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soundings

In This Issue: Effective Management of Claims & the Control of Costs

Effective Management of Claims & the Control of Costs

Background

In 2001, the Managers implemented their Value for Money (“VfM”) programme, which was introduced to ensure “best practice” was applied to claims handling services, both by the Managers and by third party suppliers. A further aim of the programme was to identify ways of improving and increasing the cost effectiveness of those services. The VfM programme is now entrenched in the Managers’ everyday claims handling and forms the cornerstone of how cases should be handled.

The success of this programme however depends to a great extent on the application of the VfM guidelines that have been agreed. These guidelines are aimed at ensuring that there is a focus by all parties on the

“most appropriate outcome” at each step of the proceedings. The importance of detailed reporting, accurate estimating and, overriding all of this, a clear vision is crucial. That vision of course should be a combined one, taking in to account the various factors making up the fabric of a particular case.

The following summarises a number of aspects that the Managers consider absolutely essential in being able to crystallise this vision.

Case Assessment Reports

An integral part of the VfM programme is that a Case Assessment Report (“CAR”) is prepared. This document should set out the key issues in the case, the proposed action to be taken,

the time frame for that action and the estimated costs. In terms of any proceedings, a CAR should also include a breakdown of the various stages of the proceedings and the costs estimated to be incurred at each of those stages. The production of a CAR enables the Member and the Managers to make an informed decision as to the strategy which should be adopted for the future conduct of the case. As a case develops, the CAR should be updated.

It is however clear the CARs are not being produced with regularity. Given the importance of this document the Managers will be taking steps to ensure that CARs are produced and updated in accordance with the VfM guidelines.



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Importance of accurate estimating

As a legal costs insurer, a proper assessment both of the Member's own costs and potential cost liabilities is essential. The Managers recognise that estimating is not an exact science as there may be a change in circumstances which may materially affect the estimate previously provided. However, if such a circumstance arises, the Managers and the Member must be advised of this change and any estimate must be updated as soon as any change occurs.

The importance of estimating was highlighted in the case of *Mastercigars Direct Ltd v Withers*, a 2007 case, where the Supreme Court costs office held that a firm of solicitors was bound by an estimate in respect of the quantum of bills rendered to a client. It was found that the solicitors' firm was in breach of the Solicitor's Guide to Professional Conduct in that it had not warned its client that costs were escalating well above the estimate previously given. The court held there had been no duty on the client to ask for an updated estimate and whilst the client might well have been aware that unexpected twists and turns in the way the case was

being prepared were occurring, that was not the same as realising that it was going to cost a great deal more money. Accordingly the court held that the solicitors' firm was bound by its original estimate.

This case serves as a useful reminder of the need to ensure that estimates are regularly reviewed and the Managers and Member are kept regularly apprised of developments.

Accurate estimating is also crucial where cases are considered for formal support. The Association's Directors are becoming increasingly concerned at the number of cases where estimates have been provided that have proved to be inadequate and have tasked the Managers with addressing this in the future.

Active Case Management

Over recent years the Managers and the Board have seen an increasing number of disputes that involve a chain of charterparties which are essentially back to back. Difficulties continue to be experienced in resolving these disputes without the need for various concurrent hearings.

In addition it is also clear that meetings between the respective parties' solicitors occur infrequently unless mediation or some other form of dispute resolution process is agreed or ordered. The Managers consider that more face to face discussions between the parties' solicitors, and indeed the parties themselves, would assist in streamlining the litigation process. The Managers will also be focusing on this in the future.

Looking forward

In appropriate cases the Managers will also be asking solicitors to consider alternative fee arrangements, including fixed fees, for specific phases in a case such as initial advice or disclosure.

In 2011 and 2012 the Managers will be focusing on the objective of having a "clear vision" for each case. This will involve much greater focus on the VfM guidelines and the relationships with third party suppliers. Active case management is a core requirement of this approach with much greater focus on the most appropriate outcome for the case.

Should Members have any questions regarding this or the VfM programme then they should approach their usual Club contact.

The UK Defence Club

Thomas Miller Defence Ltd, 90 Fenchurch Street, London, EC3M 4ST
tel: +44 207 283 4646 fax: +44 207 204 2131
email: tmdefence@thomasmiller.com web: www.ukdefence.com