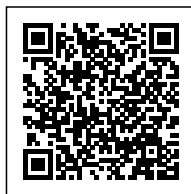


LAWYER LIABILITY CASES INCREASING IN IBERIA

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Lawyers liability cases going to court have increased three-fold in the last decade, anecdotal evidence suggests, so what steps can lawyers take to reduce the risk of being sued?

Professional indemnity claims against lawyers in Iberia are on the increase, according to experts in the field, with the increasing use of junior lawyers cited as a key factor.

Juan Antonio Ruiz, a litigation partner at Cuatrecasas, Gonçalves Pereira, says that while there is no empirical information collected, searches in case law databases show that, in the 1990s, courts in Spain, for example, would decide around 30 lawyers liability cases each year, but in the last decade this number has increased to around 80 cases per year.

Ruiz says that the figures maybe misleading given that legal databases have broader access to court decisions now than they had in the 1990s, but he adds: "Our perception though is that claims against law professionals have increased, not only because the literature says so, but because it is common knowledge in the professions that this increase is real."

Most professional negligence claims against lawyers in Spain and Portugal relate to litigious work.

Ruiz says complaints against lawyers were uncommon until a few years ago but have been increasing in relation to instructing legal proceedings.

Using junior lawyers increases risk

One of the main factors in the increase in negligence claims is the fact that law firms are reducing their headcount in order to cut costs, this results in lawyers being responsible for a greater volume of work and makes firms more inclined to use junior lawyers – consequently the risk of mistakes being made is increasing, according to Ana Dores, XL Group's Senior Underwriter, Professional Indemnity for Iberia and Latin America. She says: "Less personnel are handling the same or even a larger workload, and less experienced lawyers now represent a higher proportion of the teams. This, obviously, could potentially have an impact in the number of errors and omissions – and consequently there are more claims. This is especially a risk in the coming years as activity levels rise as expected due to the improvement of economic perspectives."

Experts believe that most negligence claims come from simple errors in process rather than gross misconduct. For example, mistakes in basic advice, drafting, provision or access to key information, and judicial deadlines. Ruiz says: "The following circumstances of lawyers' liability stand out: allowing substantive prescription or expiry periods for submitting complaints to elapse; allowing procedural periods for answering complaints or filing appeals to elapse; not giving clients information; omitting relevant requests or elements from legal writs; and failing to return documentation provided by clients."

Experts say firms can minimise their exposure to a claim by following some key principles. For example, making sure that young lawyers have a better knowledge of the practicalities of working in a law firm – this knowledge can sometimes be lacking after a purely academic education. Other key considerations include keeping clients fully informed with accurate and honest information, identifying possible conflicts, sticking to the professional codes of conduct, obtaining written consent for actions and meeting court deadlines. Clients should be updated constantly on their files as well as on issues such as the possible results and legal costs of any work.

"Judges will tend to hold the lawyer liable if they are not able to prove that they informed their client about the risks of their cases," Dores explains. "Thus, it is important that the information of the risk of the case is communicated in writing to the clients."

Ruiz says it is more often small firms that face more claims and that it is not common for very large claims to be lodged. "Average PI claims would be of a few tens of thousands of euros," he adds. But Ruiz says there are some exceptions. "The highest award that we recall that we have achieved in a claim filed by us amounted to around €500,000."