



Accountability, Responsibility and Authority – its all about the limits!

Presenter: Sean Popperwell,
Popperwell & Co.

Why are we here?

- To understand the risks arising from a practices failure to define the limits of authority for the conduct of a legal matter that are linked to a practitioners capability.
- To consider what practical steps you can take to reduce the risks and help your practice avoid potential liability claims.

Sean Popperwell

Currently the Principal of Popperwell & Co, Sean was admitted to practice as a barrister in England & Wales in 1987 and as a legal practitioner in WA in 1991.

Sean practices almost exclusively in the area of professional negligence. He has represented Law Mutual's Insureds since 2001.

Legal Practice as a Business

The Law Practice as an Agent

Fundamental objective – to deliver legal services to customers (clients)

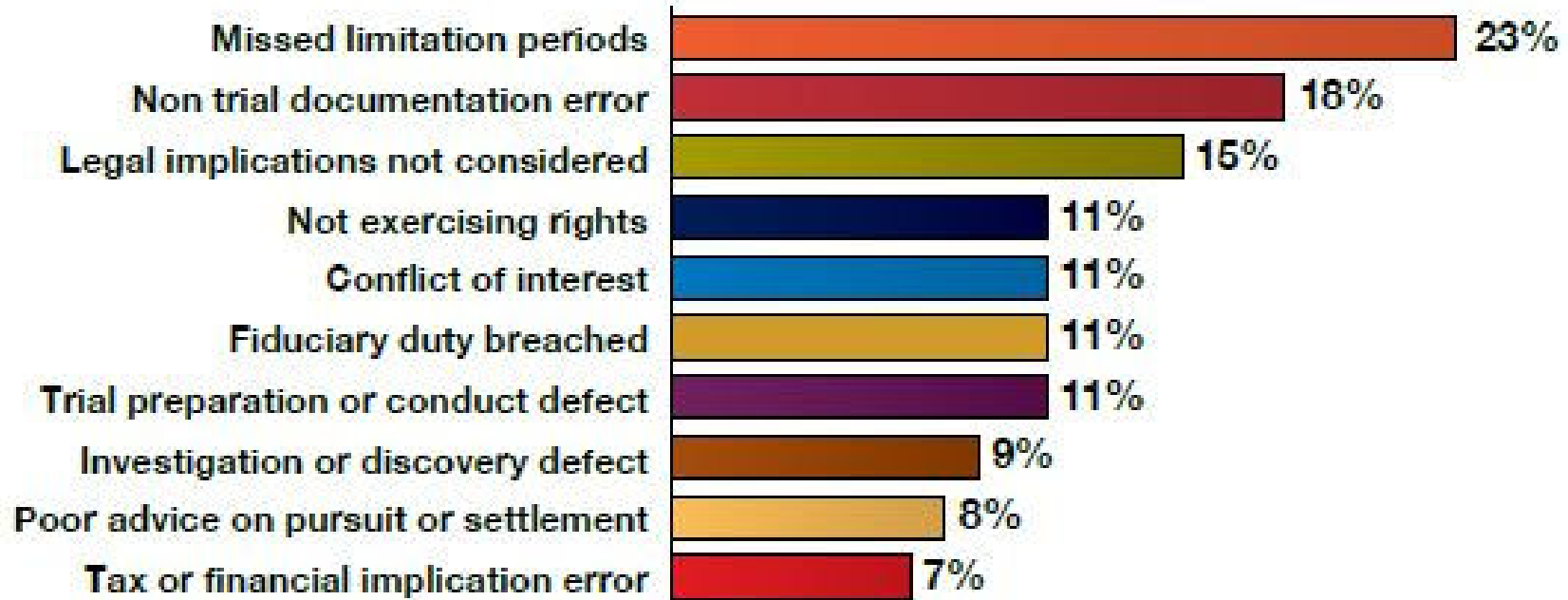
- Legal services delivered on behalf of the client.
- Law practice represents the interest of the client.

Law Practice as an 'employer'

- Engages others to deliver legal services:
 - Professional
 - Non-professional
- Engages agents to deliver legal services:
 - Experts
 - Investigators
 - Other law practices (Barristers)

- Limits of authority to represent the client as agent:
 - Actual
 - Implied
- Responsibility arising from the obligation to:
 - supervise employees
 - monitor external service providers

Top 10 allegations against insured firms



* Data taken from Law Mutual (WA) Professional Liability Risk Profile Analysis June 2016

Authority as an agent

- Express
- Implied

Exceeding the authority leads to claims.

Law Practice acquires knowledge

- What knowledge does the law practice possess on behalf of the client?
- Failure to impart knowledge leads to claims.



Actual Authority

What does your retainer say?

29/05/2020

Law Mutual (WA)

10

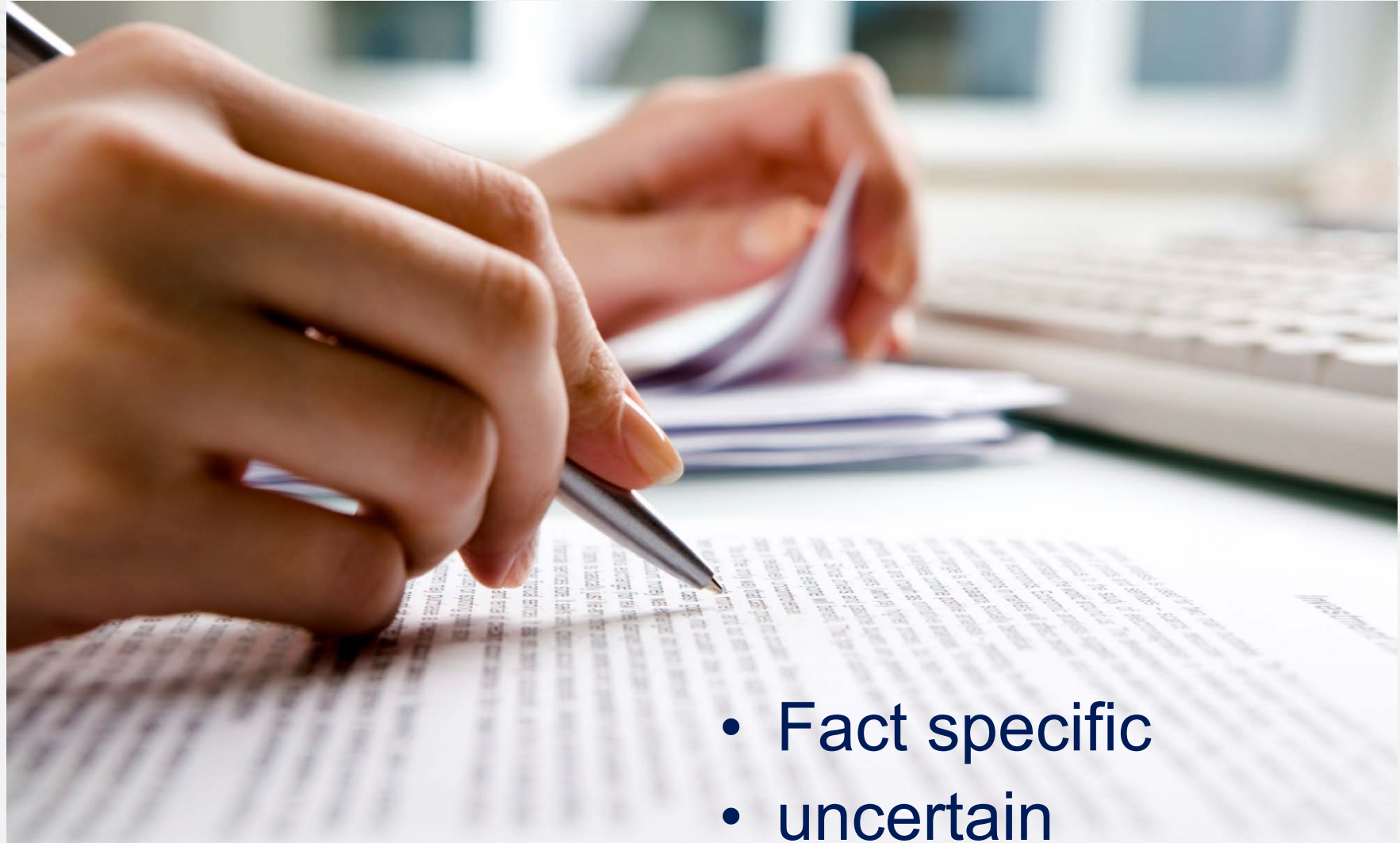
Q1. Actual authority

Do you describe the scope of legal services to be provided?

A. Yes

B. No

Implied Authority



- Fact specific
- uncertain

Q3. Implied authority

Does a law practice have an implied authority to commence legal proceedings on behalf of a client?

A. Yes

B. No

Q4. Implied authority

Does a law practice have an implied authority to commence an appeal against any adverse outcome interlocutory or otherwise?

A. Yes

B. No

Answers

Answer to both is No

Q5. Implied authority

Does a law practice have an implied authority to consent to a springing order?

A. Yes

B. No

Answer

Materiality

- Retainer – implied authority to do all things incidental to advancing the clients interests.
- Balance against what should be referred to the client – consider practicality and cost.

Q6. Contracts

Does a law practice have an implied authority to contract on behalf of the client?

A. Yes

B. No

Answer

No

29/05/2020

Law Mutual (WA)

19



Q7. Litigation

Does a law practice have authority to compromise litigation?

A. Yes

B. No

Answer

Yes

29/05/2020

Law Mutual (WA)

21



Q8. Notices

Does a law practice have authority to accept notices on behalf of the client?

A. Yes

B. No

Answer

No



Q9. Money

Does a law practice acting in a transaction in which the client is to receive money, authorised to accept the money?

A. Yes

B. No

Answer

Probably

BUT

What money?

Trust Accounts

- What authority does a lawyer need to make payments from the practice's trust account?
- Section 216 *Legal Professional Act 2008*

Trust Accounts

- What systems does your practice have to authorise payments out of trust?

Supervision



1. Partners
2. Employees
3. External Service Providers

Supervision – Law Mutual (WA) Statistics

- Reviewed (at a high level) the claims against 4 to 9 practitioner firms
- Of 130 claims, there are 41 where a failure to properly delegate or supervise is a probable cause (there may be more than one cause)
- Over 30% of claims for those firms
- Of them, 22 (>50%) involve a missed date
- Next highest is inadequate drafting – 6 claims (15%)

CONCLUSIONS?

- Hard to deny inference that formal delegation and supervisory practices will avoid professional negligence claims
- Important for small to medium size firms where principals' time is at a premium
- The existence of a “process” is not enough; training and review are essential elements of control of risks

Q13. Supervision

Can a law clerk or paralegal autonomously proof witnesses and undertake discovery in litigation?

A. Yes

B. No

Answer

No



Q14. Supervision

Can a supervising practitioner solely rely on the clerk or paralegal to bring problems to the practitioners attention?

- A. Yes
- B. No

Answer

No



Lessons to be learned

- How often do you discuss files with:
 - Employed solicitors
 - Experienced employed solicitors
 - Other Partners
 - Employed solicitors practicing in areas that you do not have special knowledge or skills

Electronic Communications

- Additional requirement to copy practitioner into all communications to the client; and
- Bring to the practitioners attention all communications received from the client.

Uniform Law – 1 July 2020

- Will we be getting comprehensive Management systems directions

Q14. External Service Providers

Is a legal practitioner absolved from liability when they act in reliance on the advice of Counsel?

- A. Yes
- B. No

Answer

No

External Service Providers

- Timing
- Briefing
- Competence
- Consideration
- Action
- Outside solicitor's bailiwick

Law Mutual (WA)®

lawmutualwa.com.au