

from the
president



An extract from the President's Update 12 December 2011

Indemnity Insurance Intervention

I am pleased to report that the Law Society and the Solicitors Regulation Authority (SRA) have been granted leave to intervene by the High Court in their respective roles as representative body and regulator in a case that could have a major impact on professional indemnity insurance (PII) for law firms solicitors .

The case concerns the capping of insurance cover by PII insurers by aggregating claims against a firm. The Society says the insurer's interpretation of the aggregation clause, if upheld, could raise major concerns for the profession and would not be in the public interest. The SRA is intervening on behalf of the Compensation Fund (the Fund), the discretionary fund of last resort for anyone affected by a solicitor's dishonesty or failure to account. Where insurers do not pay, a client can apply to the Fund for recompense grant. The total losses in this case could be in excess of £50 million.

The case arose out of the activities of a conveyancing partner at a reputable and long-established Berkshire firm, Willmetts Solicitors. Before his abrupt resignation the partner had been, for some years, involved in a number of allegedly fraudulent property transactions, unbeknown to other partners. When losses came to light as a result of the financial crisis numerous claims were brought against Willmetts Solicitors and its partners by various lenders, including the claimant Godiva.

Willmetts Solicitors has subsequently gone into liquidation and has no funds to meet the claims. Their insurers assert that all activities arising from the individual partner's involvement in alleged frauds can be aggregated as 'one claim' and therefore refuse to pay further sums beyond the £2 million. In consequence, some of the innocent partners at Willmetts have already been made bankrupt and the remainder are facing bankruptcy.

It is vital that we, as well as the SRA, were able to intervene in this case. The insurer's interpretation of the aggregation clause, which led them to cap their insurance indemnity, could have widespread significance for the public as it will affect many claimants' right of redress. It is also of great concern to the profession in terms of their PII coverage and hence to the Society to ascertain how aggregation applies in a case such as this. Our members need to have confidence in their PII cover, and this could cast doubt on what they and their clients are protected against.