

“HOW PROJECT MANAGERS GET SUED”

SYNOPSIS OF TALK TO BE GIVEN TO THE PROJECT MANAGEMENT SOCIETY OF THE INSTITUTION OF ENGINEERS OF IRELAND, 13TH DECEMBER 2005

The purpose of this talk is to provide project managers with an insight into how the scope of their potential liability in respect of a Project may be increased, either through their actions on Site or through the terms of their appointment.

We will discuss the following aspects of the project manager's potential liability:

1. Liability in negligence.

By way of introduction, we will discuss when a **duty of care** arises, and who that duty of care is owed to. In particular, we will consider whether there is a duty of care owed to the purchaser, funder or tenant of a development, and we will consider whether there is a duty of care to the contractor.

We will consider the test that is applied in order to establish whether there has been negligence, and we will analyse the **degree of skill and care** that is required of a project manager.

2. Liability in contract - the terms of the Appointment

We will consider how the terms of an appointment can **extend the project manager's liability**. In particular, we will discuss the two main heads of responsibility to the client, the responsibility to keep to the budget and the responsibility to bring the project in on time. We will consider how the wording of an appointment can be critical in setting out the extent of the project manager's role and we will also consider the extent to which the project manager can **limit its liability** under the terms of its appointment.

3. Consequences of the project manager's role as an agent

We will consider the **legal duties of an agent**, and the specific liability that arises if the project manager is the client's agent.

4. **Consequences of the project manager's role as Contract Administrator**

We will consider the consequences of the project manager's role as administrator of the building contract. In particular, we will establish when the project manager has a **duty to act impartially**. We will also consider the circumstances in which the project manager could become liable in place of the client, such as for the cost of a variation that it has ordered or the sum of a Certificate. Further, we will discuss the level of supervision that should be provided at the Site and where liability will lie as between the project manager and the Contractor.

5. **The potential liability to the Building Contractor**

We will consider how the project manager could become **liable to the Contractor**. In particular, we will consider the consequences of a project manager exceeding the authority that the client has granted to it.

6. **Being asked to take on further contractual liability**

It is common market practice that a project manager will be asked to take on further liability by entering into further contracts in addition to its appointment with the client.

We will also consider the consequences of entering into **collateral warranties** and how, in reality, this would extend the project manager's potential liability.

We will also consider the consequences of the project manager's appointment being **novated** to the contractor. In particular, we will discuss whether the project manager retain its liability to its original client, and will consider where the liability will lie in respect of services undertaken prior to the novation.

The purpose of the talk is to establish the position that an Irish judge or arbitrator is most likely to take in relation to the items listed above. As far as we can we will draw on Irish case law, but where there is no such precedents we will use foreign decisions and practical experience as a yardstick for establishing where the liability will, in all likelihood, lie.