



## **2014 CLM Annual Conference**

**April 9, 2014 – April 11, 2014**

**Boca Raton Resort  
501 E. Camino Real  
Boca Raton, FL 33432**

### **Roundtable 4: Friday, April 11, 2014 (10:25 am – 11:25 am)**

#### **What No Insurer Really Wants to Talk About (Rescission and Related Exclusions)**

#### **Case Study**

##### **Facts**

Suzy Q. was 34 weeks pregnant when she went into labor. Suzy rushed to the hospital, where she was admitted at 12 noon on a Friday. Shortly after Suzy was admitted, the nurses hooked Suzy up to a fetal heart rate monitor. Throughout the day on Friday, the nurses and Suzy's doctor, Doctor Z., closely monitored the fetal heart rate. While the strip showed a few decelerations in the fetus's heart rate, the decelerations were quick, the fetus recovered without intervention, and the heart rate rebounded in a strong fashion. That night, Suzy rested comfortably, and there were no additional decelerations shown on the strip.

Saturday morning, before leaving the hospital for the weekend, the nurses who had been caring for Suzy and Dr. Z. met with another team of nurses and Dr. Y., who were beginning their shift. During that meeting, the teams agreed that they would try to prolong Suzy's pregnancy, with the hope of getting her to 35 or 36 weeks.

On Saturday afternoon, the decelerations began again. The decelerations were more significant, lasted longer than they did on Friday, and required interventions before the heart rate rebounded. After rebounding, the fetus's heart rate was strong. On Saturday night, the nurses and Dr. Y. met again to re-assess whether they should continue to monitor Suzy, or perform a cesarean section and deliver Suzy's baby. They discussed the risks of additional decelerations if the pregnancy continued, and the risks of premature delivery. Ultimately, they decided to continue to monitor Suzy overnight and reassess her condition in the morning.

At 3:00 AM on Sunday morning, while Suzy was sleeping, the fetus suffered a significant deceleration. An alarm sounded at the nurses' station. Dr. Y. was paged and immediately reported to Suzy's room. Suzy's baby, Freddy Q., was delivered within 15 minutes. Freddy suffered from a few post-birth complications, and spent 10 days in the Neonatal Intensive Care Unit ("NICU").

Six months after Freddy was discharged from the NICU, the hospital received a letter from Suzy's brother, an attorney, asking for a copy of Suzy Q.'s medical records, including the fetal heart rate monitoring strips.

Application Question

Are there any circumstances of which you are aware of that may result in any claim or suit being made against you?

If yes, please give full particulars in order for your application to be considered.

### Prior Knowledge Exclusion

The Policy will not provide coverage for any Claim based upon, arising out of, or relating in any way to circumstances which the Insured, prior to the Policy's inception date, knew or reasonably should have known would result in a Claim.

### Notice Provision

As a condition precedent to coverage under the Policy, the Insured will provide the Insurer with timely notice of circumstances that could give rise to a claim, including, but not limited to, circumstances involving any of the following: (1) unexpected death; (2) birth related injuries; and (3) severe burns.

### Scenarios

The events described above all happened in Year 1.

Scenario One: At the time of the event in question, the hospital was insured by ABC Insurance Company. The hospital continued to be insured by ABC in years two and three. Suzy Q., individually, and on behalf of Freddy, files a lawsuit against the hospital in year three.

Scenario Two: At the time of the event in question, the hospital was insured by ABC Insurance Company. In year two, the hospital moves coverage to XYZ Insurance Company. Suzy Q., individually, and on behalf of Freddy, files a lawsuit against the hospital in year three.

### Session

In the session, we will use the case study to discuss the questions listed in the accompanying outline. The discussion will view the questions from both sides of the isle.