



Solicitors' Negligence Cases:

Alexander Langsam v Beachcroft LLP¹:

Can specialist solicitors still rely on advice from Counsel?

June 2011

In a judgment handed down this week, the High Court has considered the extent to which specialist solicitors are entitled to rely on advice from counsel as a defence to a claim in negligence.

Reliance upon counsel is not a new topic, for example, cropping up in *D Morgan Plc v Mace & Jones*² last year. In that instance, a "generalist" solicitor was asked to provide planning law advice. Since he was not a specialist in this field, it was his normal practice to rely heavily on advice from counsel when serious planning issues arose.

The judge had summarised the applicable law as follows:

- (a) The starting point is that a solicitor is entitled to rely on the advice of counsel properly instructed, and a solicitor without specialist expertise is entitled to make normal and proper use of the Bar.
- (b) However, the solicitor must still exercise his own judgment in relation to the matters on which the advice has been sought. If he reasonably thinks Counsel's advice is obviously or glaringly wrong, he has a duty to reject it.
- (c) The more specialist the nature of the advice, the more reasonable it will be for the generalist solicitor to accept it and act on it.

This issue has been revisited in *Langsam*. Mr Langsam sued his former solicitors for advice he had received on the settlement of his professional negligence claim against his accountants. The solicitors had relied upon counsel's advice. Unlike the *Morgan* case, Beachcrofts had held themselves out as having special expertise and experience in professional negligence litigation. On that basis, Mr Langsam argued that they were subject to a higher burden as regards advice from counsel.

The impact of specialist expertise had previously been considered in *Matrix Securities v Theodore Goddard*³. There it was held that the only difference for a solicitor with specialist expertise is that he must "*bring his experience to bear on the matter*". He need only give separate advice or record reservations if he regards counsel's advice to be seriously wrong. However, Mr Langsam sought to rely on Australian case law to argue that the duty on a specialist solicitor should go further and that he should be required to form his own view about the correctness of counsel's advice.

¹ [2011] EWHC 1451 (Ch) (9th June 2011)

² [2010] EWHC 3375 (Ch)

³ 1998] PNL 290

The judge rejected that argument. He confirmed that:

- (a) The independent judgment which the solicitor should apply to counsel's opinion is informed by his or her specialist expertise.
- (b) Subject to that test, where the advice is given by appropriate counsel specialised in the field who has been properly instructed, even an experienced and specialised solicitor is entitled to be guided by counsel's advice.

This case will therefore give some additional comfort to solicitors who wish to take advice from counsel on their specialist subject.

Further information

For more information on this case, or Clyde & Co's Professional Negligence practice, please contact:

Simon Gildener

simon.gildener@clydeco.com

Lisa Payne-Lawrey

lisa.payne-lawrey@clydeco.com

Michael Kingston

michael.kingston@clydeco.com

Clyde & Co
51 Eastcheap
London EC3M 1JP

Tel: +44 (0) 20 7623 1244

Fax: +44 (0) 20 7623 5427

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