



Small businesses missing out on low-cost litigation

London 12th May 2009...Many small to medium sized businesses (SMEs) are failing to take advantage of low risk 'no win, no fee' options for taking legal action, leaving many unable to enforce their rights through the courts, research has found.

The survey of commercial litigation lawyers, conducted by legal expenses insurer FirstAssist Legal Protection, found that the use of 'conditional fee arrangements' (CFAs) - in which lawyers do not charge a fee unless they win the case - for commercial litigation cases is growing strongly, but that it was mainly larger companies which were reaping the benefits. Over two thirds (85%) of the lawyers questioned said that their clients were becoming more interested in using this method to fund their cases.

By using a lawyer on a CFA, companies do not need to spend huge sums on lawyers' fees in order to bring a case and, when combined with an After the Event (ATE) legal expenses insurance policy, are covered against their costs - and those of the other side - if they lose. In the event that the case is successful, then the losing party pays the winner's fees and other costs, including the insurance premium. In most cases, the premium is deferred and conditional, meaning that companies do not have to pay it before starting legal action, and will not be liable for it if they lose.

"It's a free go at litigation, so it is surprising that there has not been more interest in using CFAs from businesses with a turnover of less than £10 million," said FirstAssist's Managing Director, Peter Smith.

Some of the reasons why this might be the case were highlighted at a follow-up roundtable session of leading litigation lawyers, hosted by FirstAssist. “There is an extraordinary lack of awareness about litigation funding in the legal market,” said one delegate.

However, one leading lawyer with extensive experience of using CFAs and ATE insurance said that it was becoming an easier sell to clients as the benefits become clearer. “Clients generally were a little mistrusting because they were used to being told that litigation was expensive and risky. Now you are telling them it’s a no win, no fee arrangement they think ‘it’s too good to be true’,” he said.

Another lawyer expressed a common fear that the cost of the ATE premium may be taken from any damages won rather than paid by the other side if the court decided it was unreasonable, as happened in many personal injury cases brought by some claims management companies.

Smith told delegates that that fear is not relevant to commercial litigation.

“The courts have accepted that there is a rule of proportionality; that the insurance premium payable should be proportional to the risk undertaken in the case ...and in 10 years we have never had a serious premium challenge,” Smith said.

The research also showed that over half (68%) of commercial litigators thought that CFAs and legal expenses insurance enabled cases to be brought that would otherwise not proceed for lack of funding.

The survey also highlighted an expected rise in the number of companies considering legal action. More than three-quarters (77%) of litigation lawyers stated that they expect the number of commercial litigation cases they handle to surge over the coming year as the recession deepens.

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Note to editors:

About the research: The research was conducted in December 2009 amongst 232 litigation lawyers by leading legal expenses insurer FirstAssist Legal Protection.

About FirstAssist:

FirstAssist is a leading UK provider of both 'After the Event' and 'Before the Event' legal protection. The firm provides legal protection products to insurers, banks, building societies, brokers, affinity groups and clients of law firms

Products include:

- Pursuit, the most innovative ATE product available to support CFA's
- Personal and Commercial BTE covers sold as part of home, motor, travel and commercial insurance and banking packages by some of the UK's leading insurers, brokers and banks
- A range of other products and services which provide unrivalled access to BTE and ATE covers for liability insurers

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- Automatic cover up to £2 million
- Nothing to pay up front; premium only payable in the event you win
- Lower premiums if settled early
- Premium calculation approval from the Supreme Court Costs Office, so premium recoverability is not an issue.

FOR FURTHER INFORMATION PLEASE CONTACT

McGrory Communications

Geraldine McGrory 07870 657 531/020 76092081, Joy Frascinella 07951 479 504