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# TRAILBLAZERS

WEST

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### **What was the genesis of the idea/path that has made you a trailblazer?**

After many years spent representing law firms in a variety of matters, the most troubling trend I've seen over the last decade is the increasing number of cases against law firms related to Ponzi schemes run by the firm's former client. These claims, which are typically brought by receivers, bankruptcy trustees, or third parties, can arise whenever a law firm's client has allegedly engaged in criminal or fraudulent activity. This trend – to “blame it on the lawyers” – is a natural consequence of the victims' need to try to find a perceived “deep pocket” to cover the losses.

### **What sort of change has resulted from the concept?**

With losses that are often significant, these cases are very serious for any law firm in cost, potential exposure, and negative publicity. The primary theory is typically “aiding and abetting,” which is tantamount to accusing the lawyer of being complicit in criminal or quasi-criminal conduct, which can threaten the individual lawyer's license and career. These cases are complex, typically include multiple plaintiffs or jurisdictions, involve challenging or unsettled legal issues, and require creative and unique strategies to defend. Given the rise in Ponzi scheme cases, many law firms have re-examined and improved their client vetting and intake processes. The admonition “know your client well” has taken on new meaning and significance.

### **What bearing will this have on the future?**

As more of these cases continue to be filed, courts will have to grapple with how to draw the line between lawyers who unwittingly aided a wrongdoing client and lawyers who deliberately helped. The insurance industry is also sure to respond with tighter underwriting, higher premiums, and the expansion of exclusions for liability based on lawyers' intentional misconduct.