



## Short Minutes Episode 59 - Transcript

### Cover your bases

Settling litigation is ultimately the client's decision, but sometimes when the dust has settled and the client has had time to reflect on the outcome, they experience settlement regret, and the solicitor is the first person they look to for answers.

In the case of *Johnson v Firth*, the client was in financial difficulties and expressed his desire for an early settlement on multiple occasions. Following an unsuccessful settlement conference, the client instructed the solicitor to settle his claim for \$500,000 inclusive. Proceedings were at an early stage and medico-legal opinions had not been obtained on behalf of the client.

Prior to the settlement conference, the solicitor advised the client that if he was not happy with the offer he received he did not have to accept it. After, when discussing with the client, the solicitor advised that 'if he proceeded further, he could get more' and that he should take his time to think about it. This was recorded in a diary note by the solicitor and confirmed in writing to the client.

Almost two years later the client commenced proceedings in the District Court against the solicitor claiming the matter was settled prematurely and at an undervalue.

The District Court proceedings were dismissed and ultimately so were the Court of Appeal proceedings. The court concluded that there was no breach of duty of care and even if there was, causation was not established because whatever the advice, it would have made no difference, the client would have accepted the best offer available in the short term.

The prospect of a client experiencing settlement regret is always a possibility, particularly in highly charged, emotional situations where there is added pressure to obtain a quick and desirable outcome. Solicitors need to be mindful when giving advice to clients in such circumstances and should manage the associated risk by:

- Documenting all settlement discussions in contemporaneous file notes and confirming advice and instructions in writing
- Providing clear advice in writing with respect to any settlement offer received including if the client may improve their position by waiting
- Making it clear that the decision to settle is ultimately the client's own
- Ensuring your advice is understood and obtaining your client's informed consent to settle any action

I'm Glenda Carry