

*HOW NOT TO GET SUED – Limiting Liability for Consulting*  
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A consultant is self-employed, so there's no employer protection if a client or third party alleges a personal injury or damage to property caused by the consultant or his advice or product. "Personal injury" could include alleged damage to reputation, lost profits or business opportunities, regulatory penalties, or other harm. A plaintiff might even allege gross negligence, recklessness, or intentional harm. The stakes could be high, even if ultimately the consultant is exonerated. What to do?

There are basically three ways to limit liability: buy insurance, set limits contractually, and operate through a limited liability entity. (A fourth way – personal asset and liability planning – is beyond the scope of this Tip.) Special care may be required in engagements involving non-US clients.

The client engagement letter might provide that the client's acceptance of the consultant's services will act as a bar to the client's taking any legal action against the consultant with respect to the consultancy and/or that the consultant's liability will, in any case, be limited to the fees paid under the engagement, regardless of actual damages alleged to have been suffered as a result of consultant negligence (or worse) or breach of contract. Provision might be made for allocation of liabilities with respect to a specific project. The engagement letter might also include: arbitration instead of litigation; that litigation be brought only in the client's jurisdiction, applying the law of that jurisdiction; that the client will pay the consultant's legal bills related to a losing lawsuit initiated by a client. A client might challenge such clauses, but they should generally be enforceable, absent fraud or other legally acceptable excuses.

General liability ["umbrella"] insurance covers most aspects of personal or property damage resulting from alleged negligence. Property and casualty insurance provides protection for property and assets. Consultants should also consider professional liability ("errors and omissions") protection. The American Chemical Society offers E&O coverage for chemists and chemical engineers.

Insurance protection and contractual limitations on liability will not necessarily reach all areas of potential liability. Enter the limited liability entity (discussed in a prior Tip) – a corporation or limited liability company – which shields the consultant from liability beyond entity net worth. Consultants should consider whether the nature of their engagements requires this extra layer of protection.

A final word of caution: any mode of liability protection has its limits. Entity protection requires that the owner and employees honor formalities and maintain strict separation of personal and business activities. Contractual protection requires strict compliance with contract terms. Insurance will protect against only the risks, events, and circumstances specified in the policy; few policies will protect against intentional harm, fraud, or

recklessness [though bonding under a policy of fidelity insurance might]. But even with these limitations, some form of liability protection is almost certainly significantly better than none.

More information on this subject may be found in several good books and other resource material [here](#). For information on [ACS Professional Liability Insurance](#) click here.

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For comments or questions, go to [the Chemical Consultants Network LinkedIn Site](#).

Mr. DeLaurentis will speak on this topic at the October meeting of the Chemical Consultants Network. Click [here](#) for details.

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