

Between:**BARRY CONNOLLY****Plaintiff****– and –****ELECTRICITY SUPPLY BOARD, EIRCOM LIMITED trading as EIR, SIRO LIMITED AND ACTAVO (IRELAND) LIMITED****Defendants****JUDGMENT of Mr Justice Max Barrett delivered on 3rd May, 2019**

1. Smith Foy & Partners wish to come off record as solicitors for Eir in these proceedings. This is opposed by Ronan Daly Jermyn, Solicitors, who have been instructed by Eir but are not yet on record. If the court is minded to allow Smith Foy come off record, Ronan Daly want that done on terms regarding costs to date. The key facts are as follows:

31.10.2017 Mr Connolly issues his personal injuries summons.

21.12.2017 Corrigan & Corrigan, Solicitors enter appearance on behalf of Eir.

18.02.2018 Smith Foy, acting for Actavo, write to Corrigan & Corrigan and make an offer that Actavo will indemnify Eir in respect of Mr Connolly's claim and that Smith Foy will come on record for Eir.

08.03.2018 Corrigan & Corrigan write to Smith Foy indicating that they can take over proceedings for Eir and that Corrigan & Corrigan will bear their own costs to date.

09.03.2018 Smith Foy serve a Notice of Change of Solicitors.

26.11.2018.1 Notice of motion concerning within application issues.

2. Some additional points arise: (1) Eir, relying on Actavo's indemnity, as relayed by Smith Foy, did not seek replies to particulars or enter a defence, understanding that Smith Foy would protect its interests and indemnify Eir as agreed; (2) the correspondence between Smith Foy and Corrigan & Corrigan went beyond one letter into a protracted chain of correspondence, culminating in the agreed indemnity; (3) the personal injury summons is specific; there could be no mistake what allegations were being made against Eir; (4) it is not clear what (if any) new information came to hand between December 2017-February 2018 and Smith Foy's application to cease acting for Eir; however, the court sees no reason why matters dealt with by Smith Foy post-indemnity could not have been dealt with beforehand.

3. There is no reason why Eir and Smith Foy should be coerced into a version of that "*forced form of liaison*" referenced by O'Flaherty J. in *O'Fearail v. McManus* [1994] 2 ILRM 81. Thus the sole issue presenting is the issue of costs to date. The court is somewhat mystified as to what Actavo/Smith Foy expected in this regard: the indemnity agreement between Actavo and Eir is a valid legal agreement; and Actavo cannot unilaterally repudiate and/or rescind same. The court will therefore allow Smith Foy to come off record, subject to the terms of the said valid, binding indemnity agreement being at all times observed.