

*NORLAM'S COMMENTS REGARDING LIABILITY INSURANCE IN NORWAY
A SHORT INTRODUCTION TO THE TOPIC*

Short history of the background and development of the liability insurance in Norway

The main motives behind the liability insurance is to:

- Secure the client
- Secure the lawyer

In the late 1930s, a new legal provision was established in the Norwegian Act relating to the Courts of Justice, that lawyers needed to furnish certain guarantees. The Norwegian Bar Association immediately arranged for such guarantees, but at this point just to secure the client, not the lawyer.

From the beginning of the 1960s, compensation funds were established, also to prevent the client suffering financial loss.

Liability insurance for lawyers was introduced by the Norwegian Bar Association in 1976. Up until that time Norway only had a system of compensation funds. The liability insurance was developed to secure the lawyers against recourse claims.

In 1990 guarantees were inducted. This arrangement is also a mean to secure the financial interests of the client. These guarantees are issued by an insurance company. In Norway such guarantees are not provided unless the lawyer/law firm also has a liability insurance. The condition to carry out a payment according to the guarantee is that the client has suffered a financial loss. In theory the guarantee should be disbursed to the client and the recourse claim then covered by the liability insurance of the lawyer. However, in reality, as long as the lawyer has not acted intentionally or with culpable negligence, the claim from the client will be covered by the liability insurance directly.

Following an insurance payment, the insurance company will report the incident to the Supervisory Council for Legal Practise in Norway. If the lawyer does not have a liability insurance, the lawyer will have to cover the claims from the client himself/herself. Should the lawyer not have the will or ability to make the payment, the Supervisory Council for Legal Practise will decide whether the lawyer should be deprived of the licence to practise law.

Due to the short time frame it is impossible to present a detailed review of the liability insurance for lawyers in Norway. The system is fairly complex, so this document gives a general summary of the background, development and the system today.

The Guarantee and the professional liability insurance

The Act relating to the Courts of Justice and the Instruction for Lawyers demand a guarantee for those who shall perform legal practise. The guarantee shall cover liability for damages that

the lawyer incurs towards a third party by exercising the legal practise. Financial loss/material damage insurance might cover the remedy claim from the guarantor against the lawyer.

Lawyers can run real estate agency business with legal authority based on the licence to practise law. The Act of Real Estate Agency Business and the Instructions for Real Estate Agency Business demands that a guarantee is furnished to The Financial Supervisory Authority of Norway.

The guarantee safeguards the client – the professional liability safeguards the lawyer

The guarantee is a financial security for the one who suffers a loss by the actions or omissions by the lawyer, and not for the lawyer himself/herself. The intention of the guarantee is to safeguard the client that the lawyer is solvent in case the legal service cause the client financial damage. The guarantee is given by the lawyer to the Norwegian Supervisory Council for Legal Practise. First the lawyer has to take out an insurance and afterwards a guarantee document is deposited with the Supervisory Council for Legal Practise.

The economy of the lawyer is covered by taking out an insurance together with the guarantee. In case of an action for damages, the injured/the sufferer can seek for damages directly from the guarantor, who is liable for the responsibility the lawyer has incurred.

For disbursements under the guarantee, the guarantor will claim legal remedy for all disbursements. The remedy will either be directed towards the underlying liability insurance of the lawyer or directly towards the lawyer.

By taking out a professional liability insurance the lawyer will safeguard his/her own means, and the guarantor obtain a security for a reimbursement of the disbursement under the guarantee. It is therefore hardly possible to get an agreement of a guarantee without taking out a professional liability insurance for a minimum of the same amount.

The insurance does not, however, cover all the claims one can incur as a professional legal practitioner. For claims that are covered by the guarantee, but not included within the coverage area of the insurance, the guarantor will be able to bring forward a remedy towards the property of the lawyer.

The amount of the guarantee

- *Generally about the amount of the guarantee for legal practise*
 1. The guarantee shall be at least 5 000 000 NOK (approximately 600 000 EURO), according to the Instructions for Lawyers.
- *Lawyer intern*
 2. Lawyers who have lawyer interns must furnish an additional guarantee of at least 3 000 000 NOK (approximately 350 000 EURO) according to the Instructions for Lawyers. In addition, the lawyer intern must take out an insurance of his/her own.
- *Real estate agency business*

3. Lawyers who run a real estate agency business must have a special guarantee of 30 000 000 NOK (approximately 3 600 000 EURO), cf. Instructions for Real Estate Agency Business. This guarantee and the appurtenant insurance comes in addition to the guarantee and the insurance one has as a lawyer.

The amount of the liability insurance

The guarantor will normally demand that the lawyer take out a liability insurance for the same amount as the guarantee. The individual lawyer/law firm must nevertheless consider whether there is a need to take out an insurance for a higher sum. This must be assessed in proportion to the type of legal practise and the damage risk. The Code of Conduct for Lawyers determines that lawyers at all times shall have a liability insurance as regards to the character and extent of the legal practise.

The coverage area of the liability insurance

In principle the insurance will cover responsibility that incurs in the capacity of a legal practitioner, i.e. in the capacity of a lawyer or a lawyer intern. Within this is at the same time the demarcation that in case a person do not practise in accordance with the mentioned capacity, the responsibility will not be covered by the insurance. Further, a separate list of exceptions in the conditions may state what is not covered by the insurance.

If the assignment does not formally demand any legal competence or similar, questions may be raised whether one has received the assignment as a legal practitioner or as a private person. The members of the Norwegian Bar Association are instructed to give an assignment confirmation for most of their assignments. The assignment confirmation will thus indicate that the assignment is accepted in the capacity of acting as a legal practitioner.

Assignments as public guardian, supporting guardian or arbitrator will empirically be assigned to lawyers because of their occupation, and will therefore as a rule be included in the insurance. In case of doubt an assignment confirmation should be issued to clarify the situation.

Report about the claim/damage to the insurer

According to the Insurance Contracts Act the deadline for the report to the insurer is 12 months from the point in time one receive information of the circumstances that substantiates the claim. In this regard it is important to notice that the evaluation of when knowledge is received, is strict, and the Norwegian Bar Association recommends on a general basis that damages and potential damages is reported as quickly as possible.

Further it is very important to report potential damage cases to be able to get expenses for accumulated costs covered. Expenses for a lawyer or an expert that are engaged by the policyholder himself/herself, will normally only be covered after an approval from the insurer.

Judgement of the Supreme Court in 2001: Lawyer liability – Advisory service in regards to tax reasoned investment

The Code of Conduct states that it is the duty of the lawyer to, as soon as possible, make the client familiar with circumstances that can affect the independent position of the lawyer towards the assignment, e.g. financial interests or special relations to the opposite party.

The Supreme Court declared that the professional code of ethics is relevant for the legal assessment of the requirement of due care with regard to compensation, but observes that not every breach of standards isolated must be regarded as negligence giving rise to entailing liability.

Final comments

According to information received by Norlam, very few European countries have this kind of system with guarantees, but instead most countries have similar solutions in the form of compensation funds.

According to Norwegian traditions, the lawyers can take on a wide range of assignments; investigation, real estate agency business, information bureaus, accounting, board positions and more. It is therefore very difficult to define "legal practise". We would like to call attention to the challenges this expansion of working areas might cause in regards to the liability insurance.

When it comes to establishing the insurance premium, we mention that there are a lot of different ways to solve this question. In Norway the lawyers pay a certain amount each year which is reasonably low compared to a lot of countries in Western Europe. England has another solution, where the lawyers pay a certain percentage of their yearly income. Norlam does not have adequate knowledge about the Moldovan insurance business to be able to make suggestions on how the liability insurance should be settled in Moldova.

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