



The Personal Injury and Medical Law Teams' Newsletter

April 2010

The application of the apparent extension of the *Fairchild* principle in clinical negligence cases continues: in **Ingram v Williams** the judge, applying the *ratio decidendi* expressed in the judgment of Waller LJ, reflecting the unanimous opinion of the Court of Appeal in *Bailey v MOD* [2009] 1 WLR 1052, held *per incuriam* that there was a material contribution despite concurrent competing causes in circumstances where those causes were both indivisible and unquantifiable. *Deirdre Goodwin* comments

Other cases considered this month include:

- **Noble v Owens** - straitened financial times have brought an increase in fraudulent claims. Insurers are being more assiduous and ingenious in seeking out cases of *plumbus oscillans*. Covert video evidence has apparently paid dividends in *Noble* with the £2.5m balance of C's damages being 'frozen' pending remission of the case to the trial judge to determine whether there has been a fraud and if so, to reconsider the assessment of damages. This decision is significant as D's request for a retrial was rejected because of the need to balance the criteria in *Ladd v Marshall* against the need for finality in litigation – a tension not specifically addressed in earlier litigation: a retrial should not be ordered where the fraud is not clearly established: *Jonesco v Beard* applied.
- **Elliott Group Ltd v GECC UK** - a timely reminder that the courts will not lightly postpone a trial date. Coulson J, referring to his earlier decision in *Fitzroy Robinson Ltd v Mentmore Towers Ltd*, sets out the specific criteria to be considered on such an application when applying the overriding objective.
- **Connor v Surrey County Council** – *Susan Chan* (also a member of the Public Law Team and on the Treasury Counsel 'A' List) digests and comments on a 'stress at work' negligence claim arising from the use or non-use of statutory powers held by a public authority and the balance of competing interests and risks of a policy type which may not be justiciable.

In the **May PIMLU** (to be distributed later this month) we shall be considering the continuing asbestos causation saga in **Reynolds v Secretary of State (2010) EWHC 1191, (QB), Cooke J** where the court relied upon *Fairchild* and the more recent decisions in *Willmore* and *Sienkiewicz* (the appeals against both of which are due to be heard in the Michaelmas Term). There is also comment upon a significant decision in **Hiscocks v Dietrich, (2010) May 4th**, Norwich County Court by Judge Darroch perpetuating the uncertainty of when a successful Part 36 offer 'bites' and whether this is increasingly no more than a game of chance.

Seminars - 2010: the PI Team is drawing up a new programme of seminars for summer and autumn 2010 including the likely change in the credit hire landscape following a recent Court of Appeal case in which Stuart Nicol appeared for the Defendant (judgment to be handed down in late June).

Back copies of earlier PIMLUs are available upon application to clerks@13kbw.co.uk and **Articles, Case and Practice Notes** on major developments are posted on our website: www.13kbw.co.uk

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The May 2010 PIMLU will be sent out later this month