

## Legal Library

This month ACQ Magazine looks at professional negligence in the UK and class action in Poland.

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### How have professional negligence cases changed over the years? Are more people claiming for compensation?

People are more aware of their rights and expect more of their professional advisers. People are also more aware of avenues for complaints and legal action via the internet.

### Would you encourage companies, who are at risk of being sued by clients, to purchase professional indemnity insurance?

Yes. The lack of insurance could wipe out a business that does not have the correct level of indemnity insurance. Such insurance is compulsory for Solicitors' firms.

### What topics does your firm specialise in, in terms of professional negligence?

Legal Negligence Claims against Solicitors and Barristers in relation to a variety of cases from under settled personal injury claims to major losses in property transactions due to poor advice or failure to carry out appropriate searches etc.

### What are some of the larger cases you have been involved in lately?

We have recently been pursuing a claim for a purchaser of a number of houses for development which became worthless as the solicitors failed to carry out a protective search and creditors placed charges on the properties. This resulted in a payment of £750k to clear the charges and a claim for consequential losses by way of rental income.

### Please give me some information about EAD Solicitors.

EAD Solicitors is a firm of highly qualified, skilled professionals who pride themselves on being friendly and approachable - 'real' people with whom clients feel comfortable.

We believe our clients deserve sound advice and

the best representation from solicitors they can trust, talking a language they'll understand...and that's what we deliver.

**Rafal Kos is from Kubas Kos Gaertner, a Polish law firm based in Warsaw. The recently passed Act on the collective pursuit of claims is a revolutionary change in the disputable proceedings system in Poland.**

The Act is purported to transplant the institution known in the American law as class action and in the European law model as collective claim to the Polish civil litigation system. The Polish regulation, unlike the US class action, is designed to work within the framework of the so-called "opt-in" model; it is assumed in the "opt-in" mechanism that the judgment issued as a result of the statement of claims lodged shall be binding only for the injured parties who expressly and unequivocally manifested their will to take part in such proceedings through clear indication of their will to participate in the said proceedings.

The American "opt out" model (all members of the class, including absent members, are bound by the decision, unless they expressly declared not willing to be bound) has been rejected.

Deciding on the "opt-in" model in all categories of cases, especially in the so-called mass litigation, the Polish legislator ignored the fact that: (i) this model is more expensive and less efficient than the American "opt-out" mechanism, since more entities may interfere in the litigation; (ii) it may turn out to be ineffective in light of some typical models of social behaviour – the general public, and more specifically consumers are unlikely to join collective claims due to the costs and time involved as well as complexity of the procedure in such cases; (iii) the legislator accepts the fact that the defendant shall not pay full compensation, since – based on the statistics – it is almost certain that not all consumers will join the litigation which means that this model will not allow for achieving the preventive effect against the entities which are involved in unfair market practices; and (iv) it may result in discrepancy of judgment in factually identical cases, since persons who will institute individual cases may lose, despite the fact that – for example – the collective claim was successfully won. Surprisingly, notification of the claim to absent class members, when proceeding as collective claim has been certified by the court, looks similar in both the Polish and American system.



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#### DETAILS



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