

Settlement Regret: When a Closed Litigation File Becomes a Claim

Risk management topics:

General Practice

Litigation

Practice Management



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Today's sensible compromise can become tomorrow's negligence claim. Usually, the real dispute is not about the settlement itself. It is about the advice, the paper trail and whether the client can later say: *"I did not understand what I was giving up."*

Regret is common. Liability is not.

A settlement can feel entirely sensible on the day and deeply unsatisfactory later. Once the dust settles, a client who agreed to compromise may reframe that compromise as the product of negligent advice. The familiar allegations follow: *"I was pushed into it, the risks were not properly explained, or I was never given enough information to make a real choice."*

The outcomes of settlement regret claims will often turn on the advice process and what can be proved years later.

Failure to properly advise on settlement

In *Agnello v Maliganis Edwards Johnson (No 2)* [2026] ACTSC 84 the plaintiff alleged negligent advice about the commutation of workers compensation entitlements and said there had been no written advice about important risks.

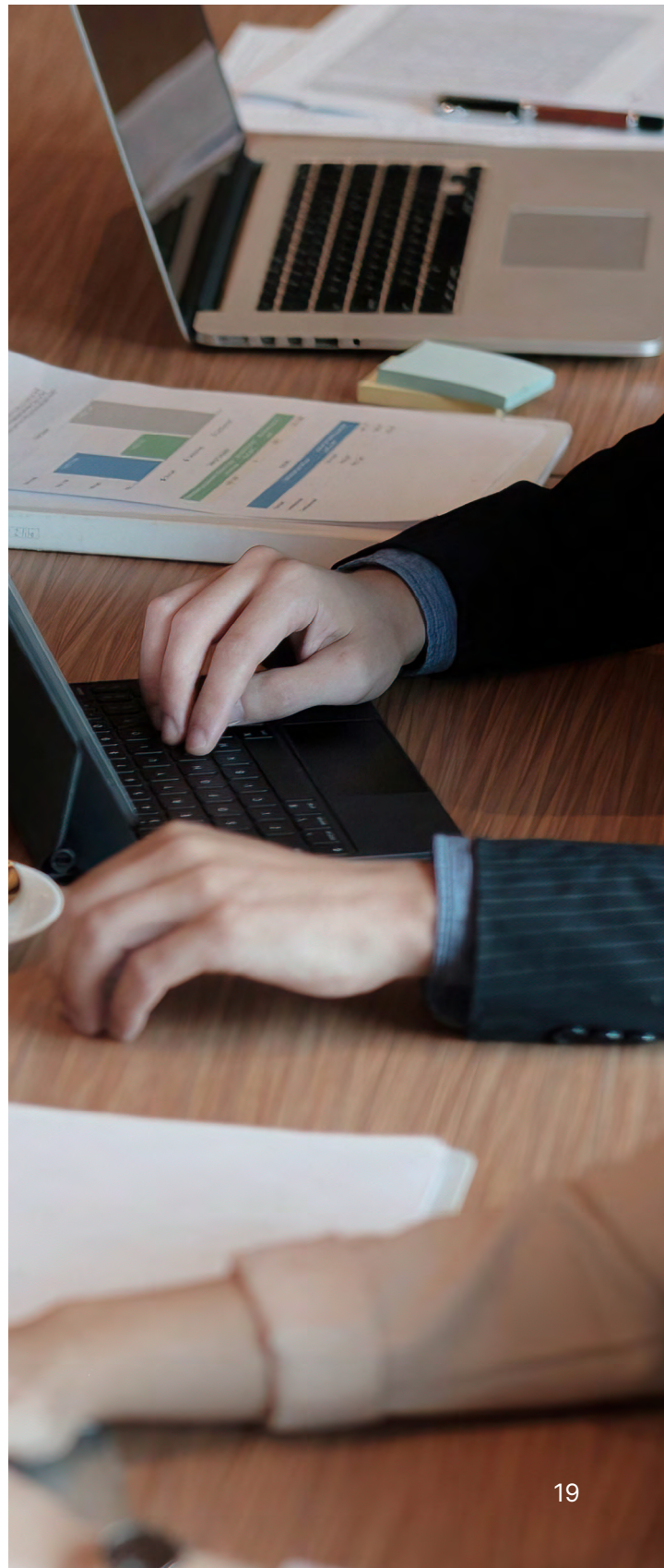
The Court accepted there had been a failure to advise about a particular risk, so there was a finding of breach, but the claim still failed because causation was not established.

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A thin paper trail or missing written advice may expose a solicitor to sharp criticism, even if the plaintiff ultimately cannot prove that better advice would have changed the result.

In *Spralja v Bullard* [2018] VCC 437 the nature and quality of the solicitor's advice about settlement was under the spotlight. The Court criticised advice that was superficial, unbalanced and partly misconceived. It did not properly analyse the competing claims, focused heavily on downside risk without adequately explaining what success might look like, and left no reliable written record of the client's final instructions.

The client succeeded in arguing that he had not been equipped to engage meaningfully with the settlement decision.



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When the file saves the day

Johnson v Firth [2021] NSWCA 237 is an example of the value of written advice. The client was under acute financial pressure and wanted to settle his motor accident claim early. The solicitor repeatedly advised against settling too soon, made it clear the offer did not have to be accepted, suggested waiting for further medico-legal material, and confirmed that advice in writing. Nevertheless, the client instructed the solicitor to settle. Almost two years later, the client sued the solicitor.

The Court of Appeal found no breach and no causation. The settlement figure sat within a reasonable range, and the evidence showed the client was determined to settle. The point is simple: early settlement is not the problem; poor advice and poor records are.

Clear, repeated and documented advice can be invaluable when a disappointed client later alleges pressure, haste or undervalue.

Odlum v Friend [2024] NSWCA 159 also demonstrates the value of a well kept file. The client alleged she had not been properly advised to accept a costs offer before a hearing and later found herself facing a far worse costs order.

The solicitor relied on an email sent when the offer was received and a handwritten file note recording advice given shortly before the hearing. The Court of Appeal confirmed that there was no negligence.

Again, the practical lesson is stark: when memories diverge years later, contemporaneous emails and file notes often carry the day.

The lesson

Taken together, these cases make one point clearly. Settlement regret claims usually arise out of communication failures, not bad outcomes alone. Clients do not have to like the deal, but they do have to understand their options, the risks of settling and pressing on, and that the final decision is theirs.

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Risk management guidance

Five practical steps can help solicitors avoid these claims and, if necessary, defend them:



Confirm in writing the available options, key risks, likely range of outcomes and the consequences of accepting or rejecting any offer.



Give balanced advice. Explain not only the dangers of continuing, but also what success could look like and where the real areas of uncertainty lie.



Record instructions contemporaneously, especially where advice is given urgently at court or by telephone. If possible, have the client confirm their decision in writing.



Avoid language or conduct that could later be characterised as pressure. Make it clear the decision to settle is the client's, even where your recommendation is strong.



Where a client wants to settle for personal or financial reasons against legal advice, document that clearly. A well kept file can be the best defence to a claim built on hindsight and regret.