HENMANS LLP

EPIC (personal injury department newsletter)

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Prompt settlement following detailed investigations

Paul Chadder, partner

We recently settled for £5,000 a claim originally valued at £60,000 by maintaining a robust defence on quantum whilst seeking to undermine the claimant's credibility.

The claimant suffered a shoulder injury in 2008 during the course of his employment for the insured, which manufactured wind turbines. It was alleged that he was required to lower himself beneath a turbine blade in order to use a power tool on its underside and that in so doing he severely injured his rotator cuff. It was clear that working practices had changed after the accident. Liability was admitted pre-issue. The claimant's expert considered this was an advancement case but could not give an accurate timescale until an MRI scan had been undertaken.

It was maintained in the schedule of loss that the claimant had been unable to work for three years since the accident despite the letter of claim suggesting the claimant had been absent for five weeks only. The schedule also claimed a substantial amount for care although the claimant's expert confirmed the claimant could do most things himself.

On receipt of the papers we immediately discussed matters with the claimant's solicitor to highlight issues of concern and seek disclosure of bank statements, updated medical records and a form of authority for release of personnel records.

A background surveillance check was undertaken which suggested the claimant might have been working at night. We obtained a desktop report from an Orthopaedic surgeon who cast doubts on the claimant's expert's evidence. A careful review of the personnel records showed that the claimant had only been off work for a matter of days following the initial injury, that he was capable of performing heavy manual labour on his return and that his symptoms had arguably resolved within a couple of months.

The updated GP records revealed that the claimant's treating surgeon did not think there had been a rotator cuff injury, but that the claimant was suffering from tendinopathy or bursitis.

In view of the claimant's failure to disclose bank statements, we sought an order for specific disclosure. At the same time we made a part 36 offer of £5000, gave details of weaknesses in the claimant's case and disclosed the personnel records. The claimant accepted the offer, bringing the case to a swift conclusion within 4 months of first instruction.

For further information please contact Paul Chadder (paul.chadder@henmansllp.co.uk).

Important change in Part 36 rules

Mary Duncan, partner

The decision in *Carver v BAA* (2008) (that the court may consider in broad terms whether a party has obtained a judgment 'more advantageous' than a Part 36 offer when deciding what costs order is appropriate in a case where a Part 36 offer has been beaten by a small margin), has been useful to defendants but has also been criticised for creating uncertainty. The CPR (Amendment No.2) Rules 2011, which came into effect on 1 October 2011, will overrule the decision but only in relation to offers made on or after 1 October 2011.

There is a new paragraph 36.14 (1A) which reads: "For the purposes of paragraph (1), in relation to any money claim or money element of a claim, 'more advantageous' means better in money terms by any amount, however small, and 'at least as advantageous' shall be construed accordingly.".

It may be wise to review Part 36 offers already made and consider whether or not a further offer should be made to bring the offer within the new rule, but for defendants it may well be preferable to rely on the old rule under Carver and leave any old Part 36 offers as they are.

For further information please contact Mary Duncan (mary.duncan@henmansllp.co.uk).

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Mary Duncan

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Successful defence of GCC complaint

We recently represented a chiropractor in both a civil claim and a complaint to the General Chiropractic Council. The claimant claimed that he attended our client's clinic in October 2008 suffering from low back pain, and that our client had negligently provided chiropractic manipulation to his neck as well as his back, causing a severe neck complaint.

Initially, a civil claim was brought against our client. Liability was denied on the basis that the contemporaneous treating notes recorded that, although the claimant's primary symptom was low back pain, he was also suffering from pain in his neck. On examination, range of movement was restricted by 35% and our client was of the view that tests showed that he was suffering from nerve root irritation in his neck. Our client diagnosed an acute lumbar strain, together with cervical joint dysfunction and mild whiplash syndrome in the claimant's neck. The claimant's neck was treated with gentle spinal manipulation.

The claimant claimed that this treatment led him to develop a problem with his neck that he did not have prior to the treatment and that immediately after the treatment (ie. the same day), he suffered severe pain in his neck. He was referred to a neurosurgeon in February 2009. However, the claimant's GP notes indicated that he had not attended his GP until 5 weeks after the relevant appointment with our client and that, even then, he had only presented with a back problem and did not mention a neck problem to his GP. Further, the GP notes suggested that he had indicated to his GP that he wished to continue the chiropractic treatment with our client, but wished to be referred under the terms of his private health insurance. The claimant did not appear to mention any symptoms in his neck to his GP until 3 months after the appointment with our client. Interestingly, when the claimant was examined by the neurosurgeon, the findings were very similar to those of our client's examination of the claimant 3 months earlier. If anything, the claimant's symptoms appeared to have improved.

Liability was therefore denied on the basis that the claimant was treated appropriately for a pre-existing problem with his neck. Following our detailed denial of liability, we did not hear further from the claimant's solicitors.

Around 9 months later, the claimant instigated a complaint about our client to the General Chiropractic Council, on the same basis as the civil claim. We submitted detailed statements to the GCC pointing out the numerous inconsistencies in the claimant's account. The matter was investigated by the Investigating Committee, which found, without the need for an oral hearing, that there was no case for a complaint against our client. (Case handled by Jane Lightfoot).

Jane Lightfoot, associate

Committal for contempt

In *Nield v Loveday (2011)* Mr Nield and Acromas applied to the court for the committal of Mr and Mrs Loveday for contempt of court. Mr Loveday had brought a personal injury claim following a road traffic accident. Liability was admitted. Proceedings were issued in relation to quantum only. There were suspicions Mr Loveday had exaggerated his symptoms and surveillance was organised. The Lovedays signed witness statements which grossly overstated Mr Loveday's injuries saying, amongst other things, that he had had to be pushed through an airport in a wheelchair to go on holiday; in fact they did not take a plane and drove to their destination.

When this came to light, Mr Loveday agreed a reduced amount of damages and to pay Acromas' costs which far outweighed the damages he received.

Mrs Loveday admitted being in contempt of court and was given a six month suspended sentence. Mr Loveday did not admit contempt. He was convicted and given a 9 month custodial sentence.

New recruit

We are delighted to welcome Thomas Hallett to the defendant insurance team. Thomas trained with Henmans for two years, spending half of that time in the personal injury/professional negligence department, before qualifying as a solicitor in September 2011. He will work in Paul Chadder's team which specialises in the defence of the full range of public, employers' and public liability claims. Thomas also brings practical commercial experience with him, having previously worked in a number of management roles at Marks and Spencer's London head office.

Thomas Hallett, solicitor

The firm is not authorised under the Financial Services & Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of the Solicitors' Regulation Authority. We can provide these investment services if they are a part of the professional services we are engaged to provide. Professional advice should always be sought for assistance in specific areas of the law, and we cannot accept any responsibility for any action based on these articles.