

Recommendations for lawyers in managing their relationship with legal protection insurance

Preface

Legal protection insurances and lawyers are committed to ensuring the best possible access to the law for all those seeking legal advice. To this end, close cooperation between these parties is essential in the interests of the insured and the clients. Both parties must show respect for each other's role in the legal system.

In the course of their work, lawyers are subject to State supervision and to the mandatory provisions of the Federal Law on the Free Movement of Lawyers (LLCA). They are also required to comply with the rules of professional ethics. The rule of law requires full respect for the principles governing the legal profession, in particular professional confidentiality, the independence of the lawyer and the prevention of conflicts of interest. These professional rules are non-negotiable elements for lawyers.

Legal protection insurance is subject to FINMA supervision. They are required to comply with the provisions of the Federal Law on Insurance Supervision and the related regulations, the Insurance Contract Law (ICA), as well as the insurance contracts and general contract conditions. They must protect on the one hand the interests of the individual policyholder and, on the other hand, the interests of the pool of insureds. They are obliged to observe the obligation of equal treatment, damage mitigation and the contractual responsibilities of insurance law. This is the only way to ensure that insured persons pay affordable premiums and that their interests are upheld by the rule of law.



1 Establishment of contact

Contact via the lawyer

- The lawyer gets an idea of the situation, verifies whether there is a conflict of interest and enquires about current time limits.
- The lawyer must immediately refuse a client's mandate if he is unable or unwilling to take it on (Art. 395 CO).
- The lawyer asks his client if he has a legal protection insurance and if he wishes to use it.
- If the insured person wishes to use his legal protection insurance, the lawyer will ask him to report the claim to the legal protection insurance immediately and personally. The lawyer points out to the client the FSA/SVV checklist for the insured.
- If an external lawyer is consulted to deal with the case, the legal protection insurance company will contact the lawyer before confirming to the client that the costs will be covered.
- The notification of a claim to the legal protection insurance by the lawyer is not an insured benefit and is therefore in principle not covered by the legal protection insurance.
- If the notification of the case is made by the lawyer, the insured must in principle pay the fees himself, up to a possible guarantee of assumption of costs. The legal protection insurance may, but is not obliged to, grant cover retroactively.
- The lawyer must inform his client about agreements/contracts with the legal protection insurance and, if requested, disclose the content to him.
- Legal protection insurance promptly confirms the coverage of the costs to the insured and also informs his lawyer. The same applies in the event of extensions or restrictions.

Case management by a lawyer

- Even in the presence of a legal protection insurance, the mandate exists exclusively between the client and the lawyer.
- In order to guarantee independence, the lawyer ensures that the costs are not covered by an exclusive debt assumption of the legal protection insurance but in the form of an accession to debt aside the principal.
- The lawyer shall ensure that the guarantee of assumption of costs includes the following points:
 - › the parties;
 - › the subject-matter of the dispute;
 - › if quantifiable, the value at dispute and any limitations of the value at dispute.
 - › the basis of the fee and the invoicing procedures, provided that the legal protection insurance covers them;
 - › any cost ceiling; to be set in a manner appropriate to the subject-matter of the dispute;
 - › any limits in benefits and the amounts of the remaining insurance cover.
- The scope of the lawyer's mandate must not be identical with the insurance cover or the assumption of costs guaranteed by the legal protection insurance.
- If the assumption of costs by the legal protection insurance diverges from the scope of the mandate and the fees agreed with the client and if the latter must expect additional costs, the lawyer informs the client about the situation and issues, as far as possible, separate invoices.
- The lawyer informs the client that the assumption of costs by the insurance company does not release him from other possible economic consequences (e.g. uncovered lawyer's fees, expert opinions, court fees, costs of adverse parties).



2 During claims handling

- The lawyer is bound without and time limit and in respect of any third party by professional confidentiality in regard of any information confided to him by his clients in exercising his profession, A release from the duty of confidentiality does not oblige him to disclose anything entrusted on him.
- The lawyer defends his client's interests, informs him about the obligation to reduce the damage with regard to the legal protection insurance and about the obligation of the insured to inform the legal protection insurance about the main steps of the procedure.
- The lawyer may be instructed by the client to assume the obligations in regard of the legal protection insurance. he must be released from the lawyer's obligation of confidentiality in this regard. In this context he must also always protect the client's interests, in particular with regard to the legal protection insurance.
- The lawyer is aware that the legal protection insurance generally carries out a new assessment of the continuation of an action after the closing of each instance. He ensures that the legal protection insurance receives the relevant documentation in good time for an examination and is thus also able to assert a possible lack of prospects of success and to initiate the procedure provided for in the Regulation on Supervision (Art. 169 OS).
- If the client has released his lawyer from the duty of confidentiality, the lawyer can inform the legal protection insurance, by means of informative copies, about the main steps and announce any extensions deemed necessary, appeals or extensions of the mandate.
- In principle, the legal protection insurance may request interim status reports from the insured free of charge. If the legal protection insurance requires to be informed directly by the lawyer instead the insured, the appropriate costs can be invoiced to the legal protection insurance.
- In the absence of other agreed terms, the lawyer may charge fees according to the progress of the case, but at least once a year, even if the legal protection insurance is only subsidiary liable for benefits or advances.
- The legal protection insurance retains the possibility of settling the claim economically (compensation of the claim).

3 Case closure

- Before a possible settlement (e.g. before a trial), the lawyer clearly and early informs the legal protection insurance company about the framework conditions and requests its consent if it has to bear the costs of the settlement. If necessary, a clause of revocation must be included in the court settlement.
- The fee invoice (even if sent to the legal protection insurance) must be addressed at the client. The invoice must be detailed if fees were agreed on an hourly basis.
- If the client is entitled to deduct tax the legal protection insurance may require the client to pay VAT to the lawyer.
- Lawyer fees of third parties must only be reimbursed to the extent that the legal protection insurance is obliged to pay.
- If the lawyer and the legal protection insurance cannot agree on the fees, the mediation procedure (if existing) must be invoked.
- The legal protection insurance must be clearly informed about the closure of the case.