

Defence Litigation amidst COVID - 19

Emerging Trends in the Irish Jurisdiction

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For most businesses, the current pandemic crisis has dealt a fierce blow to business as usual activities for employers, employees, clients, service providers and service users. In this article Pauline Taaffe and Emma Kelly of Beale & Co explain the practical consequences of COVID-19 for the provision of legal services in Ireland and discuss a number of claimant behavioural trends emerging in recent weeks.

The Impact of COVID-19 on the Irish Legal System

The Irish Courts Service has introduced a series of measures to minimise the risk of community transmission of COVID-19 while at the same time continuing to administer justice in public. Examples include:

- Urgent cases are going ahead in the High Court, to include injunctions, examinerships, and judicial reviews. Most other matters will be adjourned generally.
- The Judiciary continue to work on existing matters. If any judgments are to be delivered by the Court, copies of such judgments will be sent to the parties and members of the press at the time of delivery. The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as costs.
- Interim applications can be adjourned by consent via e-mail.

- Court offices remain open with drop boxes being provided for the lodgement of pleadings - thus lessening the need to queue and wait. Court office staff are available by email and telephone.
- Remote court hearings will be facilitated in the new legal term, which commences on April 20th. This pilot likely constitutes a fast track roll out of the Courts Service plans in respect of technology it set out in its Strategic Plan 2017 – 2020. This pilot follows in the footsteps of the Judiciary of England and Wales which recently published its protocol on remote hearings.

Emerging Claimant Behaviour amidst COVID-19

- Claimants in this jurisdiction typically face uncertainty in terms of court list and trial dates. This coupled with the protracted nature of the current health crisis, seems to have impacted on the outlook of Claimants – the inevitable delay faced by Claimants post Covid-19, where their cases are not considered urgent by the Courts, has likely brought about a strong desire on their part to resolve litigation.
- Claimants' and Claimant solicitors' appetites to settle claims appears to have increased. In many cases Claimants' solicitors are approaching Defendant solicitors to open the conversation. This is likely driven by cashflow concerns on the part of both Claimants and their solicitors;
- Many Claimants appear willing to settle claims at an earlier stage in the claims cycle than previously anticipated pre-COVID-19;

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- International Claimants who have issued proceedings in Ireland are demonstrating a keen interest to resolve claims;
- Claimant solicitors are becoming increasingly open to “*all-in*” or costs inclusive settlements, where they may not have been previously, possibly due again to cashflow concerns and where the Claimant solicitors are acutely aware of the anticipated increased delay at the Office of the Legal Costs Adjudicators (formerly the Taxing Master) due to Covid-19.

Adjusting to the “*New Normal*”

The uncertain economic climate that exists throughout Europe and the globe has brought a sense of urgency to all parties to litigation. We are driving forward using both new and existing remote business tools, such as:

- Organising settlement negotiations remotely; by phone, conference call or secure online platforms for video negotiations;
- Holding liability consultations with the Insured, experts and counsel via secure remote technology;
- Conducting without prejudice discussions and costs negotiations by phone and e-mail;
- Participating in remote mediations and scheduling remote experts’ meetings as well as remote medical assessments;
- Reviewing our files to identify Claimants who now may be receptive to discussing settlement possibilities;
- Delivery of several training sessions online in the form of webinars to an international client audience. (For more information / to subscribe, <https://beale-law.com/beale-and-company-previous-webinars.php>)

Further Considerations due to COVID-19

Suitability of remote technology: Not all matters are suited to remote technology and we do consider the merits and make recommendations to our clients on whether a physical meeting might be more appropriate. This is particularly relevant in a case where there are numerous opposing and entrenched views on behalf of the experts as well as the willingness and ability of the participants to use technology.

Cyber security: We are acutely aware of the increased threat of cyber security issues when dealing with confidential and sensitive data. Our recent article offers guidance on this specific point. (<https://beale-law.com/publications/984-protecting-your-business-against-cyber-attacks-during-the-coronavirus-covid-19-crisis.php>)

Excess: Insurers may wish to earmark files, which may be resolved in the short term. Together with your legal advisors, providing Insureds, in particular small and medium businesses, with ample notice in respect of when the excess may become due and owing, may assist with such recovery. Notice will assist Insureds to consider where the excess will come from and allow such monies to be put aside, if available.

Force Majeure: Both Insurers and Insureds may want to consider including a “*Force Majeure*” clause in settlement agreements. Such a clause excuses one party from fulfilling its contractual obligations, where those obligations have become impossible or impractical to perform, due to an event that the parties could not have anticipated or controlled, ie Covid-19. This may need to be considered for example, by way of extra time being permitted in respect of payments, if required. Both Insurers and Insureds should be conscious of not over committing in the current climate.

Conclusion

The delays in court hearings and traditional face-to-face settlement meetings has not resulted in a standstill in

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resolving claims. The shift in the mind-sets of Claimants and their representatives coupled with our utilisation of remote business tools now gives rise to the possibility of closing claims sooner and more efficiently.

If you would to receive any further information on the above, please contact Pauline Taaffe or Emma Kelly to discuss further.

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