

NIIFA Members Update

A new firm has joined NIIFA: Milsted Langdon of Taunton.

NIIFA Security for Cost Applications - How Can We Help?

The rules are designed to protect defendants from claimants who are secure in the knowledge that if they lose the case they do not have sufficient funds to meet the costs of the litigation. This leaves the defendant in a very precarious position. A security for costs ruling will stay an action until the claimant can provide security that he can meet costs. Many applications for security of costs fail because of a lack of expert assistance and analysis. The forensic accountant can have a significant role to play and can be used in the following ways:

- In complex cases to prepare schedules of the costs that will be incurred in defending the case;
- Analysing and reporting on the financial status of the claimant;
- Knowing what financial information could and should be provided.

The forensic accountant's specialist knowledge will often prove vital in interpreting the statutory or management accounts. Complexities that may arise include:

1. Accounting policy changes that mask the true trading results
2. Group company transactions – a complex web of inter group transactions which serve to manipulate trading activities and results
3. Unfamiliar formats and presentation of management accounts – which may hide the true results
4. Understanding the true position regarding the claimant's assets and liabilities as disclosed in the accounts.

Our message is – consider using the forensic accountant in such applications – there could be so much at stake.

NIIFA Accountants - Can They Work on a Contingency Basis?

The case of *R (Factortame) v Secretary of State for Transport [2002]* is famous for developing, some say, the hegemony of the European Union, and the rights of Spanish fishermen. However it has now thrown up an interesting decision on costs. A firm of accountants had agreed to provide accountancy services to a number of the claimants for a fee of "8% of the final settlement received". They were owed £200,000 in fees and interest. The Court of Appeal made the following points:

- It would be a very rare case for the court to consent to an expert instructed on a contingency fee basis, because this would lead to a lack of objectivity;
- However, in this case the accountants were not employed as experts but provided back-up accountancy services;
- The court had to decide whether providing such



services on a contingency basis offended public policy.

The Appeal Court decided that it did not offend public policy and allowed the agreement. The Court understood that whoever carried out the calculations (accountants, solicitors, counsel) would always have a financial interest in the outcome of the litigation.

The accountants breathed a sigh of relief!

NIFA Expert Meetings

An Interesting Question:

In the meeting of experts the other side's expert makes concessions, which are noted by your expert. Unfortunately he is advised by his instructing solicitor not to include the concession within the Joint Statement. What can be done?

Suggested answer – CPR r 35.12(3) says "The court may direct...they (the experts) must prepare a statement...showing those issues on which they agree..." There is no authority permitting an expert to resile from anything agreed at the meeting. The signed Joint Statement should contain a comment that the aggrieved party may apply for the statement to be amended to reflect what had been agreed at the meeting. Under r35.24 the expert, or aggrieved party, can make application to the court.

When Can the Claimant Meet the Expert?

A number of interesting points arose from the Court of Appeal decision in P v Mid Kent Healthcare NHS Trust [2002]. The parents in this medical negligence claim requested a conference with the 7 quantum experts without the defendant's solicitors present. This was after the expert reports had been produced. Lord Woolf said what was not permissible was "the idea of one side [testing] the views of an expert in the absence of the other party." Permission was not granted.

However, Lord Woolf said that there is no reason why the experts themselves should not, in carrying out their duties, seek to meet with the claimant "A single expert is entitled to interview the parents for the purpose of preparing a satisfactory report." The court also stated that the provision of written answers to questions would normally mean that their evidence would not require amplification through cross-examination at trial.

NIFA Legal Professional Privilege and the Inland Revenue

As forensic accountants we often encounter parties in litigation who fear that the Inland Revenue may obtain documents, which might trigger a tax investigation. However, the recent House of Lords ruling in R v Special Commissioner, ex parte Morgan Grenfell [2002] preserved the principle of legal professional privilege.

MG had promoted a scheme enabling clients to minimise their tax liabilities. The Inland Revenue issued a s 20(1) notice under the Taxes Management Act 1970 requiring

MG to produce papers relating to legal advice it had received regarding the scheme. The Revenue argued that the section did not preserve any privilege for legal documents.

Lord Hoffman stated that LPP was a "fundamental human right long established in the common law", and which fell within Article 8 of the European Convention of Human Rights. The Lords unanimously decided in favour of MG. Whether this decision will have a marked affect on Revenue practice will be seen.

NIFA Cautionary Tales

Up in Smoke!

A USA lawyer purchased a box of very rare and expensive cigars then insured them against fire. Within a month, having smoked his entire collection, and without even making his first premium payment, the lawyer filed a claim against the insurance company, on the grounds that the cigars had been lost "in a series of small fires". In the ensuing litigation the trial judge agreed that the case was frivolous but held that the claim was nevertheless valid. Rather than instigate a lengthy and expensive appeal the shell-shocked insurers accepted the ruling and paid the lawyer \$15,000.

"Innocent" Money Laundering

For the first time a solicitor has recently been jailed for failing to report suspicion of money laundering by a client. Jonathan Duff was sentenced to 6 months under the Drug Trafficking Act 1994, despite asserting that he had no knowledge he was assisting in the laundering.

With new legislation going through in the UK and Europe more professionals will find themselves charged for unwitting roles in laundering money.

The net is getting tighter.

NIFA Accredited Forensic Accountants

Phillip Allsop, **Barber Harrison & Platt** - Sheffield
Phillip Wood, **Barringtons** - Newcastle-under-Lyme
Mike Mason, **Numerica** - Southampton
Garry Potts, **Conways** - Chester
Peter Lee, **Dendy Neville** - Maidstone
Christopher Yaxley, **Dyke Yaxley** - Shrewsbury
Clive Haslock, **Haslocks** - London
Martin Berry, **Hobsons** - Nottingham

Nick White, **John Gordon Walton** - Leeds
Peter Kelsall, **Kelsall Steele** - Truro
Clive Adkins, **Kilby Fox** - Northampton
Michael Woof, **Little & Company** - Gloucester
Graham Manning, **Manning & Girling** - Ipswich
Roger Isaacs, **Milsted Langdon** - Taunton
Roger Guthrie, **Peters Elworthy & Moore** - Cambridge
Ian Monk, **Numerica** - Leicester
Christopher Hatcher, **Watts Gregory** - South Wales