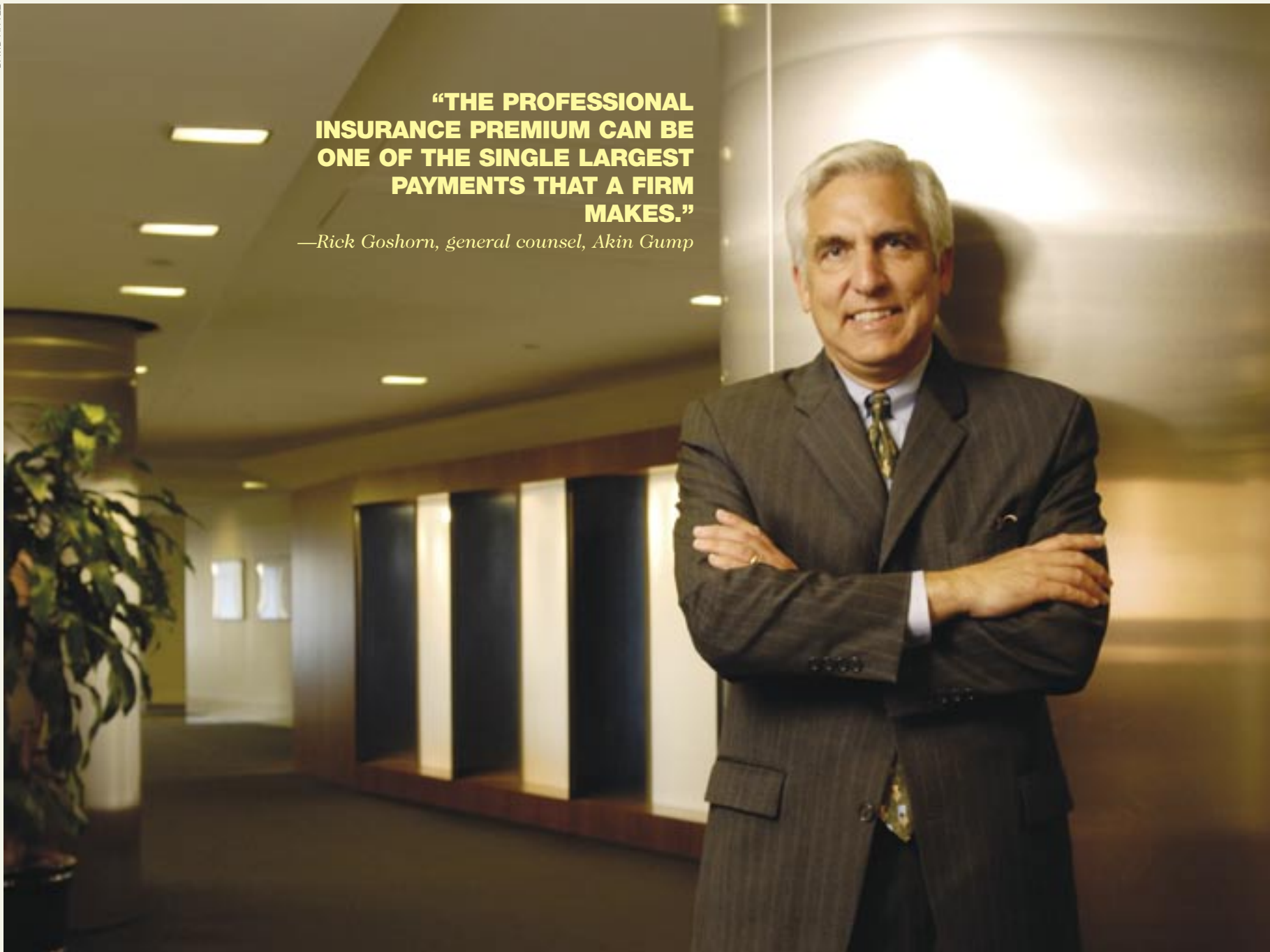


**“THE PROFESSIONAL
INSURANCE PREMIUM CAN BE
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PAYMENTS THAT A FIRM
MAKES.”**

—Rick Goshorn, general counsel, Akin Gump



RAISING THE LEGAL PREMIUM

Law firms hunger for higher professional malpractice liability limits as they come under fire because of conflicts of interest, unscrupulous clients, complex deals and larger scale. ● **BY PATRICIA VOWINKEL**

Attorney Ron Shechtman remembers a meeting he had with a client not long ago.

The meeting was to take place in the office of a law firm in Hartford, Conn., a convenient midway point between the client who was based in New Hampshire and Shechtman, a partner with the New York law firm Pryor Cashman LLP.

But before the meeting could take place, the Connecticut law firm first insisted on knowing the names of everyone who would be at that meeting so that it could do a conflict of interest

check—even though it was only lending office space to Shechtman and was not representing anyone at the meeting.

“I was taken aback by this degree of care,” Shechtman says. “But they explained they were part of this insurance group and this was one of the requirements under which they were bound to comply.”

That’s just one example of how seriously many law firms, and their insurers, are taking the threat of legal malpractice claims.

And it’s no wonder. A series of headline-grabbing corporate frauds and multimillion dollar malpractice claims over the past few years have made it clear just how vulnerable law firms are to the individual mistakes of their partners.

Law firms have come under fire because of their relationship with companies involved in high-profile frauds, such as Enron, Tyco and WorldCom.

“The debacles of many of these corporate failures or frauds that marked the end of the

last century and the beginning of this one created financial disasters for everybody around and associated with the corporate entities, Shechtman says. "And often financial disasters for the accounting firm and the law firms that were involved."

More recently, the legal profession has been battered by a controversy over tax shelter advice it gave to clients.

Many law firms, as a result, are appointing general counsels to handle their firm's risk management issues and are trying to protect themselves by buying larger limits on their professional liability coverage.

SIZE MATTERS

Although malpractice has been a longstanding concern for the legal profession, many firms face a growing risk because of their increasing size and the increasing complexity of their dealings.

A recent wave of merger activity in the legal profession means that law firms are bigger than ever and that means there are that many more opportunities for things to go wrong.

In addition, following a merger, the acquiring company has not only its own liabilities worry about, but the liability of the unknown acts of the target firm's lawyers.

And as the law firms grow ever larger, so do the size of the potential losses. Because liabilities can be so large, law firms are taking the risk very seriously.

"The professional insurance premium can be one of the single largest payments that a firm makes," says Rick Goshorn, general counsel for Akin Gump, a leading international law firm.

So firms pay close attention when it comes to the issue of malpractice.

For an example of just how costly mistakes can be, consider the case of Dallas-based law firm *Jenkins & Gilchrist*.

Jenkins & Gilchrist has agreed to pay a total of \$108 million to settle with clients who sued the firm over its tax-shelter advice. The \$108 million includes an \$85 million settlement with some 1,000 former clients who filed a class action against the firm and additional money to compensate clients who opted out of the class action. It is the largest reported settlement against a law firm, says Doug Richmond, senior vice president for Aon Risk Services.

The cost of settling a malpractice claim can run into millions of dollars and a firm with a poor claims history can have a harder time securing insurance and may have to pay higher premiums. But there are other costs as well.

"There's real cost in terms of distraction and time, and most policies have deductibles and retentions," Goshorn says. "There are also reputational costs," he says, noting that it makes good business sense to run a conscientious organization that is sensitive to the risks that it is taking on.

Aon's Richmond agrees.

"The real risk for firms, I think, in a lot of ways is not monetary, it's reputational," Richmond says. "In any business, you've got to be concerned about your good name."

And the rapid collapse of Arthur Andersen is an unsettling reminder of the fragility of professional service firms and how difficult it can be for a firm to survive a scandal.

CONFLICTS AND CLIENTS

The type of mistakes that get lawyers into trouble vary depending on the size of the law firm.

At smaller law firms, malpractice claims tend to arise from basic mistakes, such as missed deadlines, lack of competence and lack of due diligence, Richmond says.

At law firms with more than 100 attorneys, those kinds of mistakes are usually caught before they can cause a problem because there are so many people working and reviewing the cases.

Instead, at large law firms, the problems tend to come from two areas: conflicts of interest and dishonest clients.

Conflicts of interest can result in malpractice claims because of the potential for a breach of fiduciary duty by the law firm.

The problem is not an easy one to manage, however. Large law firms have many hundreds of clients and it can be a major challenge to keep track of all of those relationships and identify possible conflicts, especially when firms are adding and losing clients on a daily basis.

But malpractice claims stemming from a conflict of interest can be some of the most difficult to defend against.

"Even if you practice law perfectly, all you need is one allegation of negligence and couple it with a conflict of interest and unfortunately the attorney or the firm is in a very difficult defense position," says Anne Marie Davine, a managing director and law firm practice leader at Marsh & McLennan.

Law firms usually try to avoid going to trial and instead seek a settlement, in part to avoid the negative publicity that would come with a trial and in part because they know that juries tend to have very little sympathy for lawyers. And juries are usually very unforgiving in cases where there is a conflict of interest.

In addition to cases with conflicts of interest, malpractice claims also can arise in connection with work done for dishonest clients.

In the cases of corporate fraud involving Enron, Tyco and WorldCom, the

law firms were often perceived to be at fault for the failures of their clients. Angry shareholders have gone after not just the corporate executives of those companies, but the professional service firms that offered advice to those executives.

Lawyers are often walking a tightrope when working for corporate clients.

"One of the key issues arising in risk management is the tension between trying to tell the client what it wants to hear, but also maintaining the primary intellectual obligation as an attorney to render opinions

AKIN GUMP FISHES FOR GENERAL COUNSEL IN THE CORPORATE POND

● PATRICIA VOWINKEL

When Akin Gump decided to appoint a full-time general counsel to handle the firm's legal and risk management affairs, the big Washington, D.C. law firm decided to look for talent outside the firm.

Akin Gump, a leading international law firm with more than 900 lawyers, already had a part-time general counsel. But it decided it wanted someone who could take on the role full time and who had experience as a corporate general counsel.

After conducting a nationwide search through executive recruitment firm Korn/Ferry International, Akin Gump settled on Rick Goshorn, who joined the firm in October 2004. Before joining Akin Gump, Goshorn was general counsel at Acterna Corp, a public communications test equipment company. Before that, he held a variety of senior executive legal positions with London-based telecommunications company Cable and Wireless Plc from 1991 to 2001.

"It's a relatively new phenomenon for law firms to have full-time general counsels," Goshorn says. "In the past, they had tended to delegate the general counsel role to a number of partners."

Akin Gump is just one of a number of large law firms that have begun to appoint an attorney to the role of general counsel — full time.

It is part of a trend by large law firms to organize themselves according to a more corporate model with MBAs serving as executive directors at the firm and by hiring chief financial officers and chief technology officers to take care of the business end of running the firm.

Having a general counsel as the point person for legal, ethical and risk matters also makes good business sense, Goshorn says. After the meltdown of Enron and the passage of Sarbanes-Oxley, good corporate governance has become a critical issue, not just for public companies but for private ones as well.

And as law firm risks and ethical issues become ever more volatile and complex, some large law firms are finding that they need someone to take on the job of general counsel on a full-time basis.

"It can be very challenging if you are also trying to practice law," Goshorn says. "My client is the firm and the firm comes first. That's all I'm thinking about. My paying client is Akin Gump. For others, there might be a tendency to push the firm's business to the back while you focus on the urgencies of your client," he says.

Not all law firms, however, can afford to have one attorney devote all of his or her time to the firm's own business. "Firms have to be of a certain size to justify it," Goshorn says.

While some law firms will appoint a senior attorney or partner from within the firm to take on the role of general counsel, some law firms want a general counsel with corporate experience.

There's a new wave of companies that want to hire someone who has done the job of general counsel at a corporation, Goshorn says. His mandate, he says, was: "Design, build and operate a corporate style general counsel capability for the firm."

Goshorn says his role as general counsel at Akin Gump is not all that different from his role as general counsel in the corporate world. Many of the same types of problems and challenges can arise. Law firms, like other businesses, have employment risks, as well as risks that can arise from their use of technology or from their properties in the United States and in foreign countries. Law firms also face professional liability risk in the form of malpractice suits.

"For a law firm, you are concerned about the quality of the services," he says. "It's not like we are selling widgets into the marketplace, but it's the same sorts of concerns. You want to make sure there are quality controls, that you're making sure the service you are providing for the top tier law firms is right at the very top in terms of quality," he says.

At top law firms, quality is not usually an issue. The problem is not so much the attorneys' work itself but the potential for liability arising from conflicts of interest or working for dishonest clients.

As general counsel, Goshorn has responsibility for the business intake process and setting up systems and processes to help the company avoid conflicts of interest. He also deputizes partners with special skills to handle various matters and has brought in experts to run educational and training programs at the firm.

Although he spends his time managing the firm's risk, he has never had formal training as a risk manager, Goshorn says.

"I would describe myself as a generalist, as a senior lawyer and executive. I've never been a risk management expert," he says.

But, he says: "I'm a problem solver. I know what I don't know. I know how to find answers to things. I think in some ways that's a good thing because I don't try to do it all myself."

based on a fair and balanced review of the law and the legal requirements applicable,” Shechtman says.

It also can be hard for lawyers to discern when a client is dishonest.

“The biggest trouble if you are a lawyer is can you spot the problem? Because to the extent that you have a corporate officer or director engaged in misconduct, he or she is attempting to conceal that from the corporation as well,” Richmond says.

“If there is somebody in an organization that is determined to defraud that organization, there is no guarantee that even the very best lawyer is going to detect that,” he says.

BIGGER LIMITS

As law firms merge and expand in size, more firms are increasing the size of their professional liability limits. Limits also are increasing simply because of the growing cost of defending a malpractice claim.

“What we are seeing currently is firms buying more limit of liability. I think some of the drivers of that are the merger activity that is taking place in the legal community,” Davine says.

To meet the demand for larger limits, broker Beecher Carlson last year began placing coverage for clients of Attorneys’ Liability Assurance Society (ALAS).

ALAS, a mutual insurance company for large law firms, can provide primary coverage for law firms with limits up to \$75 million. Clients who want limits in excess of \$75 million are referred to Beecher Carlson, which then arranges the additional coverage for them with markets that recognize the ALAS underwriting form.

“There’s a serious demand from law firms to be buying higher limits,” says John Kearns of Beecher Carlson. “ALAS had to do something about that because they wanted to keep their law firms that are within their group and they wanted to be able to provide a solution for them.”

At the same time, a number of insurers are reducing the amount of primary coverage offered from \$50 million limits to \$25 million, he says.

Although some insurers have been reducing the limits they are willing to offer, brokers say there is still plenty of capacity available in the market and pricing has remained relatively stable for the majority of law firm clients.

Underwriters, however, are asking a lot more questions of law firms as they seek information about the firms’ law practice and their risk management strategies.

In addition to beefing up their insurance coverage, many law firms are trying to improve their risk management efforts by providing attorneys with more training and increasing the layers of internal review.

“I think it requires new levels of oversight and new levels of review,” Shechtman says.

“Sometimes lawyers working with a client are so close that perspective can be difficult. Sometimes you need a second tier of review to come up with a more detached and jaundiced view of what may be at stake,” he says.

An increasing number of law firms are designating an experienced attorney to the position of in-house general counsel, a role that involves handling risk management and other ethical issues.

A survey conducted by the law firm consultancy Altman Weil in 2005 showed that 69 percent of the nation’s top 200 law firms have designated in-house general counsel, up from 63 percent in 2004. Ninety-two percent of those general counsels are partners.

“For larger firms, it’s increasingly a full-time position,” says Goshorn, who took on the role of general counsel at Akin Gump in 2004. “Firms have seen that it makes sense to give one lawyer in the firm the role, to have one person who can oversee the legal affairs of the firm.”

Responsibilities can include managing the firm’s client intake process to reduce the risk of working with dishonest clients and keeping tabs on the firm’s various relationships to avoid real or perceived conflicts. It can involve tracking the firm’s claims history, instituting policies and processes as well as seeing to the education and training of the firm’s attorneys.

But risk management practices can be hard to quantify or justify. It is difficult to know how many lawsuits have been averted, for example, because of a law firm’s good risk management practices.

“For all of the corporate scandals that have gotten attention of late, there are probably many multiples of problems that have been avoided as a result of firms doing exactly what they should have,” Richmond says.

There have been periodic efforts to quantify the value of risk management, he says.

But, Richmond says: “I think most law firm leaders would tell you ‘We don’t need to quantify that value because we know the harm that can come if you don’t take these steps and we just don’t want to find out.’ ”

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