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Contact Information

www.smdf.ie
01 - 676 3118

Address by Laurence K. Shields

Chairman of the SMDF

Dear Members,

It is coming close to renewal time and I urge all members to renew with your Fund this year. The Fund was established by solicitors for solicitors and our main concern is to look after you when you need us.

I urge you also to encourage colleagues who are not members to consider applying to the Fund this year for a quotation. It is important to bear in mind what the President of the Law Society, James MacGuill, said in our last newsletter concerning benefits of membership of the Fund. It is not just about cost when considering the Fund for your indemnity requirements. Insurers have come and gone from the PII market in Ireland over the years.

At renewal time, you choose your PII provider. This choice is a really important one. When the worst happens and you are facing a claim, you will be really glad that you chose us. The way the claim is handled right from the start can have a major impact on the amount of the settlement and the length of time it takes to reach settlement.

With the SMDF you have the comfort of continuity and the knowledge that the Fund is in the market for the long haul and not the short term. With the SMDF you can choose a colleague from a panel to handle your claim. There is a world of difference between making a notification to a large commercial insurer and discussing the matter with an SMDF panel solicitor as selected by you. In contrast to large commercial insurer, your SMDF solicitor will manage your claim sensitively, energetically and cost-effectively.

We are delighted to host an SMDF Seminar on Thursday 11 September next on **Risk Management and Regulation for Solicitors**. We have had a great response. The seminar was oversubscribed within a week, so we have taken a larger room in the Royal College of Physicians, Kildare Street to accommodate everyone. See the back page for further details.

Jim Graham writes about an interesting case involving a Member and an Employers' Liability claim on page 2 and Anne Neary continues her series of articles and deals with credit management on page 3. We have a number of practice alerts also – see page 4.

We got so many letters from members on the occasion of Maurice's retirement that I decided to re-print a few of the comments with the permission of the writers.

Regards

Laurence K Shields

Chairman



Laurence K. Shields
Chairman

Tributes to Maurice Curran and the Fund:

As a practitioner, I would like to compliment you for having the foresight to set up the Fund at a time when solicitors were being overcharged by other Insurers for the Professional Indemnity cover. I have always supported the SMDF and will continue to do so as long as I practice.

Maeve Breen M. T. O'Donoghue & Co. Gorey, County Wexford

Setting up the Fund is an achievement which must rank as one of the great success stories of the Profession.

Michael Irvine Matheson Ormsby Prentice

Maurice, for as long as I can remember, your input and direction on many difficult files in which I have been involved has been delivered with a clarity of thought and depth of judgment that could not fail to impress.

Edmund Butler, Upper Mount Street Dublin 2

The difference between SMDF and other Insurers is that it is run by solicitors for solicitors, understands the realities of day to day practice and is in it for the long term unlike other Insurers who come and go as it suits. Maurice Curran was outstanding in that respect, he was always available at the end of the telephone to discuss any issue, fully understood it from his own experience of practice, and you knew that he was on your side. He has left an ethos in the SMDF that all Solicitors can be very grateful for.

Matt Nagle, Mallow, County Cork

EVENTS AND NEWS UPDATES

FORTHCOMING EVENTS

Risk Management and Regulation for Solicitors in Ireland
Chair Laurence K Shields -
Panel of Speakers

3 CPD Practice Management Credits
Thursday 11 Sept 2008
2.00 – 5.00 pm

Corrigan Hall
Royal College of Physicians
6 Kildare Street, Dublin 2

How to Succeed in a Slowing Economy

Anne Neary
3 CPD Practice Management Credits
Tuesday 30 Sept 2008
12.00 – 2.15 pm

(workshop format)
The Embassy Rooms,
JFK Parade, Sligo

Contact Seamus Monaghan
President SBA for further details
seamus_monaghan2000@yahoo.co.uk

Current Issues concerning Partnership and Solicitors

Anne Neary and Michael Twomey
3 CPD Practice Management Credits

Tuesday 14 October 2008
2.00 – 5.00 pm
The Westbury Hotel, Dublin 2

Contact anne@anneneary.ie
for further details

If you would like a seminar run in your area, please contact either Margaret Weber SMDF
margaret.weber@smdf.ie
or
Anne Neary
anne@anneneary.ie

Employers' Liability and Occupiers' Liability



Jim Graham
Claims Consultant

Employers' liability is not compulsorily insurable in the Republic of Ireland, as distinct from Great Britain and Northern Ireland, where it is compulsory. Here is an interesting case involving a Member and an Employers' Liability claim. Pat Murphy was employed by John Smith & Co., as a general labourer on an intermittent basis. John Smith would be described as a small time builder, and employed three full-time employees, but would have employed others as needs arose. He had a maintenance contract for a number of years with some local businesses.

The nature of John Smith's business could not have been described as successful, and would appear never to have officially profitably traded. It was not a company that took its legal responsibility seriously, and it is quite probable that its employees were paid under the table.

In 1996, Pat Murphy was asked by John Smith to assist in washing down the ceilings and walls in his own home in the Midlands. Murphy was to wash down the walls and ceilings in advance of repainting.

John Smith personally gave Mr. Murphy a bucket containing a mixture of sugar soap and warm water, but this appeared to have limited effect. Smith then changed the solution and added crystals from a white, plastic container and returned the bucket to Murphy. Murphy was wearing ordinary plastic household gloves.

Mr. Murphy put his hand in the water and received severe burns (from "caustic soda" which had been added to the water solution). Murphy had not been warned. This was a highly corrosive solution and caused a very serious injury.

Arising out of the accident, Murphy attended the offices of a solicitor and an attendance note was taken. The attendance note commenced as follows:

"I was working for John Smith & Co. of Main Street."

A letter of claim was sent by the solicitor to the secretary of John Smith & Co., claiming that the accident was caused through their negligence, breach of duty and breach of statutory duty in exposing his client to such injuries and failing to provide him with a safe system of work.

At a very early stage, the case was approached by the solicitor as an Employers' Liability claim. This was understandable, given the nature of the instructions. However, it was always open to the solicitor to approach the case as an Occupier Liability claim. The accident had occurred in Mr. Smith's home, and Mr. Smith himself had both supervised the work and had created the danger.

No reply was received from the defendant or the defendant's insurers. Eventually in 1997, Solicitors acting for John Smith & Co. wrote to the claimant's solicitor saying "There is no insurance involved in this case and the company does not have Employers' Liability cover." No action was taken to ascertain whether John Smith in a personal capacity had insurance on his home which may have covered this liability. By the time the case got to trial, the Statute had expired, and even if reference had been made to Mr. Smith's potential personal insurance, it was too late.

Because of the lack of any financial backing for John Smith & Co., a compromise settlement was reached, which would not have reflected the full amount of damages.

The solicitor was in turn sued by Murphy, claiming that he was guilty of negligence and/or breach of duty.

Counsel felt that a solicitor does not fulfill his obligation to his client merely by carrying out what he is instructed to do. The initial instructions suggest that this case should be viewed as an EL claim, which is understandable. However once the information came into the hands of the solicitor that there was no insurance for the company, it was incumbent on him to consider the case further and, to quote Roche-v-Pielow, to "give the matter due consideration". Counsel's view was that there was negligence on the part of the solicitor in failing to join Smith personally into these proceedings.

Standard home policies have two main sections covering both buildings and contents. Besides the usual perils, fire, storm etc, there is cover under both buildings and contents sections for liabilities. The contents section provides the policy holder with an indemnity for liability arising out injury to a domestic employee or injury to any person carrying out repairs or decoration whilst employed by the policy holder in connection with his home or temporary residence. The building section also provides liability cover but it is limited to covering the policyholder's liabilities as a property owner. This section excludes any legal liability arising out of the policyholder's profession or business.

It is probable that this particular claim **could** have been dealt with under the contents section of the home policy, as in this case, it could be held that John Smith was acting in a personal capacity in arranging to have the redecoration and cleaning done. Smith did have a policy of insurance in force on his home at the time of the incident.

Credit Management – Top Tips to getting paid on time



Anne Neary
Solicitor

One of the first symptoms of a slow-down is that clients become slower to pay. A recent survey in the UK has indicated that 82% of businesses have noticed an increase in late payments. More worrying still is that 83% of these businesses believe that late payment is having serious consequences for them. The primary effect of late payment is a trickling off of cash flow, and as we all know, cash flow is the very lifeblood of our businesses.

It is very easy to brush the problem under the carpet. So many of us become fatalistic and believe that it is just one of those things that is beyond our control. As solicitors we are not trained to take a strategic approach to our credit management. It is important to realise however that a number of simple strategies can be applied to the collection of fees.

The first and most effective strategy is to communicate your payment expectations to your clients. It is essential in this economy to get used to telling them about your terms of payment.

Here are our top tips and strategies for getting paid:

- Draft a letter setting out the terms and conditions at the very beginning of your relationship with your client.
- Put payment terms into your standard terms & conditions and state them clearly on every invoice
- Draft your Credit Policy
- Set a credit limit for each client
- Set interest rates.
- Create a best case and worst case budget scenario for your client.
- Discuss the budget and your expectations about payment with your client.
- Ensure that your client understands and agrees to the budget by signing it.
- At the outset, anticipate the practical consequences of the client defaulting on the agreement.
- Discuss those consequences at the first consultation.
- Create clear, readable bills with detailed descriptions of the work done for the client.
- Bill regularly.
- Create a written collection policy.
- Appoint one member of staff to phone clients and monitor collection.
- Write a collection script for that staff member to follow on the phone.
- Ensure that there is an appropriate follow-up.
- A telephone call from the principal or fee-earner is generally very effective. You should not feel uncomfortable ringing a client asking for payment. If you are confident that the fee you billed for the service given is fair and reasonable, then you should expect prompt payment.
- Create and monitor your Accounts Receivable Reports.
- Discount your bill only as a last resort.

Finally don't forget the gratitude curve. The gratitude curve sweeps downwards day by the day, if not by the hour. A client is most willing to pay the bill on the day the transaction is completed and will not be so willing a few weeks later. Ask for payment when you hand an invoice to a client. They will otherwise assume you do not expect prompt payment.

Above all remember this - never apologise for seeking payment from a client. We are all entitled to payment for work carried out and we should never feel uncomfortable seeking payment from clients.

These tips and strategies are simple and effective. Once you start implementing them you will see an immediate effect on your cash flow. You will wonder what you ever did without a credit management strategy.

Anne Neary is a solicitor and management consultant to the Legal Profession. She can be contacted at anne@anneneary.ie or by phone 01-4911866 or 086 1955919. She offers a **Practice Management Programme** to Law Firms who want to run their practices as a business.

NEWS AND EVENTS

Dublin Seminar - Risk Management and Regulation for Solicitors.

Thursday 11 September, Royal College of Physicians, 6 Kildare Street, Dublin 2.

3 CPD Practice Management Credits.

We look forward to seeing you on Thursday 11 September for our seminar. We are covering a lot of material in one afternoon. We will give you an overview of Regulation of Solicitors and some helpful strategies to reduce the risks inherent in the running of a busy legal practice.

We are delighted that **James MacGuill**, this years President of the Law Society, will be dealing with Regulation. He will inform us what is new in this area and give us a general review of the area. **Seamus McGrath** is the Senior Investigating Accountant in the Law Society and will give us a description of how the Law Society conducts its audits of solicitors' practices. He will explain what the Law Society looks for and he will identify common problems.

He will also deal with how to avoid problems and how to deal with the audit report.

Tom Shaw will give us an overview of the new PII regulations one year on. The Fund invited **Mark Carver** to talk to us about Risk Management in the UK as it is always interesting and useful to hear about the developments and experiences of our colleagues in England. **Paddy Groarke** will address risk issues in litigation and **Anne Neary** will deal with systems which can minimize risk.

We have made extra places available as we will not be able to repeat this seminar, so if you would like to attend, please contact Margaret Weber at the Fund at margaret.weber@smdf.ie OR 676 3118.

Practice Alerts

Section 117 of the Succession Act 1965 which entitles a child to apply to the court where a parent had failed to make adequate provision for them in their Will. Watch out! There is a six month time limit here which is very tight particularly as these can be complicated cases.

PIAB – remember the 2 year limitation period for actions against deceased. That **includes** the time in PIAB which is not suspended in such a case.

VAT Clause in the Contract for Sale – The safest thing is to leave the Law Society VAT clause in unless your client and/or their professional advisor confirms that it should be amended or deleted.

Making Time the Essence of the Contract

All of us experience pressure from clients from time to time to make time of the essence in the Contract for Sale and to serve a Completion Notice. Very few practitioners consider the dangers that can apply in these circumstances and regard it as a method of putting pressure on the other side to complete.

The law on the matter is that to enforce a Completion Notice, you have to be ready, willing and able to close the sale.

If the solicitor, on the other side attends a closing, he does not have to accept an undertaking on an outstanding matter, but he can take up his papers and leave.

The effect of this is that the impact of the notice is then reversed and the purchaser is released from his contract.

The SMDF experienced such a case when a Solicitor had made time of the essence at the instruction of his client in the Contract for Sale but was then unable to complete due to a tax document not being available and an inability to give vacant possession because of a State Body control on the movement of animals. The client lost his sale and sued the solicitor in negligence. The solicitor had no written evidence or attendance note of the instruction from the client nor of the fact that he had explained in full to the client the legal implications of inserting a clause making time of the essence.

The outcome of this case was that the SMDF had to make a substantial settlement of the claim.

The moral of the story is – make sure you have a full written attendance of the advice given to the client and also that you are able to complete the sale before serving your Completion Notice.



SET UP
BY SOLICITORS
FOR SOLICITORS

Contact details for the SMDF

Phone: **01 - 676 3118**, visit our website www.smdf.ie
or contact Margaret Weber margaret.weber@smdf.ie

Margaret
Weber
Manager

