



## Linder Myers Cases of Interest

### Partridge and Partridge –v- Screen Technology Printing (A Firm)

In November 2002, Trevor Ward of Linder Myers, Solicitors was instructed by two clients [a father and son] resident in New Zealand (recommended to Linder Myers by a relative in Wales), to pursue a claim for damages for personal injuries arising out of a road traffic accident which occurred when the New Zealanders were attending the World Cup Rugby Tournament in Wales in November 1999.

The Clients were placed on Conditional Fee Agreements without "after the event" insurance, and protective proceedings were issued in view of the imminent expiry of the 3 year limitation period.

Medical examinations and appointments were arranged in New Zealand, and indeed, New Zealand Counsel were instructed in relation to certain jurisdictional matters. The father sustained a whiplash injury and his claim concluded within early course for £7,000 plus costs.

The son's claim was more complicated. Indeed, as the son had become involved in the "no fault medical treatment system" in New Zealand and was engaged in various forms of therapy and treatment at the New Zealand government's expense, the Defendant in this case made application to debar/prevent the Claimant from proceeding with his claim in the UK. The Defendant abandoned such argument shortly before final Trial. The son claimed damages largely in relation to the development of psychological injuries arising out of the accident; he developed symptoms of Post Traumatic Stress Disorder (PTSD) and Post Concussional Syndrome (PCS) and depression. Shortly after disclosure of the medical evidence obtained in New Zealand on behalf of the son from neuropsychiatrist, neurologist and psychologist, the Claimant, who was studying to be a New Zealand lawyer and professional rugby player, settled his claim for £30,000 plus costs.

Trevor adds the New Zealand clients to his growing list of international clients whom he has represented in the past in both clinical negligence and personal injury cases, from as far afield as Tasmania, Canada, USA, Cyprus, Majorca, France and Guernsey.

### N (A Minor) –v- B

This Claimant was run over when he was 4 years old. His mother had allowed him to play in front of the house with a friend and was inside when an older sibling came and told her that N had crossed the road. The mother came out of the house to discover that N was sitting on the kerb over the other side of the road. At the same time the mother noticed a vehicle approaching at speed. There was a junction at which the driver should have stopped although he did not. The driver continued along the road still picking up speed. By this time N had stood up and stepped into the road. The driver did not see N and hit him. The Police and Ambulance attended the scene and the driver was interviewed by the Police. The driver was adamant that he was not speeding and that N had walked out in front of him.

There was an initial hearing to deal with the issue of liability where the parties agreed a split of 2/3 1/3 in favour of N. This was approved by the High Court Judge at a hearing following submissions regarding evidence.

Following the accident the Claimant was taken by ambulance to the hospital where he was diagnosed with a fractured femur, a fracture of the right mandible, and a head injury which caused some brain injury. One of the main continuing symptoms was thought to be the increased tone in musculature of the right arm and right leg. This was initially thought to be left sided hemiplegia caused by the accident however the medical evidence pointed more to this being an unfortunate coincidental right sided hemi-hypertrophy.

In addition there was a brain injury which resulted in problems with memory and speed of thought which had an impact on daily living and the ability of N to obtain employment. However N came from a socially deprived background where his siblings had also been statemented at school and achieved no qualifications. The parental record of consistent employment was poor. During the course of the case N had failed to take full advantage of educational and employment rehabilitation arrangements. On this basis the claim for future loss of earnings was problematical.

A settlement figure of £300,000 was finally negotiated for N which was subsequently approved by the Circuit Judge. This was equivalent to a settlement of £450,000 on a full liability basis. The figure included the awards for damages for pain,

# update

From the Linder Myers  
Personal Injury Department

## When is an Admission not an Admission?

The answer is when made by a Defendant on liability in a claim for personal injury.

Those who practice in the area will be familiar with applications made on behalf of Defendants to withdraw previous admissions of liability, often made months after the initial admission was made and relied upon by the Claimant or his representatives. From a Claimant's perspective, the practice is grossly unfair and is, to put it mildly, an inconsiderate way of conducting either business or litigation. The article which follows addresses the relevant legal principals and authorities and the tactics which Claimants representatives should consider.

In *Gale –v- Superdrug* the Court of Appeal said that the test was threefold: -

- (i) Is the application made in good faith?
- (ii) Does it raise a triable issue with a reasonable prospect of success?
- (iii) Will it prejudice the Claimant in a manner that cannot be adequately compensated, usually in costs?

In *Gale*, the Claimant was injured at work in 1990. Liability was admitted and an interim payment made. Proceedings were issued in 1993 and the Defendants disputed liability. The Judge struck the Defence out, saying that the most significant issue was the "extremely high level of disappointment and concern for the Plaintiff". An appeal succeeded, the higher Court taking a different view on the relevant issue. Lord Justice Waite stated that "a party resisting the retraction of an admission must produce clear and cogent evidence of prejudice before the Court can be persuaded to restrain the privilege which every

litigant enjoys of freedom to change his mind".

In the later case of *Sollitt –v- D J Broady Limited (unreported)* the Claimant was injured while working for the Defendant in 1994. The case involved a complex corporate history (involving transfer of assets but not liabilities) but in essence in 1996 the then Defendant mistakenly admitted liability. When the Defendant sought to resile from that admission in 1999 the new prospective Defendant was without assets and uninsured, and the individual who had been responsible for the accident had disappeared. The prejudice to the Claimant was clear and the Defendant was not allowed to retract its admission.

In *Flaviis –v- Pauley* the concept was refined. The Claimant, with a stolen passport and a driving licence under a false name, hired a motorcycle which collapsed under him while being ridden at over 60mph and the resulting claim was settled for a sum in excess of £700,000, the Defendants being unaware of the Claimants dishonesty. The Defendants were subsequently allowed to withdraw their admission of liability but not in full. They were not permitted to re-open the issues of negligence or contributory negligence. They were however permitted to withdraw the admission of liability to the extent that they could argue that the hire contract was illegal and hence no duty of care arose in the first place.

In *Hamilton –v- Herts County Council* the Claimant sought damages following an injury to her back at work. Liability was admitted in January 2001 but in early 2002 the Defendants sought

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to withdraw that admission, the insurers having made a mistake in assessing the claim. The Defendants had a realistic prospect of successfully defending and the second part of the *Gale –v- Superdrug* test was satisfied. Again, the argument that the Claimant would be greatly disappointed failed.

The situation is of course now influenced by the Civil Procedure Rules and the provisions of the personal injury protocol. CPR Rule 14.1(5) provides that the Court may allow a party to amend or withdraw an admission. However this rule in common with all the CPR is subject to the overriding objective which is to decide cases justly. In the writers submission that effectively involves a balancing of respective prejudice to the parties on any application by a Defendant to withdraw an admission of liability.

The pre-proceedings personal injury protocol applies to claims of less than £15,000 in

value and it is specifically stated at paragraph 3.9 that there is a presumption that a party will be bound by an admission. The consequence of this must be that in such a "fast track" case the burden of showing an absence of prejudice will rest on the Defendant.

In considering the issue of prejudice the disappointed expectation of the Claimant is irrelevant. What must be established is a prejudice which directly impairs the Claimant's position in litigation.

Reflecting the new climate of conditional fee agreements the Court in Hamilton indicated that account should be taken of the way in which claims for personal injuries are now funded & in particular that admissions which are later withdrawn could jeopardise the future availability of funding. That would be an example of the type of litigation specific prejudice referred to above.

## How should a Claimant proceed when faced with an Admission?

Firstly, the Claimants representatives should ensure that the admission is written, open (i.e. not expressed to be "without prejudice" or similar) and in specific terms. If there are any doubts as to the basis on which the admission is made they should be clarified. If the admitting party will not provide the appropriate clarification then the relevant evidential enquiries should be pursued to protect the Claimant's position, with the Defendant being informed of that and warned as to the likely costs consequences.

If the admission satisfies the criteria above it can probably be relied upon with some comfort although even in fast track cases it may be prudent to ensure that the basic liability evidence e.g. photographs, plans and measurements of an accident scene, have been secured.

In multi track or higher value cases the relying party should consider the early issue of proceedings and securing a judgment. If necessary, further proceedings can be stayed while quantum is investigated.

Alternatively, the claiming parties representatives may need to consider carefully what evidence they will need to secure their clients position in the event that there is a future attempt to withdraw from an earlier admission.

Should that unfortunate situation arise (and we have had Counsel refer to the Defendants conduct in such a case involving an elderly client as "disgraceful") the application should be strenuously opposed. The Claimant should at least have the comfort of knowing he will receive his costs.

Finally, if all else fails the Claimant should consider inviting the Court to adopt a fallback position which is reflected in the case of *Flaviis*.

In the current "no win, no pay" climate admissions are always welcomed by Claimants representatives. However, they need to be treated with some care.



### Two Wheels not Four

We are pleased to announce the establishment of a specialist team to deal with motorcycle accidents headed by Mark Howarth. The department is regularly referred work by brokers and bike hire companies. Mark comments that there are a number of differences between motorcycle accidents and other road accidents

Due to the costs of insurance most motorcyclists are only third party insured and consequently we need to act quickly to ensure that those clients that are still able to ride are returned to the road as soon as practically possible.

Most bikes that are involved in accidents are actually written off; indeed it is fair to say that many of the scooters that are available today are built to be written off. It is quite possible to drop a scooter and this to cause sufficient damage to deem the vehicle a write off.

Bike valuation can be a tricky process. Some bikes are grey imports, i.e. bikes brought into this country legally but unofficially, their specifications significantly different to similarly badged official imports. The valuation of these vehicles is further complicated by the fact that the Milo meters actually give distance travelled in kilometres and this again can greatly effect the valuation of the bike.

There are in fact four classifications of write off – A to D. Category A are vehicles that are damaged to such an extent that there are no salvageable parts, this most commonly occurs in bikes that have been on fire. Category B write offs are vehicles that have some salvageable parts but cannot be repaired. Vehicles that have been deemed write offs in the above two categories should never be put back on the road. Indeed Insurers settling such claims should advise the DVLA of the fact to ensure these vehicles are not reregistered. Category C write offs are where the vehicle is worth more than £1000.00 and the vehicle can be repaired but the costs of repairs are simply higher than the approximately 65% of the value of the bike. Category D write offs are similar to category C but the pre-accident value of the vehicle would be less than £1,000.

Bikes deemed to be category C or D write offs can be put back on the road, quite often the owners of these bikes will undertake the repairs themselves at a cost significantly less than the salvage value of the vehicle.

Another reason why bike write offs are much more common than car write offs is that the repair costs only need reach 65% of the net pre accident value of the vehicle before it is likely to be written off.

The bike itself can contain useful evidence to help prove the motorcyclists claim. Often the defendant insurers produce a statement saying that the motorcyclist was a young lad who came down the road travelling "like a bat out of hell." However for the first two years of riding or until age 21 a bike must be restricted to 33 brake horse power which would mean that it would have been impossible for a bike to have been travelling very fast

Another peculiarity of motorcycle accidents is the number of items of special damage. If the helmet has sustained any impact whatsoever, it should be replaced. A helmet that has been involved in a previous accident can have been so weakened that it does not protect the wearer in a subsequent accident. In addition most motorcyclists will have protective clothing that again should be replaced after an accident, the cost of which can be substantial. A client should always be reminded that such items should be kept in case of possible inspection. Insurance companies often attempt to argue that such compensation for such items should be reduced to take into account wear and tear. The writer believes this argument is flawed. Protective clothing is there to do a specific job, and it can do that job effectively until or unless involved in an accident and consequently those items should be replaced at the full purchase price.

A number of weeks can pass before the settlement for the bike can be reached, during which time a motorcyclist can be without any form of transport. It is therefore important to check the clients alternative transport arrangement. If the client does not have access to alternative transport then the third party insurers are duty bound to compensate the motorcyclist for the loss of use of his vehicle. The weekly amount will vary depending on the particular circumstances of the motorcyclist but over a number of weeks the amount can become quite significant.

Other articles about the specialist aspect of motorcycle accidents will appear in future editions.