

Limiting liability ■ Lateral hires ■ SOCPA 2005: overseas crime ■
The American scene ■ Conflicts and information barriers



'The Windy City' - Chicago, USA



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Regulated by The Law Society

The firm is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of the Law Society. We can provide these investment services if they are an incidental part of the professional services we have engaged to provide.

Limiting liability

Limited Liability Partnerships (LLPs) are much in vogue, as revealed by Legal Risk's recent **Top 100 Professional Indemnity and Risk Management Survey**, with 41 per cent already converted and a further 17 per cent planning to do so in the next 12 months.

But LLP status is not the panacea for all ills – if the LLP fails, the job goes with it, and members may have personal liability as well. So the incentive is still there to limit liability contractually, which firms are doing increasingly. Most Top 100 firms limit liability at least some of the time, and we have helped four of the Top 50 with drafting their terms as well as many smaller firms.

Limiting liability to your level of professional indemnity cover may not be the best course for several reasons. First, it may be some years before a claim comes in, and the firm may have less cover then.

Secondly, the 'aggregation rule' in the policy wording, which enables insurers to treat a number of similar claims as one with only one policy limit, (see **Risk Update, April 2005**), may mean that there is not enough cover for all the claims arising from perhaps a quite simple mistake such as an error in a standard rent review clause. Repeat work means that most firms need to address the aggregation issue and consider what steps they should implement to protect partner assets. This applies whether the firm has a commoditised, volume practice such as domestic conveyancing or personal injury (as The Accident Group panel firms are only too well aware) or high-end commercial work such as major development projects.

The focus on aggregation may also be increased by two high profile investigations into alleged fraud and money laundering. Recent announcements by the authorities of activity involving alleged terrorist funding in Northern Ireland linked to ownership of property, and the investigation into alleged frauds against the Cheshire Building Society and other lending institutions, coupled with a probably unprecedented warning to commercial lenders by the Financial Services Authority, will inevitably focus attention on law firms who did the conveyancing.

Thirdly, simply limiting to a fixed amount is only part of the equation, coupled with issues such as time limits and net contribution clauses.

Large claims are rare, but increasing in number both in the UK and, according to a recent American Bar Association survey, in the United States of America. Increases in cover bought by firms were noted in Legal Risk's Top 100 Survey.

Protecting partner assets needs more than simply converting to LLP, limiting liability contractually and buying more cover. It needs a strategy. As with anything else in practice, a piecemeal approach will waste resources and fail to achieve all it could. We are working with a variety of international, national and high street firms to devise strategies and see them through to implementation.

Legal Risk is planning research on the Top 100 firms' approaches to limiting liability with a view to benefiting the profession as a whole. If you are interested in participating on a confidential basis please let us know.

We provide standard terms limiting liability for £750+VAT. Terms apply. For advice on limiting liability, protecting partner assets and indemnity insurance issues contact info@legalrisk.co.uk



Risk Management in the Legal Profession This comprehensive guide to managing risk within a law firm, written by Frank Maher and published by Managing Partner magazine, provides an in-depth analysis of key risk areas within law firms and helps firms develop a strategic approach to managing these issues with clear examples - an opportunity to learn from other people's mistakes. It also contains hot tips on professional indemnity issues and includes several case studies including contributions from Chris Andrews of Clifford Chance and Julia Graham of DLA Piper. Risk Update readers can buy the book for £175 (usual price £195) by using the special order form enclosed with this newsletter.

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Lateral hires, mergers and demergers

This issue is increasingly affecting firms large and small: as firms adapt and change to fit their market sectors and partners become more mobile, successor practice issues under the Law Society's Minimum Terms are becoming more of a problem.

Problems arise when firms take in teams of people without first thinking through the insurance consequences.

First, what is the insurance claims record of the new recruits? Respected firms have damaged their insurance position by taking in partners with bad claims records.

If the old firm is dissolving, which firm's insurance covers claims arising from their work at the old firm? Depending on the facts it may be one or more firms' insurers. Law firms often presume, wrongly, that the claims will follow the relevant department to the new firm. We have seen demerger agreements drafted by respected law firms which showed a failure to understand how the insurance cover operates. Dealing with the issue through indemnities, which are difficult to draft, has its limitations too.

Awareness of the issues is on the increase, possibly borne in part out of bitter experience. Legal Risk's **Top 100 Professional Indemnity survey** showed an increase in checks being carried out on partner hires, including 74 per cent checking claims records (up from 50 per cent two years ago), and 77 per cent checking successor practice liability (up from 57 per cent last year). Other checks were also on the increase.

Not enough thought is given to who will pay excesses (with some surprisingly wide catch-all provisions in some policies), which firm's primary and top up insurance will apply (as to which the answers may differ), the dangers of publicity bringing unforeseen liability, and problems in handling notifications to insurers where the firm's insurance may be covering another firm with which your firm has no real connection. And that is to say nothing of the problems of handling claims where two firms' insurers are involved. On dissolution, great care needs to be taken to ensure maximum advantage of the firm's existing cover by managing the notification process prior to dissolution, reducing the impact on firms with successor practice liability.

This is a large firm issue too - Legal Risk partner Frank Maher has advised six of the Top 100 law firms and many insurers on successor practice issues, as well as numerous small firms.

Like tax planning, early preparation can make all the difference, and firms should consider insurance issues at the start of a proposed deal to avoid becoming uninsurable in the open market consigning a firm to the Assigned Risks Pool where, by way of example, even basic cover would cost over £3 Million for a firm with £30 Million turnover.

For advice on successor practice, merger and indemnity insurance issues contact info@legalrisk.co.uk

About Legal Risk We are practising solicitors specialising in risk management, professional indemnity, and anti-money laundering and other compliance issues. Recent engagements include advice on insurance implications of mergers, project planning and implementation for an international firm of a



American Lawyer Conference 12-13 July 2006

Legal Risk partner, Frank Maher, will be speaking in two sessions at this event in New York. The first will be a panel session on *Risk in the Modern Law Firm*, and the second is *The London Landscape and what it means for US Law Firms*. Details from info@legalrisk.co.uk

The American scene

Chicago was the venue for the annual Legal Malpractice and Risk Management Conference in March 2006, attended by over 400 delegates from law firms large and small as well as insurers.

Claims by insurers against American law firms are on the increase – as they are in the UK, where defendant practices which were once almost immune from claims are finding the climate has changed, not to mention claimant firms exposed to the traumas of The Accident Group claims.

Hurricanes Katrina, Rita and Wilma were reported to have had little impact

on insurance rates. Intellectual property is an increasing risk area, as insurers in the UK have also noted. The post-Enron Sarbanes-Oxley corporate governance legislation has had less impact than feared by many.

A full article about the conference by Frank Maher will appear in the next issue of Law Practice Bulletin published in Australia. For further information, contact info@legalrisk.co.uk

Money laundering reporting obligations: overseas crimes

The Proceeds of Crime Act 2002 was amended by the Serious and Organised Crime and Police Act 2005 to exclude from the reporting obligations acts which did not constitute crimes in overseas jurisdictions. The provision has been brought into force with effect from 15 May 2006 by The Proceeds of Crime Act 2002 (Money Laundering: Exceptions to Overseas Conduct Defence) Order 2006 which defines relevant criminal conduct as conduct which would constitute an offence punishable by imprisonment for a maximum term in excess of 12 months in any part of the United Kingdom if it occurred there other than offences under the Gaming Act 1968, the Lotteries and Amusements Act 1976, or sections 23 or 25 of the Financial Services and Markets Act 2000.

For help with money laundering problems or to update your firm's training, contact sue.mawdsley@legalrisk.co.uk

Money laundering conference

Legal Risk partners Sue Mawdsley and Frank Maher will be speaking at a conference on 22-23 May 2006 in London.

Details from info@legalrisk.co.uk

Conflicts and Information barriers

Many firms rely on information barriers (also referred to as Chinese Walls or ethical barriers), perhaps because a lateral hire has come from a firm on the other side of a case. Generally, the courts will hold that they are ineffective unless they are part of the established framework of the firm with training in place for all fee earners – see **Bolkiah v KPMG** [1999] 2 WLR 215.

We have been helping firms improve their conflicts checking systems and drafting information barrier procedures.

For advice on your conflicts systems contact frank.maher@legalrisk.co.uk

based risk management diagnostic tools.

For enquiries on matters in this issue, contact Legal Risk partners Frank Maher or Sue Mawdsley - info@legalrisk.co.uk

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