LEGAL RISK LLP
SOLICITORS

Risk Update

NO.58 SEPTEMBER 2014

INSIDE THIS ISSUE:

RISK UPDATE is available electronically only. To subscribe and receive a free e-copy directly into your inbox, email us at info@legalrisk.co.uk. Alternatively download it from www.legalrisk.co.uk

Professional indemnity changes

Our July 2014 Risk Update reported on the proposal by the Solicitors Regulation Authority (SRA) to reduce the compulsory limit of indemnity to £500,000 from £2 million (sole practitioners and partnerships)/£3 million (incorporated practices). We explained why we had written to the Legal Services Board to ask them to refuse the application.

The Legal Services Board has not approved the change and has issued a warning notice saying it is considering whether to refuse the application. There will be no change for 1 October 2014. See current applications here.

Meanwhile, the SRA has issued a call for evidence on client protection issues. (Closing date 30 September 2014.)

Limiting liability

We have advised 14 top 100 law firms and many others on their terms limiting liability.

The recent case of Hirtenstein [2014] EWHC 2711 (Comm) was interesting as the defendant was precluded from relying on its contractual limitation of liability because it did not adduce any evidence to demonstrate that it was reasonable. We have provided expert evidence on this issue in a claim involving a top 100 law firm.

Professional indemnity renewal

While the market will be relatively benign for the majority of firms renewing on 1 October 2014, we are seeing a number with significant problems.

We have seen a number of firms involved in takeovers with potentially disastrous effects, including being successor practice and being landed with multi-million pound liabilities. This is entirely avoidable and had they sought our advice at the time, at least some of the deals could still have proceeded without taking on these liabilities. We have assisted with block notifications to current insurers and reports on their risk management to help them seek alternative cover; done properly, this means that any future claims arising from the known circumstances which are notified to insurers will be treated as falling on the soon-to-expire policy, so the firm's new insurers are not affected.

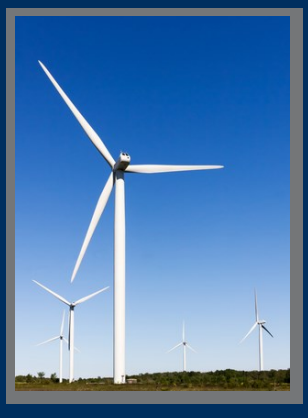
We have successfully adopted this approach on several cases in previous years, including one recent example of a top 100 firm with a rogue partner problem.

Block notifications require very careful consideration. In the past, these commonly related to multiple conveyancing cases and mortgage fraud, or undervalue settlement of personal injury claims. However we have recently had some more unusual examples, including a number of unauthorised collective investment schemes, such as land banking.

An example illustrates the need for care. One firm took over another firm and accepted the successor practice risk because, although the prior practice knew of a multiple potential claim problem, they had done a block notification. Unfortunately, the prior firm's insurers contended that the block notification was ineffective, and the acquiring firm therefore had the threat of multiple claims hanging over them. We are advising on the coverage dispute, one of many ongoing at present involving a variety of issues.

Successor practice issues always come to the fore at renewal time as firms close. Some small firms may take the opportunity to close this time with the certainty of the current run-off arrangements in place – it may never be so easy again. We continue to advise a large number of firms on these issues – both acquiring practices and the firms closing – with a specific focus on achieving their business objectives. We also advise insurers.

Continued on page 2...



Mafia suspected of involvement in wind farms

Events

Sue Mawdsley will be delivering AML and Mortgage Fraud sessions for Northern Ireland Law Society (2-3 September 2014)

Frank Maher will be speaking at the IBA Annual Conference in Tokyo (19-24 October 2014)

For more details see our website.

Recent articles

Insure Enough

Frank Maher discusses the SRA decision to reduce the minimum compulsory cover.

First published in the August 2014 edition of Managing for Success, the magazine of the Law Society's Law Management Section (www.lawsociety.org.uk/lawmanagement)

For further information on any of the above, please contact info@legalrisk.co.uk

Money laundering

The energy sector can often be high risk. The French Service Central de Prévention de la Corruption (SCPC) reported an increase in corruption in connection with wind farms, and suspected involvement of the Italian Mafia.

The Mirror reported on several cases where people had suffered at the hands of fake law firms. The BBC repeated its consumer report on Fake Britain on 11 August 2014, highlighting the risk of fake law firms having infiltrated the Law Society's *Find a solicitor* database.

The Law Society updated its Practice Note on Mortgage Fraud on 31 July 2014.

An article in The Times on 19 August 2014 reported that passport officers are poor at spotting people with fake ID. One may fairly ask how good law firms are likely to be against that background.

The Financial Action Task Force has finished the third round of mutual evaluations, which started in 2004, and started on the fourth round. The reports on Norway and Spain will be finalised and published in October 2014. The reports on Belgium and Australia will follow in February 2015. The UK will follow in 2016. Expect an increase in regulatory attention to compliance in this area.

The Law Society's *Forecasts of legal services sector real turnover and net exports* published on 28 August 2014 predicts an increase in exports of 3.0% in 2014, jumping to 7.9% in 2015, 6.8% in 2016 and 6.9% in 2018. We are seeing a number of clients increasing their business in emerging economies. This can materially alter the risk profile of firms which have traditionally maintained steady growth in markets with which they are familiar, and this in turn is leading to a variety of interesting issues on money laundering and sanctions. We are advising a number of large firms on their risk assessments which will become compulsory when the Fourth EU Directive is introduced. Sanctions issues continue to occupy a significant portion of our time.

3 reasons you underestimate risk

An interesting article on the Harvard Business Review website, by Srini Pillay, explains three reasons why we are blind to risk, and what we can do about it. It identifies the causes as follows. First, "reward obscures risk. When things are going well, we tend to fly high and lose ourselves in the thrill of the reward".

Secondly, it identifies "sunk costs" – we may continue to throw good money after bad. Finally, it says, there is '"future aversion"—the problem of assuming that because the future is unknown it cannot be tested.'

To find out the suggested answers to these issues see here.

Rogue partners

September, for no apparent reason, is a hotspot for discovery of rogue partners in our experience; it is a particularly inconvenient time when firms renew insurance, as most still do, on 1 October. It can cause significant problems as the extent may be hard to ascertain in the early stages.

We have experience of many cases, with a number current, and the issues involved include SRA compliance, anti-money laundering, tracing the money, insurance notification (including block notifications – see *Professional Indemnity Renewal* above), insurance coverage, insurance renewal and partnership.

Collective investment schemes

A note of caution – we are advising in a number of cases involving unauthorised (and hence illegal) collective investment schemes (as defined in section 235 of the Financial Services and Markets Act 2000). We have also been bombarded with emails offering opportunities for investment in student accommodation schemes. Providers often assert that their particular schemes do not require authorisation by the Financial Conduct Authority. Check whether they are right, as many are not. In one recent land banking case a solicitor for the company was held to owe a duty of care to the plot buyer even though he was not acting for the buyer.

28 Bixteth Street, Liverpool, L3 9UH
TELEPHONE 0845 330 6791 FACSIMILE 0845 330 6792 INTERNATIONAL TELEPHONE +44 151 231 6230 FACSIMILE +44 151 231 6231
EMAIL info@legalrisk.co.uk WEBSITE www.legalrisk.co.uk