

WHITE PAPER



MANAGING RISK FOR COMPETITIVE ADVANTAGE

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ABOUT THE AUTHOR

David Jargiello runs a sophisticated law firm management practice that includes the full range of professional and business matters that confront lawyers and law firms. The general counsel and a management partner of Heller Ehrman, Venture Law Group and Virtual Law Partners (and member of the founding team of the latter two), he is among the most experienced law firm general counsel in the country. Contact Information: email (david@jargiello.com), direct (650.472.3994), and cell (650.833.8641).

The following slides are adapted from various presentations given by Mr. Jargiello to law firms, LPLI brokers and LPLI underwriters around the world.



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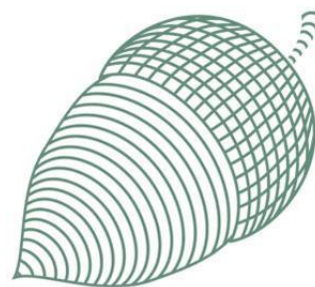
✓ **A DIFFERENT PERSPECTIVE:**

- Practicing law is a business.
- Every law firm gets sued for malpractice; it is a cost of doing business in the industry today.
- “Risk management” is a strategic business decision:
 - ... pay now, for systems to prevent loss, or
 - ... pay later, in the form of settlements and increased/increasing insurance premiums, or
 - ... gamble that nothing bad will happen and that any losses from claims << profits of the law firm.
- In the final analysis, anyone can buy insurance and anyone can get their claim paid. Survival as a long-term going concern turns on whether carriers/brokers will take the firm’s call the proverbial “day after” a material claim.



✓ CASE STUDY: VENTURE LAW GROUP

- 1993: 14 lawyer spin off from Wilson Sonsini.
- 2003: 120 lawyers in Silicon Valley, San Francisco, Los Angeles, Seattle and Reston.
- Corporate finance/securities boutique.
- Systematic investments in clients (several tens of millions of dollars were invested in clients over a 10 year period).
- Systematic representation of entrepreneurs, venture capital investors and investment banks as adversaries in unrelated matters.
- Extensive business dealings with clients: consulting services, incubators, stock transfer services, and more.
- Four VLG clients became VLG lawyer owned/managed businesses.





✓ VLG: HISTORICAL DATA

VLG Insurance Profile ≈ 2000 to 2003

Policy Limit

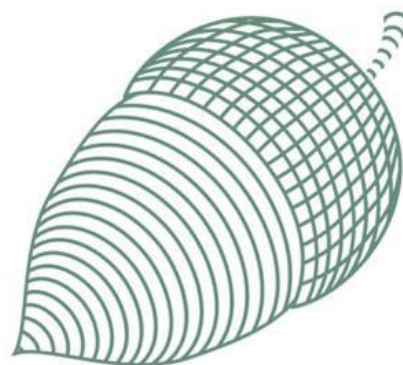
\$200,000,000

Self-Insured Retention

\$500,000 per claim

Premium Cost

≈ \$ 5,500 per lawyer





✓ VLG: HISTORICAL DATA

- In 10 years, the number of claims related to client investment, client business and consulting activities:

Zero

- In 10 years, the number of actual lawsuits of any kind:

One

- ... Shareholders thought that they should have made more than they did in a dot com era acquisition; VLG prevailed on summary judgment.



✓ VLG: HISTORICAL DATA

- In 10 years, the number of material malpractice settlements:

Two

- ... Founder returned on eve of a dot com IPO, threatening to sue the board, VC's and lawyers on a "just because" legal theory. Carrier settled out of fear of the stock market for \approx \$1M.
- ... Lender forgot to file a UCC-1 to perfect its security interest – VLG represented the debtor. Lender threatened to sue on the legal theory that VLG would settle to protect relationship with management. Settled for \approx \$900K.



✓ VLG: HISTORICAL DATA

- In 10 years, the number of stock-for-fee deals with clients:

One

- In 10 years, the number of fee suits against clients:

Zero

- In 10 years, the amount invested by the law firm in its clients:

Zero

- So, where did the millions invested in clients come from ? From partners' personal, after-tax dollars, invested individually, or via pooled, special purpose investment funds we created.



✓ VLG: LESSONS

- VLG mantra: the management of risk is a considered business decision and a competitive weapon.
- Because risk management was woven into the fabric of the firm, VLG could take what appeared to be substantial risk: engineers, not cowboys.
- VLG risk management decisions had the backing of management; defiance of policy was not optional.
- All VLG partners, associates and staff were subject to risk management procedures – NO exceptions, ever.



✓ **VLG: LESSONS**

- VLG partners suffered significant, personal financial penalties for failure to comply with risk management policies.

- VLG considered many extraordinarily aggressive, out-of-the-box ideas; all were analyzed but in the end, “no” meant “no.”

- Finally, VLG custom-designed and implemented elaborate internal processes and procedures for client intake, investing, conflicts, legal opinions practice, recordkeeping, management positions, attorneys’ private business dealings and other matters.




✓ **MANAGING RISK TO COMPETITIVE ADVANTAGE #1 – THE BIG PICTURE**

- There is NO “right” way for a law firm to manage risk.
- The “right” risk management plan for a law firm is dictated by business and cultural considerations
 - ... Law firms pay anywhere from \$5K per lawyer to \$20K per lawyer for LPLI,
 - ... How much to pay for how much insurance is an ordinary course business decision unique to each law firm, and
 - ... How stringent to make/enforce risk policies is likewise a cultural matter for the partners to decide.
- There is only one certainty: Your firm will almost certainly be sued for legal malpractice at some point in time simply because it has become a cost of doing business.



✓ **MANAGING RISK TO COMPETITIVE ADVANTAGE #2 – THE LAW FIRM GENERAL COUNSEL**

- All firms should promote one, hire one, or engage an outside one.
- Why? Because in the first instance it is good business practice and organizational hygiene.
- Further, having a law firm general counsel is a law firm management issue *du jour*, and for marketing purposes it will sell to brokers and underwriters alike, as well as to commercial lenders.
- What a long, strange trip it's been
 - ... In 1994, VLG was panned for appointing a general counsel. Direct from a premier law firm management expert of the day: *“that is the stupidest thing I have ever heard of, why would any law firm need such a thing?”*
 - ... In 2010, 

Law Firm General Counsel and Risk Management Forum

Managing Risks in a Rapidly Changing Market



“As the profession becomes more competitive and law firms embrace the need to address their own legal risks with the best talent, they are taking the role of General Counsel more seriously and increasingly staffing it with some of their top lawyers.”

“A recent Hildebrandt Baker Robbins survey finds that law firm GCs are now moving up the compensation ranks, with some among the most highly paid partners. Even though the GC role can sap time away from revenue generating work, over 40% of GCs surveyed report that their compensation falls within the top third of their respective partnerships.”

“As risk management becomes increasingly important, law firms are depending on an effective General Counsel more than ever.”



✓ **MANAGING RISK TO COMPETITIVE ADVANTAGE** **#3 – COMMITTEES**

- It is important to empanel committee(s) of partners charged with managing professional risk:
 - ... “Risk management committee” is a dated/tired term and there is no particular magic what it is called . . . professional standards, professional practice, legal practice, loss prevention. What matters is that such a committee exists and functions, and that lawyers and staff call when they have questions or get into trouble.
 - ... Associate/staff members are fine, but the committee’s effectiveness will be directly proportional to its internal, political clout.



✓ **MANAGING RISK TO COMPETITIVE ADVANTAGE** **#4 – NEW BUSINESS**

- Just say no: Firms must have a system for rejecting new business over the objections of a sponsoring partner.
- Why?
 - ... All publicity may be good publicity, but all business is not good business
 - ... Hot button issue for underwriters
 - ... Recurring theme in an overwhelming majority of claims: *“how in the world did this client ever get in the door?”*
- My advice: The risk management committee should be the new business intake committee.
- Historical Note: VLG had a new business committee that met telephonically every single morning to review incoming new client requests; much work was systematically rejected.




✓ **MANAGING RISK TO COMPETITIVE ADVANTAGE** **#5 – POLICIES**

- A law firm must have them today, because underwriters expect them.

- It doesn't matter who creates/manages these policies (the General Counsel, the Executive/Management Committee, the Risk Management Committee or others) – that is a matter of internal cultural preference.

- What does matter is that you have policies, that they are relevant to your practice, and that they work.

- The most important policies to have . . . 



✓ **MANAGING RISK TO COMPETITIVE ADVANTAGE** **#5 – POLICIES**

- New business/client intake
- Client investments
- Conflicts and conflict resolution
- Serving on client boards/management teams
- Records retention
- Serving as escrow agent/trustee for clients or others
- Audit letter responses
- Representation of friends, family and employees
- Third party legal opinions
- Fee suits



✓ **MANAGING RISK TO COMPETITIVE ADVANTAGE** **#6 – TRAINING**

- Brokers, underwriters expect you to have risk management training, so you should do it and keep records for your insurance application.

- Practical problem – everywhere - is that the people who most need the training usually do not attend.

- The “MCLE lunch” system can be very hit-and-miss; captive audience (firm retreats and the like) are far more effective vis-à-vis attendance by those in need of training.

- “Talking head” seminars are boring, and risk management can be turned into extraordinarily dull stuff. If you pick (1) good speakers, and (2) topics that are practical, timely and relevant to what you do, then people will come.