

PKF

Accountants &
business advisers



Professional Liability Faculty

Professional Indemnity Conference 4th to 6th July 2011

Risk management in professional firms

David Dearman
Partner
PKF (UK) LLP

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Background

- Member of PKF's PI Committee. Sit on the committee of the Forensic Special Interest Group of the ICAEW.
- Partner in the forensic services department of PKF (UK) LLP – more than 15 years specialising in large and complex commercial litigation and international arbitration, fraud and financial investigations, competition and anti-trust investigations, acquisition disputes and professional negligence actions.
- Considerable experience of preparing expert reports and advising instructing solicitors and Counsel in professional negligence actions.



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Agenda – risk management

- Recruitment
- Client acceptance
- Duty of care
- Letter of engagement
- Recording of information
- Report/advice
- Quality control and licensing
- Access to papers
- Holding out
- Complaints, “circumstances” & claims



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Agenda – claims

- MAN and ERF v Freightliner v Ernst & Young
- Top ten accounting firm v Woodhouse plc
- IBR negligence



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Recruitment and training

- Skill set
- References
- Induction
- Training



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Client acceptance

- Initial contact/request for work
- Do we want this client?
- Agree scope of work
- Who is work for?
- Will anyone else see the report?
- Agree price
- Are we competent to do the work?
- Decide on the service team



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Duty of care

- Who is the client we engaged with?
- Are they the entity we are reporting to?
- Who else will see the report/advice?
- Are they likely to rely on it too?
- Or later claim they did?



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Engagement letter

- Avoid doubt over scope of work
- Consultation with legal team encouraged
- Consultation with other departments
- Limit liability to client
- Limit liability to all other parties who might rely on PKF
- PKF rules on liability limits
- Highlight liability cap at the outset
- Ensure letter is returned signed and unchanged before work commences



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Indemnities in clients' terms and conditions

- Limit liability up to specific amount versus indemnifying up to specific amount
- Indemnity clause for death and personal injury
- Indemnities for other losses not acceptable
 - e.g. “The Contractor shall be liable for and indemnify the department for all expenses, losses, costs, claims, liabilities, proceedings or actions arising out of the provision of the services.”

Recording of information

- Telephone notes
- Meeting notes
- Emails
 - do they contain advice?
 - does it say what you meant?
 - have you followed PKF procedures in sending it?
 - does it say more than it should (N.B. Data Protection Act and internal emails)?

Report/advice

- Check that report/advice is addressed to the right party (the one we engaged with)
- Do we need to restrict the report?
- Oral/written
- Are all necessary caveats included?
- Have we done the work to justify the report?
- CPR and CrPR considerations for forensic work
- Are the work and report covered by the engagement letter/contract?



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Quality control

- Licensing
- Procedure of partner sign offs
- Technical support
- Hot and cold file reviews
- Risk management team



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Holding out

- Global business? NO
(PKF (UK) LLP is a member of PKF International, an association of legally-independent firms)
- Holding ourselves out
- Allowing others to hold us out as their partners



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Complaints, “circumstances” & claims

- Procedure in PSM must be followed
- Immediately on becoming aware:
 - staff must inform client partner
 - partner must inform PI partner (or legal counsel): now includes quality, professional & personal conduct issues, not just PI.
- Claim or potential claim
 - do not respond until PI partner/legal counsel gives authority
- Regulatory complaints
 - immediately inform Chairman or Managing Partner (or if away, PI partner) and send copy of letter
- Privilege
 - Avoid damaging disclosure by following PSM

Ideal assignment?

- For a good client
- With agreed scope and fee, limited liability in proportion to fee, work we are competent to do
- Perform work properly (including recording necessary information)
- Report to contracted party (restricting ability of others to rely on report)
- Issue bill and receive payment
- Wait for claim (up to 6 years, maybe longer!)
secure in knowledge we've done our best

Claims – lessons learned

MAN and ERF v Freightliner v Ernst & Young

- Receipt of late information after the completion of audit fieldwork.
- Fee pressure.
- Signing off pressure – from parent and overseas auditors.
- Consideration of the competence of the client team in risk assessment and assignment planning.

Claims – lessons learned

Top ten accounting firm v Woodhouse plc

- Client relationship (objectivity and independence).
- Planning and adequate procedures.
- Recording work done in accordance with the scope.
- Scope versus client expectations.
- All is not lost with a good forensic accountant!



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Claims – lessons learned

Independent Business Reviews (IBRs)

- Scope v expectation.
- Fees.
- Disclaimers.



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Questions?

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