

**Legal Practitioners' Liability Committee**

**Victorian Bar – Seminar 22 April 2008**

**“Settling Litigation – Is the Case Defused or Detonated?”**

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***Introduction***

Litigation is a rather strange creature. It is interactive. It is of uncertain duration and expense. Litigants usually start a case with considerably more optimism than they have 2, 6, 12 or 24 months later. It is not uncommon at the end of a case, particularly a long and hard-fought case, for litigants to be left totally drained and disenchanted by their experience in the legal system. The common refrain is that the only beneficiaries of the action were the lawyers.

Within the litigation continuum, there are many traps for the unwary and many points at which a barrister can be exposed to risks of liability. This risk management seminar looks at some typical risk situations encountered by barristers in the context of advising clients on settlement of litigation.

Among the portfolio of barrister's claims at LPLC, it is at the point of settlement that most problems seem to arise. This is the point when the client's rights or obligations are converted from contingency to actuality, so if any loss is going to be caused, this is the moment it crystallises. For a plaintiff it may mean being confronted with the reality that the case is worth less than previously hoped, and getting his or her head around the fact that our legal system does not deliver perfect justice. For a defendant, it may mean facing up to the need to write the settlement cheque that he or she had been deferring.

For the most part, settlements are readily accomplished. However there are a surprising number of cases where the settlement itself is not the end of the game but merely another

chapter in the battle. Some litigants simply won't admit defeat, and their reaction to an adverse outcome is to raise the stakes, to "up the ante", and set off a few bombs. Before too long, a case that was intended to be defused by the settlement is detonated when the client goes about:

- finding out why they didn't get the outcome they wanted.
- seeing whether it can be reversed – whether by appeal/re-hearing, or by launching a new claim to achieve the intended result, but by alternate means.
- examining whether someone else is responsible – drawing the legal practitioner into the frame.

A litigant looking "to go on with it" after the game is confronted by immediate hurdles in the concepts of *res judicata*, issue estoppel and collateral attack, all of which stand in the way of re-litigating with the other party. Attention inevitably turns to the legal advisers in the form of a possible suit for negligent advice or omission giving rise to a lost opportunity to have obtained a better outcome.

### ***No authority to settle***

Counsel has apparent or implied authority to compromise proceedings in court, and in doing so, bind the client to the outcome even if it turns out that Counsel had no actual authority.

A client may therefore complain that no instructions were given to settle at all, or on the terms reached. In *Fray v Voules* (1859) 1 E & E 839 a solicitor (the Earl of Zetland) settled a claim without instructions, but believing that it was genuinely in his client's best interests to do so. It was accepted (at a pleading summons) that this was a breach of duty, no matter how well-intentioned the solicitor's actions.

LPLC receives quite a number of claims concerning allegations that the barrister (or solicitor) settled the case without the client's authority. These claims are relatively simple factual enquiries. Authority was either given or it was not given. When faced with this allegation, the answer will turn on the evidence the barrister has to confirm his or her authority to settle. Ideally, that will be in the form of the client's signature on the Terms of Settlement, or a copy of the draft orders to be handed to the Court. "Signing up" a client in this way is the best risk management to avoid allegations of lack of authority to settle.

### ***Pressure to settle***

The more difficult scenarios arise when the client alleges that although authority may have been given, the client's will was overborne, so that in truth, the instructions were not freely given.

LPLC has seen allegations against Counsel arising from the following behaviours:

- Swearing at the client
- Intimidating the client (e.g. raising one's voice, finger-pointing, talking over the client)
- Wig-throwing
- Impatience and rudeness
- Threatening to abandon the client
- Departing the settlement conference before it is finished, leaving important formalities to the solicitor who may not be as well equipped to cope with any complications that may arise (e.g. the late inclusion of a GST clause), particularly if there is a dominant personality on the opposing side.
- Use of legalese, instead of plain-English explanations.

Some of these are more serious than others, and although use of legalese is probably the least offensive on the spectrum, it is a common platform for client discontent or misunderstandings.

All of these behaviours leave a lasting impression in the client's mind, and in a profession where reputations are so important, impressions matter.

In *Harvey v Phillips* [1956] HCA 27 the plaintiff complained that her legal representatives had coerced her into accepting an inadequate settlement of \$4,000 for a medical negligence action against her surgeon. The plaintiff's counsel went to very unusual lengths to obtain her consent to settle the proceeding, including (in conjunction with the defendant's counsel) having the Judge speak to the plaintiff in chambers (it being a jury trial) before the commencement of the case – presumably the lawyers on both sides believed that the money on the table was adequate compensation. The picture painted by the reported decision is of a tearful plaintiff, throwing down sedatives, being harangued by senior counsel at length, who eventually threatened to return the brief and refuse to go on with the trial if she didn't agree to settle. Counsel clearly did not handle the plaintiff, or the situation, well.

The point of law on which the case went to the High Court was whether the settlement was binding on the plaintiff as against the defendant/surgeon. It was held that as it was clear the plaintiff had given her Counsel settlement authority, albeit only temporarily and with extreme reluctance, the settlement was binding. The Court confirmed the limited grounds on which a settlement entered into by Counsel could be set aside:

*“But in the case of a compromise which is made within the actual as well as apparent authority of counsel a court does not appear to possess a discretion to rescind it or set it aside. The question whether the compromise is to be set aside depends upon the existence of a ground which would suffice to render a simple contract void or voidable or to entitle the party to equitable relief against it, grounds for example such as illegality, misrepresentation, non-disclosure of a material fact where disclosure is required, duress, mistake, undue influence, abuse of confidence or the like.”*

See also *Tresize v National Australia Bank* [1994] FCA 1092 - where the client sought to set aside Terms of Settlement entered into with the Bank on the grounds that they were entered into under duress, mistake, and undue influence exercised by his own legal representatives. It was argued that the Bank was on notice of impropriety on the part of his solicitor and counsel in advising the client about settlement, the alleged impropriety being the large sum being paid for costs of the practitioners as part of the settlement sum. The Court dismissed his claim, finding the receipt of costs from a settlement raised no presumption of undue influence, and there was nothing otherwise on the facts (i.e. in the client’s allegations that he was unfairly pressured by Counsel) to show that the Bank could have reasonably anticipated there was any lack of independence or anything improper about Tresize’s representation.

In *Studer v Boettcher* [1998] NSWSC 524 (1<sup>st</sup> instance); [2000] NSWCA 263 (appeal) the client (Studer) claimed to have been coerced by his lawyers into settling a Supreme Court dispute for more than he wanted to pay.

The claim arose from a dispute between Studer, who had purchased the freehold title to land near Mullumbimby upon which Konig had built a small dwelling as part of an informal development scheme. Konig held a lease over the land, which included an option to renew and an option to purchase. Konig had registered a caveat over the property to protect her equitable interest. Studer’s purchase of the property had been subject to Konig’s unregistered lease. To enable Studer’s transfer to be registered, Konig agreed to withdraw the caveat on the basis that it would be reinstated immediately thereafter. Konig’s then solicitor failed to reinstate the caveat. Some three years later Studer refused to recognise Konig’s interest in the property and served a notice to quit. Konig commenced proceedings against Studer to protect her possession and against her solicitor for damages.

The claim went to mediation before a retired judge in May 1991. Studer was represented by his solicitor, Boettcher, and a barrister. The claim was settled 10 hours later on terms whereby Studer agreed to pay Konig the sum of \$100,000 by instalments, which were secured by a mortgage. Studer defaulted on the instalments and ultimately had to sell the property.

In 1992 Studer sued Boettcher and the barrister who had represented him at the mediation. He claimed that he had been coerced into settling the case for \$100,000, far more than the case was actually worth. Studer's case was that:

- He had gone to the mediation believing that at most he should offer \$20,000 - \$30,000, based on his legal advice to that time.
- He resisted the pressure his lawyers placed him under and *"fought like a tiger all day until all the life went out of him and he capitulated under pressure... I was in a kind of a fog. I was just like a zombie doing what I was told."*
- He had relied on the solicitor's translations to him during the day as to what was going on - his native tongue was German (but the solicitor was also fluent in the same language, so this allegation went nowhere).
- Both the solicitor and the barrister had threatened to withdraw from the case if he didn't settle.
- His wife was not present, and it was she who had the better working knowledge of the case.

The barrister and solicitor both denied placing undue pressure on the client to settle. The claim against the barrister settled in the course of the trial, without him being cross-examined. The solicitor was cross examined at length about the events at mediation and the reasons why he had formed the view that settlement at \$100,000 was appropriate. The Court readily accepted that the lawyers had properly weighed up the strengths and weaknesses of the claim and defence (including recently served evidence that made Konig's case much stronger) and had appropriately "done the sums" as to Studer's limited prospects of recovering costs if he won, and his significant costs exposure if he lost.

The Court accepted the following as relevant legal principles to apply:

- It is appropriate for lawyers to put pressure on clients to do what is, in the lawyer's view, in the client's own interest. Persuasion is OK, even forceful persuasion, so long as it is devoid of self-interest.
- However, a lawyer is not entitled to coerce a client into a compromise, even if objectively it is in the client's best interests.
- If the client is behaving as an automaton, then the lawyer should not proceed without an independent person speaking to the client to make sure the client understands.

These will all be matters of judgment for the practitioner on the day, and it is sound risk management practice to keep a contemporaneous note or prepare a memorandum at the conclusion of negotiations to record the events culminating in the settlement.

Studer therefore lost his case on the facts. The Court found there was no undue pressure to settle, and the barrister and solicitor had both behaved entirely appropriately.

Nevertheless, the question arises, what sort of a victory was this? It took almost 10 years from the time of the settlement until the High Court refused special leave to appeal. What was the opportunity cost of the time spent by the barrister and solicitor in defending their actions?

The real risk management lesson from these 'pressure to settle' cases is that it is largely about client management. The two greatest virtues Counsel can have in this regard are preparedness and patience.

Preparation means Counsel will approach the question of settlement with a well-organised mind, having distilled the legal issues and with a thorough knowledge of the facts and the evidence that is expected to be called by either side. Preparation instills trust and confidence in the client, and means the client is more likely to receive and act on advice he or she may not really wish to hear. Preparation also reduces the likelihood of surprises at the door of the Court. If surprises occur, Counsel will be better equipped to respond appropriately.

Patience lets the client have enough time to digest advice before a decision is made.

### ***Under-settlement***

This type of claim is most commonly arises in the personal injury context, often involving 'door of the Court' negotiations.

Typically, the explanation for the recommendation to settle includes concerns about aspects of the client's credibility. Counsel may be told that the opposing party has evidence the client has sources of undeclared income; inconsistent medical histories; or suspects that the client is malingering.

These are legitimate concerns that an advocate needs to warn a client about, although ideally this would not happen for the first time at the door of the Court. This may be unavoidable if Counsel is briefed very late in the piece (for example, the brief being transferred from other Counsel). However Counsel need to be careful not to overstate the concern, lest the client misinterpret it as laziness or lack of trial preparation being cloaked under the guise of concerns about credibility.

Five years later when allegations of under-settlement are made, and the settlement must be justified to a judge hearing a negligence claim against the barrister, credibility problems that may have been "front and centre" in the original action are often less immediate. The

client's new advisers will have worked out ways to explain the credibility problems away, and the focus shifts to the preparation and readiness of the case for trial and a hindsight review of the legal issues from armchair comfort rather than the 'pressure cooker' environment of an impending trial.

That said, the case law firmly establishes that Courts will be reluctant to review the assessment made by barristers and solicitors in advising settlement because so many subjective matters come into the assessment. The Court won't interfere unless the view taken by the barrister or solicitor was one that no reasonable barrister or solicitor could have arrived at.

*Hickman v Blake Laphorn* [2006] PNLR 20 is an interesting English case in which Counsel was held liable to the client for under-valuing his motor vehicle injury claim. The Court held that Counsel made the error of expressing an opinion on the value of the claim without having undertaken a thorough assessment of the medical evidence. Counsel had taken an overly optimistic view of the client's future earning capacity, believing that he would regain full time employment. In the result, when the settlement discussions occurred at the door of the Court (which was to be a trial on liability alone) all of the medical reports were not at the forefront of Counsel's mind, and he assessed the case without adequately reviewing all the evidence.

### ***Complaints about advice leading to settlement***

In a number of claims, the problem is that the settlement as documented does not accord with the client's understanding of what was agreed, or supposed to have been agreed. The problem tends to surface after settlement when the client receives an unwelcome surprise (such as an unexpected tax assessment or stamp duty assessment on the disposition of assets under the settlement agreement).

Disputed settlement advice was at the heart of *O'Connor-Sraj v Lawrence* [2005] VCC 29 September 2005. This was a family law case where, after the trial had commenced, the wife agreed to a property settlement incorporating consent orders transferring to her, at her expense, clear title to a property, having allegedly been advised by her barrister and solicitor that no stamp duty would be payable on the transfer. The wife maintained that her instructions had been quite clear, namely that she was not prepared to compromise the proceeding if she would be liable for any stamp duty on the property transfer. Ordinarily a transfer of the matrimonial property between husband and wife would be non-dutiable, but in this case the property was registered in a corporate name so it was dutiable.

When a \$23,000 assessment of duty was made, the wife went back to her legal representatives, and relying on their advice, she then made a series of applications in the Family Court aimed at avoiding the stamp duty liability. The applications failed, leaving the client with an extra legal costs liability of \$77,000.

Not surprisingly, in response to being sued by the solicitor for outstanding fees, the client filed a counterclaim alleging negligence, to which the barrister was later joined.

The case neatly illustrates a familiar theme from this type of disputed settlement claim - where the damage arising from an initial omission (here, the allegedly negligent stamp duty advice) was compounded by subsequent advice (here, the litigation advice, also alleged to have been negligent). The parties end up in litigation upon litigation, and it is often not until many years later, at great financial and personal cost, that the client and the lawyers resolve their differences.

### ***Drafting problems***

#### **(a) Failure to eliminate the prospect of further claims**

An interesting example here is *Gosfield School Ltd v Birkett Long (a firm)* [2006] PNLR 19. In this case, Gosfield School in Essex engaged a firm of solicitors to defend it from allegations by the parents of two boys that the school was in breach of its contract by providing a substandard education service. That claim was settled in 2002 on the advice of both solicitor and counsel retained by the firm.

The parents then commenced a second claim in 2004 in tort by the two boys. Their claim was that as a result of their substandard education, they had been held back in the labour market. The School subsequently settled the second claim, and then set about suing the solicitors and counsel for failing to advise that the first settlement with the parents would not prevent any further proceedings from the boys, or to advise them that the original settlement should have sought a waiver from the boys of their rights or an indemnity from the parents for any claim the boys might make. So the claim was for not having done enough to protect the School from subsequent litigation.

The Court found that the solicitor (but not the barrister) had actually foreseen that the boys might pursue a claim against the School in their own right. Furthermore, when advising the School about the parent's claim, the solicitors and barrister had adverted to the difference between an action by the parents and one by the boys. So they appreciated the prospect of further claims.

However, the Court looked kindly on the lawyers. It was conscious of not judging them too much through the prism of hindsight, and was also persuaded that the lawyers had given quite detailed and thoughtful representation to the School generally. While they had not expressly advised the school that the settlement documents did not preclude further claims, the Court held this did not amount to negligence. The Court also appears to have formed the opinion that neither the School nor the lawyers thought the boys' claims were of much value. Further, there would have been a strategic disadvantage in raising the question with the parents when negotiating and settling the parents' claim, lest that in fact prompt the boys to come forward with claims they had not bothered to make to that point.

### (b) Introducing a non-party into the settlement

It is not unusual in debt claims against a company for the creditor to seek a guarantee from a director or directors of the debtor as part of the compromise. This might reflect concerns by the creditor about the solvency of the debtor company, and the extension of a discount from the full claim in return for some greater security that the settlement sum will actually be paid.

Complications will arise for Counsel (whose brief is to appear for the debtor company) and who now finds himself or herself also being asked to advise the director. Counsel will need to carefully consider whether the director needs to be independently advised in relation to the settlement, and indeed whether there is a conflict in giving advice to the director at all. Each case will depend on its own facts, and broader instructions may need to be taken to ensure that Counsel is aware of the role that the director plays with the company; the extent (if any) of the benefit to the director from guaranteeing the compromise; and whether the guarantor understands the nature and effect of the obligation being assumed.

### (c) Family Court property settlements

A common complaint in the drafting of property settlement compromises arises in relation to the sale of jointly owned assets, where before the sale price is known the parties agree that a certain sum should be paid to one party, say the wife. Is there to be an equal division between the parties, and for the wife's share then to be paid from the husband's share, or is the wife's share to come "off the top" and the balance then divided?

In *Biggar v McLeod* [1977] 1 NZLR 321 (1<sup>st</sup> instance decision); [1978] 2 NZLR 9 (appeal), the wife claimed to have instructed her barrister to settle mid-trial on terms that she would be paid \$5,000 from the sale of a jointly-owned farm property. Terms of Settlement signed by the barrister provided for payment to the wife '*as a preferential payment the sum of \$5,000 on sale of the farm land*'. The wife sued the barrister for the difference (\$2,500) between what she thought she was entitled to receive from the sale of the property, and what she actually received when the preferential payment was made off the top, and a further \$1,300 in legal costs she had incurred in interpleader proceedings which she lost, presumably to assert her right to have the \$5,000 paid from the husband's share.

The timing of the case is interesting. The original property settlement occurred in September 1970. It was not until July 1976 that the wife sued the barrister. The claim was struck out on the grounds of immunity in September 1976 and a subsequent appeal was dismissed in March 1978. So it was not until 8 years after the original settlement that the barrister was freed from the litigation.

(d) Problems with releases

Particular problems that arise in this context include:

- Releases drafted too widely, having the unintended effect of also releasing other co-sureties or joint tortfeasors from liability. This is a particular trap when a plaintiff wishes to settle with one defendant, but proceed with further action against others. The usual explanation for this is a simple oversight by the person drafting the Terms of Settlement. The usual drafting techniques to avoid this problem when entering into a separate settlement with a joint obligee is to incorporate into the Terms an undertaking not to sue (perhaps also coupled with an indemnity in relation to further claims from third parties) in lieu of a release.
- Releases drafted too narrowly, thereby permitting the possibility that the client could be the target of further claims (see *Gosfield School Ltd v Birkett Long (a firm)* above).
- Also included under this heading are insurance claims where an insured unintentionally waives his insurer's rights of subrogation, thereby breaching the contract of insurance and opening the client up to a claim by the insurer for damages. The problem doesn't arise when the insurer is conducting the defence of the claim being settled, but this may not always be the case. The way to avoid this problem is to carefully consider any relevant insurance interest in the outcome of the dispute, and seek the insurer's consent to the settlement before proceeding.

(e) Obtaining final orders

Under this heading are a variety of errors that can arise:

- Failing to seek a certificate under the Appeal Costs Act
- Failing to seek a certificate from the Judge for Counsel's fees

Usually these mistakes are simple oversights, borne out of haste and lack of preparation when attending to hear judgment. The errors are not necessarily fatal, and might be curable by a further application to the Court for a supplementary order or to rectify the initial order under the slip rule. However there is always a cost involved, and often the other party may attempt to take advantage of the mistake to press home a costs penalty.

Cases involving drafting problems also carry other peculiar legal and ethical questions:

- Can Counsel (and solicitors) continue to act in the matter for the client? The answer will depend very much on the particular fact situation, but at the very least, a flag should be raised that the client may need independent advice. For example, a natural first reaction to the suggestion that there is an error in the drafting of terms

of settlement is to deny it. After reflection, and once the denial phase has passed, the lawyer is usually inclined to do whatever can be done to fix the problem.

It is very important in the transition to “fixing” stage to be aware of the potential for conflict between the client’s interests and Counsel’s interests. It is also important to realise that your advice to the client may not be objective, and whilst you may think you are doing the right thing in suggesting various responses that may be open to the client, what you may in fact be doing is digging a deeper hole for yourself, your client, and perhaps also prejudicing LPLC’s interests if your subsequent actions actually end up compounding the damage, rather than solving the client’s problems.

If in doubt, seek advice. Sources of help include professional colleagues, the Ethics Committee or LPLC.

- Should Counsel notify the LPLC of the suspected drafting errors as circumstances that might give rise to a claim? The answer is almost definitely yes – the LPLC policy includes a contractual obligation on the insured to give immediate notice on writing not only of claims, but also circumstances that may give rise to a claim.

### ***Enforcement of settlement agreements***

It is vital to carefully think through the enforcement provisions when drafting settlement documents. There are many examples where litigation over the enforcement of a settlement gives rise to a bigger dispute than the underlying action preceding it. An example is *Macteldir Pty Ltd v Roskov & Anor* [2007] FCAFC 49. The barrister and the solicitor erred in the procedure they adopted in seeking to enforce settlement orders, and ended up with an application against them by the client for wasted costs.

The solicitor and barrister had represented a client in a copyright infringement case. The infringers had reproduced advertising material from the client’s telephone directory. At mediation in August 2001, Terms of Settlement were agreed in relation to the copyright claim involving the defendants (infringers) delivering up copies of the rival directories, refraining from further engaging in the offending conduct, making a public apology, and paying costs. At a subsequent court hearing the Terms were handed up and orders made dismissing the client’s claim. The defendants made undertakings to the Court in accordance with the various obligations set out in the Terms.

Following settlement the client complained that the defendants had continued to infringe its copyright, and instructed its lawyers to enforce the Terms of Settlement. The lawyers initially commenced a second proceeding claiming infringement of copyright by the subsequent publications and for breaches of the Terms of Settlement. They discontinued this proceeding at an early stage in favour of a Notice of Motion in the original proceeding seeking orders restraining further offending conduct by the defendants, delivery up, account of profits and damages

The lawyers mucked this up, resulting in costs of the botched enforcement proceedings being awarded against the client. An application was then made by the client under Order 62 rule 9 of the *Federal Court Rules* for the burden of those costs orders to be met by the lawyers, and for the lawyers to be disallowed their own costs for the conduct of the enforcement application.

The lawyers ultimately staved off a costs order, but not before multiple court appearances, applications, decisions, appeals, re-hearings and more appeals over a five year period. These included:

- Various directions hearing before the original trial judge (Madgwick J) where the appropriateness of the procedure being employed by the client was queried (i.e. the commencement of a Notice of Motion in the original proceeding rather than a fresh proceeding)
- Adjournment of the trial of the Notice of Motion when the defendants raised a jurisdictional challenge – on the basis that what the client was seeking (as distilled from the various directions hearings in the course of the Notice of Motion) was a bare contract case to enforce the Terms of Settlement.
- [2003] FCAFC 228 – a ‘Case Stated’ where the Full Court of the Federal Court determined on the papers (without oral argument) that it had no jurisdiction to hear the Notice of Motion – with further costs orders against the client.
- Refusal of special leave to the High Court, with costs, to appeal the Full Court decision.
- [2005] FCA 1466 – a contested application for discovery and interrogation by the lawyers against the client, in response to the client seeking to add the High Court costs (its own and the other parties) to its costs recovery claim.
- [2005] FCA 1528 – refusal of the client’s costs application under order 62 rule 9 by Allsop J (who took over the case from Madgwick J), on the basis that the facts did not merit a sanction of the lawyers under that rule – although the approach adopted by the barrister was not hopeless, it was “less than complete and less than perfect”. “Whether it was of a quality which deserving of condemnation as negligent in a tortious claim it is unnecessary and inappropriate to decide.” Allsop J, hearing the Notice of Motion, had some sympathy for the barrister, believing that the Full Court had wrongly decided the jurisdictional question, even though the barrister’s submissions to the Full Court were less than clear and the barrister had failed to alert the Full Court to two other clear reasons the Court had jurisdiction to hear the ‘enforcement’ Notice of Motion.

- [2006] FCA 489 – an application by the lawyers to dismiss the client’s appeal against Allsop J’s decision on the basis that leave to appeal was necessary. This led to an alternative motion by the client for an extension of time if leave was necessary. Lindgren J held that leave was not necessary, and ordered costs of these applications against the lawyers.
- [2007] FCAFC 49 – an appeal of Allsop J’s decision to the Full Federal Court on the question of the appropriateness of the process adopted by the lawyers, rather than the jurisdiction of the Court – dismissed the client’s appeal on the basis that the conduct of the lawyers was not a serious dereliction, or failure to fulfil, their duty to the Court.

After five years of further litigation after the settlement, no one emerged a winner. The client not only lost the enforcement action, it also lost its costs application against the lawyers. But the lawyers were also significant losers, both in terms of their own time, reputation and costs of defence.

This case highlights risk management lessons about:

- The need to think through the consequences of default and enforcement when drafting terms and obtaining final orders from the Court.
- When the Judge tries to talk you into orders that are different to those proposed, it may be appropriate to ask for the matter to be stood down to give yourself time to make sure the changes are properly thought through and that the client’s instructions to any changes are obtained.

### ***Conclusion***

All of the above examples highlight the different perils in the business of settlement. What do you do when you’re at the crossroads in one of these moments? These are the key points and the ‘take away’ risk management lessons:

1. Recognise the problem – are you at one of the points highlighted above?
2. Think things through. Be patient. Don’t rush. You will usually have, or be given, time. In hindsight, time will rarely be as pressing as you might think.
3. Give the client plenty of time. A survey in 2007 by the Bar Standards Board (the UK regulator) reported in *Lawyers Weekly* in 2007 apparently found that barristers tend to rate the quality of service they provide far higher than those who receive it. While 89% of barristers said they were satisfied they spent enough time with their clients, only 66% of solicitors agreed, and only 57% of the general public agreed.

4. Manage the detail, but keep your eye on the bigger picture, particularly with respect to other possible claims.
5. If you make a mistake, seek advice. Let LPLC know about it. To compound the problem by refusing to acknowledge it, or covering over it and hoping you can sort it out yourself, or that it might simply go away, will usually be far more costly in the long run.

**Justin Toohey**  
**Legal Practitioners' Liability Committee**  
**22 April 2008**