

## **Commercial Litigation**

### **Information on funding for commercial litigation**

#### **Litigation:**

Litigation includes any sort of proceedings for resolving disputes, whether commenced or contemplated. It is always difficult to estimate the likely costs of such a case. There are risks and uncertainties such as:

Might the dispute be settled early?

Will the other side fight all the way?

Will expensive expert advice be needed?

These and other questions cannot all be answered when you first come to us for advice.

#### **Funding Options:**

There are a number of options including:

##### **“Risk sharing”**

Those who may offer a risk sharing arrangement include:

Insurance companies.

Solicitors.

A combination of these two.

Some cases will simply not be suitable for risk sharing.

#### **Risk sharing with legal expenses insurers**

##### **“Before-the-Event Policies”**

There are legal expense insurance policies which can be taken out, usually with an annual premium, to provide cover for a possible future legal problem. You or your partner may have one, for example, as an ‘add-on’ to a property insurance, professional membership or through your credit card. We should warn you that they are frequently very limited in what they cover and may include restrictions on your freedom of choice of lawyer. If you think that you or your partner may have any such policy, you must let us have details of it at the outset of your case.

## **“After-the-Event Policies”**

These are policies which help to cover the cost of litigation once the dispute has arisen. It can provide some peace of mind against the possibility of the total litigation costs if you lose the case.

Insurance cover can be purchased to protect against:

Your opponent’s legal costs and “disbursements”: expenses such as court fees and expert’s fees.

Your own disbursements.

Your own costs and disbursements.

The usual basis of such policies is that payment by the insurers is made only if you fail completely within your case.

## **Meeting the Premium:**

The problem with all insurance is paying the premium. Points to consider are:

Sometimes the insurer will agree to defer payment until the end of the case.

Sometimes the premium itself can be insured.

The court can order your opponent to repay you this premium if you win.

Premiums, for example, may be about 25-30% of the total legal charges against which you want to protect yourself.

In substantial commercial litigation, the premiums may be even higher.

Each case is individually assessed and premiums vary according to specific risk factors.

Application can be made to increase the amount of cover, but the premium may be relatively greater because of the higher risk.

***In this pamphlet we are providing information rather than specific advice. We are not authorised by the Financial Services Authority. However, we are 127146 on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Law Society. The register can be accessed via the Financial Services Authority website at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register).***

We are not contractually obliged to give advice on the basis of a fair analysis of a sufficiently large number of insurance contracts available on the market to enable us to make a recommendation in accordance with professional criteria regarding which contract of insurance would be adequate to meet your needs.

## **Risk sharing with solicitors:**

Until recently, solicitors were not permitted by law to offer clients any such arrangements.

A Conditional Fee Agreement - colloquially called “no win - no fee”. If this is offered, your solicitor makes no charge if the case is lost, but you have to pay your disbursements and your opponent’s charges which can be protected by insurance. If you win, your solicitor charges a “success fee”, to a maximum of 100%, on top of the normal hourly rate.

### **Points you should bear in mind:**

The idea of “no fee” is obviously attractive to clients, but there are other aspects of such arrangements:

We may require you to pay for some initial investigation into your case before deciding whether to offer a risk sharing arrangement.

“There are three of us in this relationship”!

i.e. you will authorise us, and we have a duty, to inform the insurers of all information and any changes as the case progresses.

We will carry out a risk assessment at the beginning of the case, and at times during it, to decide whether we are prepared to take it on or to continue with it.

You will have to satisfy yourself whether our proposal is fair and reasonable. You cannot expect us to advise on that!

Our usual funding arrangements:

We will also need you to sign our Terms of Business.

Whom should I contact?

To take your claim further, simply call:

Ian Gee on 01524 737501

or e-mail [mailto:ig@joblingandknape.com?subject=Commercial Litigation Enquiry](mailto:ig@joblingandknape.com?subject=Commercial%20Litigation%20Enquiry)

Craig Hollingdrake on 01524 598303

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