



The Personal Injury and Medical Law Teams' Newsletter

October 2011

A bumper issue for the start of the new legal year. The **LASPO Bill** timetabled to become law by October 2012; running in parallel the Government announces reductions in civil expert and legal fees in publicly funded claims. It is therefore instructive to note the commercial decision in **Brown-Quinn & Webster Dixon v Equity Syndicate Management Ltd and Motorplus Ltd** where Burton J held that claimants holding BTE insurance were entitled to recover the reasonable costs of instructing non-panel solicitors at rates which exceeded those prescribed by the insurers. *Deirdre Goodwin* comments.

Asbestos claims – the requirement to balance harmful exposure with the prevailing state of knowledge is addressed in **Williams v University of Birmingham**. In **Asmussen v Filtroona United Kingdom** the judge conflated the breach of duty test to take reasonable steps to ensure a claimant was not exposed to a foreseeable risk of asbestos related injury, with the causation test of a materially increased risk by reason of negligent exposure – a subtle but vital distinction elegantly explained by the Court of Appeal: *Deirdre Goodwin* comments upon both cases. See too the limitation cases of **Hoey v Sir Robert Lloyd** (digested in September under IN BRIEF by *Lucy McCormick* with further comment by *Deirdre Goodwin*) and **Preston v BBH Solicitors** – *Paul Gurnham* comments.

Exaggerated and fraudulent road traffic claims – *Sarah Lippold* digests and comments on **Brighton & Hove Bus & Coach Company v Brooks** examining the fine distinction between dishonest misrepresentations and gross exaggeration such as to amount to a fraudulent claim.

Paternalistic duty of care – the duty owed by schools in respect of the acts or omissions of third parties is examined in **Woodland v Swimming Teacher's Association & Ors**; in **Sutton v Syston Rugby Football Club Ltd** the Court of Appeal addressed the scope of D's duty to inspect the ground prior to a training session; in **Murphy v East Anglia Council** no duty was owed to a wheelchair patient with full capacity who refused to fasten his seatbelt. *Deirdre Goodwin* comments on these cases.

Part 36 – the interaction of Part 36 provisions with the wide discretion under CPR 44.3(4)(c) was considered by the Court of Appeal in **French v Groupama Insurance Company Limited** – comment by *Neil Vickery*; **Lamb v Hampsey** provides a salutary lesson on the cost of not accepting a Part 36 offer in time. *Deirdre Goodwin* comments and summarises the clarification of “more advantageous” or “at least as advantageous” judgment under new section 1A of CPR Part 36.14.

Other matters of interest include:

- **Industrial Diseases** - significantly increased risk of developing bladder cancer following exposure to industrial chemicals; *Paul Gurnham* digests the Court of Appeal decision in **Ministry of Defence v Wood** and considers the causation test in claims for negligent exposure to organic solvents at work.
- **Low Value PI Claims** – in addition to the ‘portal of doom’, one size does not fit all and the court imported a discretion to allow the late introduction of new evidence at stages 2 and 3: **Gregory v Lamb** – *Deirdre Goodwin* comments – not an unsurprising decision given Allan Gore’s reputation as a founder and fearless proponent of APIL principles.
- **Public Guardian** - no longer 100% fee funded, a new fee structure is introduced
- **Medical Law** – the law struggles to keep abreast of developments in genetics: new Guidelines on consent issued by the **Royal College of Physicians** to encompass discussion with the whole family; **Provision of Hydration and Nutrition for the Terminally Ill Bill**; and withdrawal of artificial hydration and nutrition is reviewed in **W v M and S and A NHS Primary Care Trust** *Deirdre Goodwin* comments

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