

# HKSA PII MASTER POLICY BULLETIN



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\* Loss of Documents

*Siddell v. Smith Cooper* follows the trend set in *Coulshard v. Neville Russell*. The reality is that auditors of smaller companies often enjoy a close relationship with the principal directors and shareholders, which may involve them in the giving of accountancy and other advice not only to the company but to those directors and shareholders. Indeed, the audit is often a secondary product of the accounting and advisory function. Against that background, the decision that *Caparo* will not automatically apply to defeat claims is not altogether surprising, although it may lead to some unwelcome claims.

Source: *Barlow Lyde & Gilbert*

## A. RISK MANAGEMENT

*The auditors' duty of care to shareholders and directors when advising smaller companies*

### Siddell and another v. Smith Cooper and Partners (a firm)

This case concerned the audit of a small family-run company with four shareholders, Mr. and Mrs. Siddell and Mr. and Mrs. Fellows. The only outsider was the financial director, a Mrs. Jeffries. When Mrs. Jeffries left the company in 1992, various irregularities were allegedly found in the accounting records and soon afterwards the company, which had been thought to be profitable, went into administrative receivership with a deficit of over £1 million.

After some delay, the four shareholders started proceedings against the company's accountants and auditors. At first instance, the judge struck out the claim on the basis that, following *Caparo Industries plc v. Dickman*, auditors did not normally owe duties to a company's shareholders. The plaintiffs appeal. The Court of Appeal agreed that the first instance decision should be overturned and that the case could proceed.

The Court of Appeal noted that the facts were very different from those in *Caparo*, here, the defendants were not only acting as auditors but rendering much broader accountancy services to the company, including both writing up quarterly and annual accounts and giving advice to the company. The Court of Appeal said that while "the principles upon which *Caparo* was based should not be restricted to large companies, whether a duty of care exists depends upon all the circumstances of the particular case. Those circumstances will include the size of the company and the number and type of shareholders (or indeed directors) to whom the duty is said to be owed".

## B. WEBTRUST ACTIVITIES

The HKSA Insurance Scheme has been extended to include the professional activities of practices under the WebTrust initiative. Protection is of course subject to each practice complying with the training and regulations imposed by the HKSA for conducting such activities.

As such activities relate to the Worldwide Internet, liabilities could be incurred by practices Worldwide including the USA or Canada – the Scheme has been amended to respond to this subject to certain restrictions as below:

1. Maximum indemnity in aggregate shall not exceed the sum insured (i.e. no automatic reinstatements)
2. Costs and expenses incurred shall be limit and deductible inclusive (i.e. the limit of indemnity will be inclusive of legal costs and expenses)
3. Standard market exclusions in the US/Canadian jurisdictions will apply.

Details will be explained in the next bulletin.

### IMPORTANT NOTES:

1. Do not assume non-HKSA Scheme Policies provide similar cover for these activities.
2. Details of the protection available under the Scheme will be given in the next Bulletin.
3. Contact the Scheme's Broker for full details of the amendment to your Policy in respect of the WebTrust and with any concerns or questions you have in relation to the protection provided.



## C. SCHEME UPDATE

The Scheme has been renewed on 1st December 2000 and it continues to offer you very competitive prices for very wide coverage.

### *A 2-Year Policy*

Insurers are still offering coverage for two years. The premium will be fixed at policy inception and cannot be adjusted (whether downwards or upwards) except in the cases where corporate practices are required to adjust the minimum limit of indemnity in accordance with Corporate Practices (Professional Indemnity) Rules. This has many advantages such as fixture of premium in the second year even if claims occur or fees increase and a saving of management time. The premium will be paid in two annual instalments.

### *Small Firms – Lower Limits and Prices*

This year we continue to offer special arrangements for small firms which give firms all the benefits of the Scheme, albeit with a lower level of cover, at a very cheap price. If you are an unincorporated practice with up to two partners and annual gross fees of up to HK\$1M then you may be able to take advantage of the special offer which provides.

A limit of :           HK\$2,500,000

Policy Wording:   HKSA PII Policy Wording

Premium:           Only HK\$3,000

If you are interested in this offer or in discussing the renewal of the programme. Please call the PII Hotline  
Tel: 2862 4242 / 2862 4243.

## D. MEMBERS' QUESTIONS ANSWERED

### *1. What if a client's files are destroyed, misused (including dishonestly used) or stolen, whilst in the care and custody of the practice when providing its services?*

- "Client's files" in this context shall mean all forms of document(s) of whatsoever nature whether written, printed or reproduced by any other method including computer system records, and only excludes bearer bonds, coupons, bank notes, currency notes, and negotiable paper.
- You could incur liability to your client by way of a loss they incur as a direct consequence - this could arise through missed tax dates or breach of confidentiality or through the dishonesty of a member of the practice for example.

- You could also have costs incurred in reconstituting the files.

– Consult your broker once the misuse, damage or disappearance is discovered before costs are incurred. Your Scheme Policy can provide protection in these circumstances for:

- Damages and/or compensation including a claimant's costs.
- Defence costs incurred with underwriter's consent.
- An element of the costs necessary to reconstitute the files.

Remember, such a loss may also be covered by your office policy and so the other insurers should be informed immediately.

One of the largest losses incurred under the Scheme to date has arisen out of this area.

## IF YOU HAVE ANY DOUBTS OR QUESTIONS, YOU SHOULD CONSULT YOUR SCHEME BROKER.

### *2. What if a member of the practice is required to appear before a tribunal or official committee of investigation, as a result of their conduct of their accountancy business?*

- You could incur legal representation costs.
- You could incur fines or penalties.

– Consult your broker. Your Scheme may be able to provide some help towards the costs of representation but you must remember:

- Underwriters must be informed as soon as you are aware of the need to appear.
- Costs can only be paid when incurred with underwriter's prior consent.
- No policy can meet any fines or penalties imposed. This could be illegal or at the very least, against the best interests of the profession as a whole.
- The outcome of the tribunal or investigation must have implications for a concurrent or subsequent professional indemnity action – The representation must be beneficial to an acceptable claim or circumstance under the policy.

## IF YOU HAVE ANY DOUBTS OR QUESTIONS, YOU SHOULD CONSULT YOUR SCHEME BROKER.



The contents of this bulletin are for general guidance only. Any Members who feel that any of the points raised may be relevant to them should contact the PII Hotline for specific advice. Comments regarding coverage in this Bulletin refer to the HKSA PII Master Policy only.

Please call Aon Risk Services' (HKSA) PII Hotline if you have any doubt.

**TEL : 2862 4242 / 2862 4243**

If you are insuring PI elsewhere, it is recommended that you review your existing policy to ensure that it provides sufficient coverage for your needs. Should you need any professional advice, Aon Risk Services Hong Kong Limited would be able to provide any assistance required.



I would like to know more about:-

- the topics in this issue
- the HKSA PII Scheme

Signed .....

Name .....

Position .....

Practice .....

Tel No. ....

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