

Lawyers Launch Insurance Policy for Contingency Cases

By Celia Ampel
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(L-R) Larry Bassuk, Gregg Miller, and Justin Leto. (PHOTO: J. Albert Diaz)

When Justin Leto was a young plaintiffs attorney, another lawyer in his building asked how he dealt with the financial risk of pursuing litigation. Could his firm somehow insure legal costs in case the jury returned a defense verdict?

There was no such protection. “If we lose the case, there’s no way for us to get any of that back,” Leto told Larry Bassuk, now his law partner at Leto Bassuk in Miami.

But in that conversation was the seed of an idea, which this summer blossomed into a new kind of company. Level Insurance offers up to \$100,000 in coverage for plaintiffs attorneys’ costs in the event of a defense verdict. The policies, which cover individual cases rather than lawyers or firms, are available for federal court cases in all 50 states and state court cases

in California, Florida, Illinois, New Jersey, New York and Texas. Level Insurance plans to roll out across the country in the next few weeks.

The policies cover a wide swath of litigation areas, including auto negligence, medical malpractice, contract disputes, product liability and premises liability. Level Insurance will not insure a lawyer who has been disciplined by the state bar or cover litigation against the government. But other than that, the company does not analyze the merits of a case.

That could be risky business, said Aaron Davis, who handles both plaintiffs and defense work for Davis Goldman in Miami. He noted that other litigation finance companies usually rigorously vet cases.

“It’s a different model, but the premise is the same: You still wouldn’t insure something against a loss if you don’t understand the risk of that same loss,” he said.

But because Level Insurance only pays out a policy if the case reaches trial and a jury awards no money to the plaintiff, the company isn’t on the hook for lawsuits that are dismissed in the early stages of litigation.

CASES OF ALL SIZES

New York plaintiffs attorney Andy Buzin has already used Level. As a solo practitioner with many clients who can’t afford to pay an hourly billing rate, “there’s never any guarantee of an outcome,” he said. “This is something that you can use to lessen your risk in being the little guy who takes on insurance companies and big corporations on contingency.”

Defense attorney Mark Rose of Roig Lawyers in Deerfield Beach, Florida, said he doesn’t expect to see an uptick in frivolous cases filed by the plaintiffs bar, but “will it encourage, perhaps, riskier suits or more complex cases? I think so,” he said. “I think that’s a reasonable expectation.”

“You might see less well-funded firms, maybe smaller firms, that are more inclined to take on a more complex or riskier case,” he said.

Level’s founders say the company ultimately aims to provide coverage to larger law practices, as well as small firms and solos.

Plaintiffs attorney Philip Freidin of Freidin Brown in Miami is a litigator who brings multimillion-dollar personal injury, medical malpractice and tobacco cases to trial.

“We take the best cases that come in, and they pretty much all have some degree—from moderate to high level—of risk,” he said, adding this is the first way he’s been able to mitigate that risk. He’s hopeful the company will increase its policy limits as it grows.

Cofounder Leto noted that even big firms feel the crunch at a time when it can cost \$5,000 just to bring one expert witness to trial.

“As the business of law continues to evolve and change, it’s become more and more costly,” he said. “Everything that we did 10 or 15 years ago is exponentially more expensive today.”

Gregg Miller, chief sales officer for Socius Insurance Services Inc., which manages Level Insurance, said the brokerage is approached all the time about new insurance concepts. “This particular product stood out to us as an innovative product that didn’t already exist in the marketplace,” Miller said.

HOW IT WORKS

To purchase insurance through Level Insurance, lawyers visit the company’s website, Level Insurance.com, and submit a copy of a complaint, which must have been filed in the past 60 days.

They then choose policy limits between \$3,500 and \$100,000 to cover costs including expert witness fees, travel, e-discovery, court reporters, trial exhibits and courtroom technology. For every case, the premium is 7 percent of the policy limits.

The insurance covers costs starting at the time the lawyer was retained in the case, meaning some covered costs can pre-date the purchase of the policy, and coverage extends through the appeals process.