

Wordings of ILS deals increasingly novel

Insurance-linked securities are helping to drive legal innovation in the re/insurance sector and creating a vibrant environment for law firms active in the space.

That is the view of Clive O'Connell, partner at Goldberg Segalla Global, who said the influx of interest and capital into the alternative space is "from a legal perspective, all jolly interesting. As lawyers, we get to look at wording from ILS products, which are very often very novel, very inventive, very clever products."

O'Connell and his colleague, partner Jeffrey Kingsley, work with clients in the re/insurance industry to ensure they understand what they want from their contracts, and that all parties in the agreement understand exactly what they're buying or selling.

"The key to drafting contracts is to try to create as much certainty as possible so that all parties understand their obligations at that moment," said Kingsley. However, there is sometimes dis-

agreement about what the wording means, which can cause conflict among their clients.

With some ILS products one of the biggest challenges is the wording of the trigger, O'Connell explained. "We've seen some early drafts where the trigger wording is grossly inadequate, where it's referring to indices or data that simply don't exist." No matter how clever the product, it is no "cleverer"

than the contract that exists, said O'Connell. "We have to try to reflect different concepts into wordings that will work if a problem arises," he added.

He observes a parallel between the dynamics of the ILS world now, and the 1990s: "Indeed some products that were originally ART (alternative risk transfer) are now ILS contracts; ILWs, cat bonds and sidecars," he said. "Wording was very novel then also, between 1997 and 2000 when the market was very soft," he added. ■



Jeffrey Kingsley and Clive O'Connell