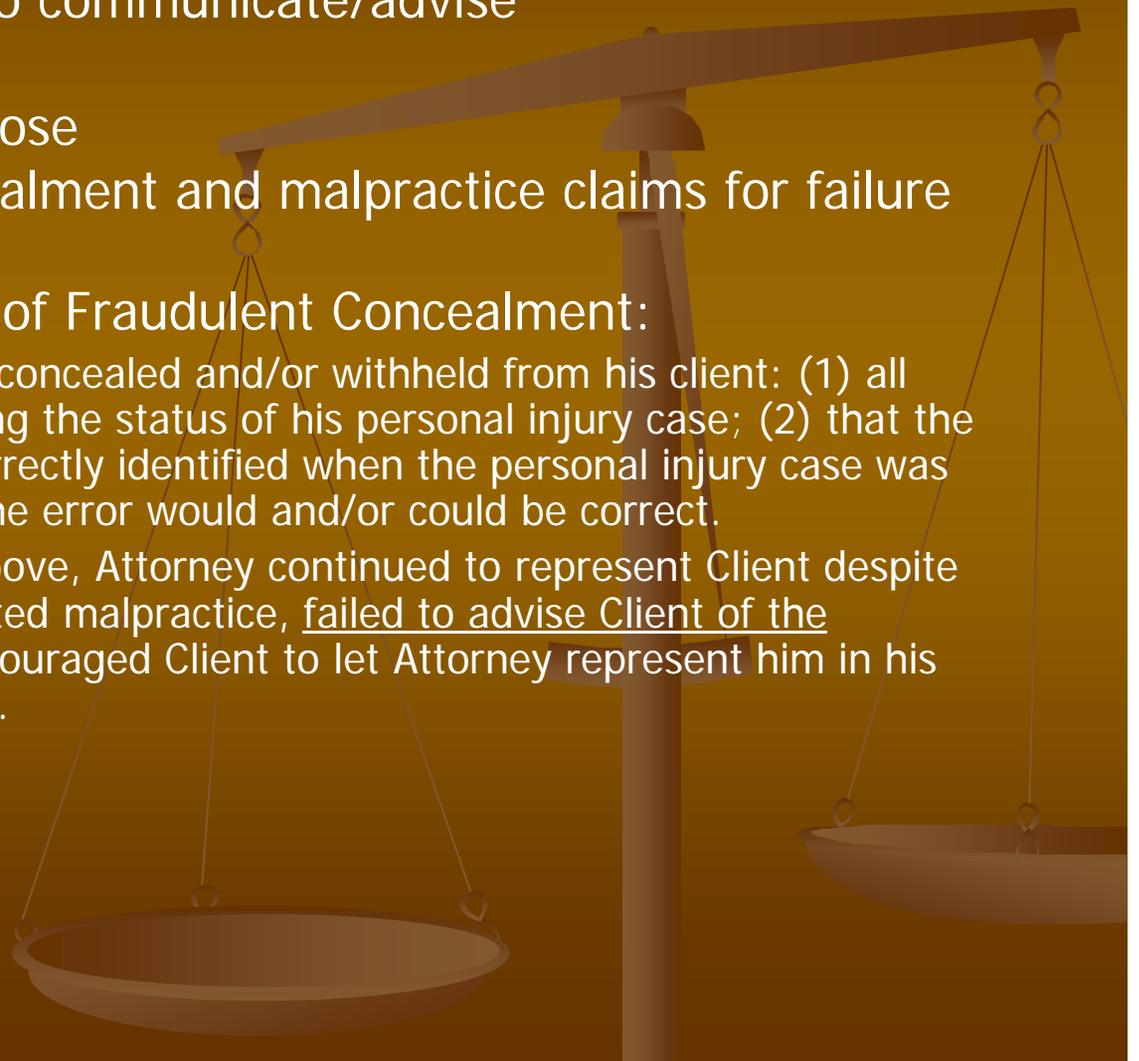
- How to do it:

Example: Lastly, I must inform you that a recent review of the file materials suggests that due to a clerical error Ms. Doe was never served. We are filing a motion this week to seek a special process server so she can be served immediately. While it remains to be seen exactly how the court will deal with this issue, we do not believe the late service of Ms. Doe will have an impact on the litigation. If new developments alter our analysis of this issue, we will certainly let you know.



## 4. Ethical/Defense Implications

- Ethical Obligations-duty to communicate/advise
- Defense Benefits
- Statutes of limitations/repose
- Avoiding claims for concealment and malpractice claims for failure to advise:
  - Creates allegations of Fraudulent Concealment:
    - Attorney knowingly concealed and/or withheld from his client: (1) all information regarding the status of his personal injury case; (2) that the defendant was incorrectly identified when the personal injury case was filed; and (3) that the error would and/or could be correct.
    - As a result of the above, Attorney continued to represent Client despite knowing he committed malpractice, failed to advise Client of the malpractice and encouraged Client to let Attorney represent him in his personal injury case.



# 4. Ethical/Defense Implications

- Potential conflict between client and attorney
- Impact on damages
  - Potential failure to mitigate
  - Potentially cap damages at time of wrongdoing
- Potential for resolution



# Any Questions?

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