

Successful settlement of fatal claim involving Afghanistan immigrant

We recently successfully settled a claim arising out of a fatal road traffic accident. The deceased was an immigrant from Afghanistan. The claimant, the deceased's widow, and her dependent children, were still resident in Afghanistan. She brought a claim under the Fatal Accidents Act 1976 for her own and her children's dependency on the deceased's earnings, as well as other expenses, such as bereavement damages and funeral expenses. It was claimed that the deceased was sending around £500 a month back to his family and the total claim was pleaded at around £100,000, the majority of which was the dependency claim.

The deceased was aged 42 at the time of his death and there were many uncertainties regarding his past earnings and future earnings potential. There was no evidence of the amount that the deceased sent home to his family, as this was done anonymously and the deceased did not have a bank account. It also transpired that, although the deceased had permission to live in the UK, he did not have a permit allowing him to work. Initially, it was the claimant's case that the deceased would have applied for and obtained permanent residency in the UK and that his family would have joined him. However, he had already been resident in the UK for several years and had not commenced any such application. It was subsequently conceded that, in the circumstances, this was too speculative, and the claim was valued on the basis that the deceased would have returned to Afghanistan.

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There were also issues as to the deceased's life expectancy and whether or not a claim could be made for dependency on his earnings from the UK, given that the deceased did not have permission to work here. We made a deduction in our valuation of the claim to allow for these.

It was also difficult to predict what kind of employment the deceased could have returned to in Afghanistan. All we knew was that he had been in the police force prior to leaving Afghanistan. We therefore assumed that the deceased would have returned to the police force, and managed to obtain some NATO data concerning police salaries, which we used as the basis for the claimant's claim for dependency on future earnings.

The claim was also reduced by 15% for contributory negligence, as it was not clear whether or not the claimant was wearing a seatbelt at the time of the accident.

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For further information please contact Jane Lightfoot
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Defending directors of small companies against the HSE

We recently represented an insured company at an HSE interview in which the Managing Director was interviewed on behalf of the company. It was a small company and he was the sole owner. There was one other director who dealt solely with finance. Two months later the HSE requested a further interview with the Managing Director in his individual capacity. Should the HSE decide to take action against an individual, a successful prosecution could have serious personal consequences which, in addition to a fine, could be imprisonment (although this will be rare) and/or disqualification as a director.

The HSE has guidelines for prosecuting individuals (OC130/8 version 2). These state: "In general we seek to avoid cases against both a company and sole directors who are the principal owners of the company, in circumstances where this would be regarded as

prosecuting the same person twice. In this situation you need to judge whether prosecution is more warranted against the individual or the company."

We referred the HSE to their own guidelines and they decided that they no longer wished to interview the Managing Director in his individual capacity. This tactic may not always have this result but it is certainly worth trying if your client is an owner and director of a small company.

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Obligation to notify defendant of funding

It is always worth taking the point if the claimant fails to comply with his obligation to notify the defendant of funding arrangements. Under CPR44.15, a party who seeks to recover an additional liability must provide the requisite information as stipulated by a rule, practice direction or order. Prior to issue of proceedings, the parties are required to comply with the Practice Direction for Pre-Action Conduct. For CFAs entered into in or after October 2009, this states that the defendant must be notified within 7 days of entering into the funding arrangements if they were entered into after the letter of claim was written. Rule 44.3(B)(1)(c) provides that additional liabilities are not recoverable if this notification has not been given.

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We recently dealt with a claim involving a RTA in the US. Following the damages settlement, the claimant claimed costs of £8,110.18, including a 100% success fee (as the accident occurred in the US and was therefore not subject to CPR 45.11) and an ATE premium. However, the existence of the CFA was not notified to us until the day before the claimant accepted a part 36 offer of settlement, and we did not know of the ATE premium until the claimant's without prejudice schedule of costs was served.

The claimant relied on the case of *Haydon v Strudwick (2010)* in which the claimant had been granted relief from sanctions as the defendant had not been prejudiced by the failure to comply with the rules.

However, *Haydon* concerned failure to serve a Notice of Funding, which we argued is purely a technical breach. This was not relevant to our case, as proceedings had not been issued. The defendant in *Haydon* conceded that it had known from an early stage (ie. the letter of claim) that the claim was being funded by a CFA and, for that reason, relief from sanctions was granted in respect of the success fee uplift but not the ATE premium.

We maintained that this was different from our case, in which no information had been provided regarding funding until the day before the claimant accepted the defendant's part 36 offer. Moreover, at that stage, there was still no mention of the ATE premium. We therefore argued that, applying the principle in *Haydon*, the claimant was unlikely to be granted relief from sanctions.

Relying on these arguments, we negotiated settlement of the claimant's costs in the sum of £4,000.00, ie. less than half the amount claimed.

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Discontinuance in a disease claim

We have recently secured a successful discontinuance in a public liability mesothelioma claim.

The claimant was the widower of the deceased. The deceased's ex-husband worked from 1971-1993 on a manufacturing site currently owned by our insured client. It was alleged that during the course of his employment the deceased's ex-husband had been exposed to asbestos. It was also alleged that the deceased had been negligently exposed to asbestos having washed and shook out her ex-husband's overalls which contained the asbestos fibres.

Our insured was one of four defendants. The other defendants were the former occupiers/owners of the site. It was denied from the outset that the insured was negligent, that any duty was ever owed to the deceased, that the insured had ever employed the deceased's former husband or that any liabilities had ever been transferred.

On receipt of the papers and prior to proceedings being issued, an early offer was made inviting the claimant to discontinue whilst

highlighting the difficulties the claimant faced. The offer was not accepted.

On receipt of the particulars of claim a robust defence was served. The claimant persevered with trying to establish which of the four defendants was the right one to pursue and which insurer was on risk at the relevant time. Proceedings were subsequently stayed.

Determining the relevant insurer brought into consideration the "trigger date" issues raised in the cases of *Bolton MBC v MMI Ltd (2006)* and *Durham v BAI (2008)*. The claimant failed to clearly set out his position. The claimant was put on notice that if proceedings were not discontinued, the insured would seek costs from the claimant, not just from any other defendant found liable if that proved to be the case. A strike out application was also considered but ultimately it was accepted by the claimant that the claim against the insured would not succeed. The claimant then agreed to discontinue whilst paying costs.

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