

CITY OF LONDON LAW SOCIETY

Construction Committee

Meeting held on 17th July 2007 at 12.30

At Ashurst, Broadgate West, 9 Appold Street, London

Present

Marc Hanson, Ashurst (Chairman)

Drew Norman, Sir Robert McAlpine

Ashmita Garrett, Clifford Chance

John Scriven, Allen & Overy LLP

Chris Parker, Taylor Wimpey

Paul Hocknell, Willis

Karen Clarke, CMS Cameron McKenna

Matthew Jones, Nabarro

Jenny Baster, Arup

John Hughes D'Aeth, BLP

Minutes: Devina Rana, Ashurst

Miranda Ramphul, Denton Wilde Sapte

Michelle MacPhee, Freshfields Bruckhaus Deringer

Martin Potter, Canary Wharf Group

Paul Cowan, White & Case

Peter Hall, Norton Rose (Vice Chairman)

Alex Cunliffe, Ashurst

Zitta Marisi, Berrymans Lace Mawer

Stella Dunn, CLLS

Richard Ceeney, Reed Smith Richards Butler LLP

AGENDA

Apologies

Victoria Peckett, CMS Cameron McKenna

Peter Brinley-Codd, Sir Robert McAlpine

John Rushton, Mayer Brown

Huw Baker, Linklaters

Richard Hill, Norton Rose

David Metzger, Clifford Chance

Bill Gloyn, Aon

Rona Westgate, Norton Rose

Michael Janney, Brachers

Stephanie Canham, Trowers & Hamlin

Michael Salau, Berrymans

Patrick Holmes, Macfarlanes

Gillian Thomas, Lovells

1. NEW MEMBERS

The Chairman welcomed the following new members of the committee: Chris Parker, Martin Potter, Paul Hocknell, Gillian Thomas and Michael Salau.

2. BUSINESS PLAN ISSUES

The CLLS as a whole has developed a business plan, and now requires each sub-committee to prepare their own. The plan for the construction committee is to be short and consist of the committee's aims for the year, including initiatives and government

consultations that will be undertaken. The Chairman proposed and it was agreed that he would draft such a business plan, which would then be circulated to members of the committee for feedback.

Stella Dunn gave a brief summary of recent changes to the CLLS, including the redesign of the webpage for the CLLS, those of its various sub-committees and the E-news updates which are a new feature that the CLLS are to implement. She highlighted that key to the CLLS was a co-ordination policy enabling communication with corporate members (of which there are 51 in total at present). The aim of committee meetings should be to get the knowledge of the committee members out to the broader membership of the CLLS. The construction committee were praised for their efforts in this area.

3. MIDLAND EXPRESSWAY UPDATE

It has not been possible to arrange a meeting with the relevant secretary of state, Margaret Hodge. It was agreed to feed comments on the difficulties raised by the Midland Expressway decision to DEBRR via the CLLS response to the Construction Act Review.

4. CONSTRUCTION ACT REVIEW

The Chairman gave the committee a brief summary of the proposed review of the Act. The Act was to be amended by a Regulatory Reform Order (RRO) but the Treasury Solicitor has advised that the amendments proposed need to be enacted by primary legislation. The Chairman proposed and it was agreed that a working group be established which would look at the proposed amendments to the Act and respond to the consultation. The working group will draft a first response to the changes, and this will then be sent to the rest of the committee for comment. Karen Clarke (on behalf of CMS Cameron McKenna), Ashmita Garrett, Paul Cowan, John Hughes D'Aeth (to nominate someone from BLP) and the Chairman volunteered to be members of the working group.

5. TRAINING PROGRAMME INITIATIVE UPDATE

An update on the initiative was given by Peter Hall, who circulated a proposed scheme of training for junior solicitors and trainees, which had been amended to take account of feedback gathered from members of the committee. The majority of responses favoured bi-annual half day training sessions to be run by volunteers from the committee, who would cover three topics from the scheme per session. At a recent meeting for construction/projects PSLs there was good response from a variety of firms, including CLLS members not represented on the committee, who would be interested in participating in the training sessions. Peter agreed to take forward the initiative by putting together a plan, incorporating a timescale, and allocating topics to volunteers.

6. CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2007 ISSUES

Miranda Ramphul produced for consideration by the committee a note on possible topics to be covered by a proposed paper on the CDM 2007 Regulations. She raised the issue that clients are not aware or prepared for the changes following from the new regulations. There was consensus that the paper was a good idea. It was proposed that the paper would be written by Miranda, who would ask for comments on it. The paper would be made available on the CLLS website, and would be circulated to members of the committee who would then circulate it to interested parties. In order to further promote the paper, an article would be written for a relevant journal.

7. LATENT DEFECT INSURANCE

The Chairman and Paul Hocknell lead a lively discussion on the merits (or otherwise) of latent defects insurance (LDI). Issues covered included the narrow level of cover provided by LDI, the perceived high premiums associated with LDI and rights of

subrogation. Paul highlighted that LDI had been available in the market for over 20 years, and that many of these policies had been tailored to the needs of developers, yet that uptake of LDI policies had been low. The committee stated that this was due to the excessive cost of such insurance policies but Paul argued such policies, on the whole, offered value for money.

Paul urged the committee to encourage clients to pay for technical audit defect surveys prior to purchasing LDI, because even if clients were to decide not to take out the insurance at the date of the survey, if they were to change their mind at a later date, with the survey completed insurers were more likely to make the cover available. Paul stated that he has never had any complaints from clients about interference in the construction process by technical audit surveyors, in fact he has actually had positive feedback.

Paul specified that subrogation was permitted but that it did not often happen because of the uncertainty and high costs involved in the litigation process. Paul proposed writing a short paper on LDI which he would discuss with the Chairman at a later date. The Chairman, on behalf of the committee, thanked Paul for his contribution to what proved to be an informative discussion.

8. **NEXT MEETING**

The next meeting will be held on Wednesday 7th November 2007 at Ashurst.