



Motor News
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News

M.O.J. Personal Injury Claims Process Costs Approved

The Ministry of Justice has endorsed the agreement reached between claimant and insurers' representatives on the fixed costs for each of the stages in the new RTA personal injury claims process for claims valued between £1,000 and £10,000. The agreed fixed costs are:

- £400 Stage 1 (the claimant solicitor completes the claim notification and sends it to the insurer who may admit/deny liability);
- £800 for stage 2 (where liability is admitted, the claimant obtains a medical report and the process continues with offers and negotiation of a settlement to a strict timetable);
- £250 paper hearing /£500 oral hearing for Stage 3 (where the parties cannot agree a settlement and the case goes to court).

M.O.J Delay?

The Post magazine has quoted an unnamed source "close to the process" as saying that the implementation of the reforms will be delayed by at least a month due to the Rules Committee being unable to sign off the draft rule changes until 2010. If correct this would see the reforms delayed until May 2010 at the earliest.

For additional information on the new process visit the Ministry of Justice web site at www.justice.gsi.gov.uk

Sentencing Proposals for Corporate Manslaughter Offences Published

The Sentencing Guidelines Council has published proposals for sentencing under the *Corporate Manslaughter and Corporate Homicide Act 2007*. The proposals are contained within a consultation paper issued in October of this year and to which interested parties are invited to respond by January 2010.

Although the Act has been in force since April 2008, to date only one company has been charged with an offence under it and this case (*R v Cotswold Geotechnical Holdings Ltd*) is not due to be tried until February 2010.

A broad summary of the SGC's proposals is set out below:

- Companies should face punitive and significant fines but these should not be calculated as a percentage of annual turnover as previously suggested
- Multi-million pound fines should be the norm with fines rarely falling below £500,000
- In almost all cases companies should be forced to publicize convictions ensuring that shareholders, customers and other stakeholders are made aware of them
- Fines in respect of workplace accidents causing death but falling short of Corporate Manslaughter should be in the order of hundreds of thousands of pounds and rarely fall below one hundred thousand
- In deciding on the level of fine the court should not be influenced by the impact on shareholders or directors but may take into account the effect on innocent workers and on public services
- Aggravating factors and mitigating circumstances should also be taken into account

Comment: although the consultation period is not yet concluded it is thought likely that the above proposals will be adopted

Third Party Rights against Insurers Bill Reaches Committee Stage

- The Bill is intended to replace the *Third Parties (Rights Against Insurers) Act 1930* and aims to create a more efficient and cost effective process for third parties bringing claims against the insurers of insolvent defendants;
- Under the new process the defendant's rights to the benefits of a liability policy would be transferred to the claimant and would allow them to pursue their claim through only one set of proceedings (the current process requires claimants to first issue proceedings to establish quantum and liability and then to issue separate proceedings against the insurer);
- Claimants are no longer required to restore insolvent companies to the register of companies before issuing, saving further time and money;



- The Bill sets out a detailed procedure to enable a third party to obtain information about the insurance cover prior to obtaining judgment so that they can see if it is actually worthwhile bringing proceedings in the first place.

Comment: the Bill has made rapid progress thus far and may well be enacted prior to Parliament being dissolved for the next general election.

CRU Issues Reminder on Time Limits to Claim Reductions on NHS Charges

Following pressure from the insurance industry the Compensation Recovery Unit has issued a reminder detailing the procedure and time limits for claiming a reduction in NHS charges where claims are settled net of contributory negligence (for accidents occurring on or after 29.01.07).

A compensator must apply for a review of the certificate detailing the charges within 3 months of either the date of issue of the certificate or of the date on which compensation is paid if this is later.

Comment: a number of compensators have lost out on reductions in NHS charges due to missing the deadline for application. The deadline was not previously mentioned on the CRU website or guidance notes.

Draft European Bus and Coach Passengers Rights Directive Amended

Following successful lobbying by Insurers' representative bodies, draft regulation before the European Transport Council has been amended to remove strict liability and the requirement to make interim payments in respect of bus and coach passenger claims.

Article 6 if implemented could substantially increase the maximum bereavement awards in England and Wales to 220,000 Euros per person but this may be limited to passengers travelling internationally. Article 8, which replaces the article requiring Interim payments, now requires only that the carrier shall provide reasonable assistance with regard to the passengers' immediate practical needs post accident.

Comment: this is very good news for bus and coach companies and their insurers. There had been grave concerns that the introduction of strict liability for bus and coach passengers coupled with a requirement to make interim payments would be hugely expensive.

Law Commissions Publish Consumer Insurance Bill

The law commissions of England and Wales and of Scotland have published a report and draft bill proposing changes to the law for individual consumers purchasing insurance. The *Consumer Insurance (Disclosure and Representation) Bill* if enacted would abolish the obligation of consumers to report all material facts when incepting an insurance policy. Instead they would be required to take reasonable care to answer insurers' questions fully and accurately.

The bill sets out three types of misrepresentation:

- If it is done unwittingly and is due to an error that a “reasonable person” might have made then the insurer will still be obliged to pay any subsequent claim;
- If the misrepresentation is the result of carelessness then the insurer is allowed a proportionate remedy such as paying only part of the claim;
- If the policyholder made a “deliberate” or “reckless” misrepresentation then the insurer will be permitted to avoid the policy but it is intended that this would only be permitted in the most serious cases.

A consumer may be bound by careless, deliberate or reckless misrepresentation by an intermediary but only if they are the consumer's agent and not the insurer's.

The bill would also abolish “basis of contract” clauses (where all answers on a proposal form are treated as warranties breach of which would enable avoidance).

Comment: supporters of the bill say that it will update and simplify existing law and better protect the interests of consumers. It is however unlikely to be enacted prior to the next general election.



Costs

CFA Unenforceable, BTE Available: Tranta v Hansons (Wordsley) Ltd: Supreme Court Costs Office – Supreme Court Costs Office 2009

In this QBE case our solicitors were successfully able to argue, on behalf of the defendant, that there was no obligation to pay the claimant's profit costs.

The claimant had entered into a CFA after suffering a fall on the defendant's bus and sustaining injury on the 25th of March 2005. As the CFA was taken out prior to 1st November 2005 the *CFA Regulations 2000* applied and these were materially breached by the claimant's solicitors' failure to investigate the existence of BTE cover for the bus passengers which was provided by the QBE policy.

The fact that the claimant might not have opted to use the BTE cover was immaterial, a material breach of the regulations had occurred because she was denied the opportunity of deciding whether or not to make use of the BTE cover.

Comment: although the CFA 2000 Regulations were repealed on 1st November 2005 there are still a considerable number of claims outstanding where the CFAs were taken out prior to this and the regulations still apply. Where the regulations have been materially breached these older CFAs may be successfully challenged.

Contributory Negligence, Small Claims Track, Applicable Costs: Parveen v Farooq - Liverpool County Court (2009)

The claimant had agreed damages for personal injury with the defendant in the sum of £875 net of contributory negligence. The defendant agreed to pay costs in addition but only fixed costs as allowed under the small claims track. The claimant issued Part 8 proceedings in an effort to recover fixed recoverable costs as per Part 45 but was unsuccessful at first instance with the judge ruling that as the net damages were within the small claims track that costs regime should apply.

The claimant appealed arguing that the judge had been wrong to fix the costs by reference to the small claims track and should have considered the gross value of damages.

Dismissing the appeal the judge held that there was no requirement within the rules for the court to consider the impact of contributory negligence. The claim had been compromised at £875 and the small track was the normal track for a claim of that size. At the costs only stage the court knew the level of agreed damages and it was not required to assess the value of the claim.

Comment: this is the first appeal decision on what has proved to be a thorny costs issue. Judge Stewart QC is a highly respected costs judge who has never been overturned on a costs matter. Hopefully this decision will finally see an end to disputes on this issue.

Correct Fee Earner not Specified, No Entitlement to Costs: Booth v Oldham MBC – Watford County Court (2009)

In this case dealing with pre-action disclosure the judge held that no costs were recoverable by the claimant in respect of their application. The letter of claim had not complied with the pre-action protocol as it was unclear and failed to identify the accident locus.

In addition although a substantial part of the work had been done by a grade “D” fee earner the statement of costs served suggested that all of the work (bar attendance at the hearing) had been done by a grade “A” fee earner. The judge took a very dim view of this and stated that the grade “A” fee earner should be personally notified of his disgust.

Comment: senior fee earners are often credited with carrying out work on cases which defendants believe they are over qualified for. Cases such as the above will no doubt fuel defendants’ suspicions about work being falsely accredited to senior fee earners.

Our thanks go to Berryman Lace Mawer for telling us about this unreported case.



Credit Hire

Appeal Permission Refused: Copley v Lawn and Madden v Haller – Court of Appeal (2009)

Permission to appeal the Court of Appeal's decision to the Lords in the above conjoined credit hire case has been refused.

The Court of Appeal's decision confirmed that claimants who reject offers of replacement vehicles out of hand will be held to have failed to mitigate their losses if they then opt for more expensive credit hire but only if the offer is specific as to the cost to the defendant and the defendant genuinely has replacement vehicles available. Failure to mitigate will restrict the hire claim to the amount that the defendant would have paid for a replacement vehicle (see *Autumn Motor Quarterly Autumn 2009*).

Comment: few commentators expected the defendants to succeed on appeal and insurers are already using alternative strategies. Whilst one chapter of credit hire litigation has now ended there will undoubtedly be further cases particularly over the rates charged.

Credit Hire Company Penalized for Delaying Repairs: Tiller v Green – County Court (2009)

The defendants successfully challenged the duration of the credit hire period on the basis that the credit hire company, who were acting as the claimant's agents, had unnecessarily delayed repairing their client's vehicle.

The credit hire company Accident Exchange tried to blame the repairing garage but after they were brought into the action by the defendants the garage were able to prove that they were blameless. The judge held that the delay had been due to Accident Exchange's failure to instruct an engineer and to authorize repairs promptly. As a consequence the defendants were only liable to pay £1,790 of the £9,303 hire charges. Accident Exchange was ordered to pay the defendant's costs on an indemnity basis and those of the garage.

Comment: historically it has not been possible for defendants to penalise credit hire companies for delays with repairs. In this very welcome judgment for defendants the credit hire company was held accountable for the delay which will hopefully encourage credit hire companies to authorize repairs more promptly in future.

Non-compliance with Court Directions, Striking Out: Hussain v Mohammed and Fortis – Liverpool County Court (2009)

The claimant sought a small amount of damages in respect of personal injury and damage to his vehicle and to recover much more substantial ongoing credit hire charges of £35,000 on behalf of the hirers Direct Accident Management Ltd. The first defendant's insurers had grave reservations as to the authenticity of the alleged accident circumstances and even as to the true identity of their policyholder.

The claimant supplied essential evidence, which should have been forthcoming some months previously, only a few days before trial. The defendants applied to have the claim struck out on the basis that the claimant had not properly complied with the court directions by disclosing this evidence so late in the day. This application was heard as a preliminary issue at the trial and the claim was struck out in its entirety with an order for the claimant to pay the second defendants' (i.e. the insurers) costs.

Comment: delay in the disclosure of evidence is a common frustration for defendants seeking to investigate credit hire claims. In this case the court applied a strong sanction for the claimant's delay which will hopefully encourage future claimants in the area to comply with court directions more promptly.

Our thanks go to DWF Solicitors, who acted for the second defendants, for telling us about this case.

Hire Agreement Signed by Party other than the Claimant: Bracken v Scarth Roofing – North Shields County Court 2009 and Beeken v Ruffell – Kings Lynn County Court 2009

In the above two cases the credit hire agreements were signed by parties other than the claimant.

In *Bracken* the claimant's wife took delivery of the hire car, signed the agreement and completed the mitigation questionnaire. In *Beeken* the claimant's father signed the agreement to hire a replacement motorcycle.

In both cases the hire claims were struck out in full as the claimants were found to have no legal liability to pay hire charges.

Comment: defendants should always check who has actually signed credit hire agreements. If the claimant has not signed they may have no liability to pay hire charges and thus the defendant will have no liability to pay the claimant. Thanks to Beachcroft LLP for telling us about these cases.



Untrustworthy Witness: Mohammed Farooq v D and G Coach and Bus Ltd – Liverpool County Court 2009

In this QBE case the claimant's substantial claim for credit hire was dismissed after his evidence was shown to be full of contradictions. HHJ MacKay found him to be an unreliable witness and completely rejected his evidence.

It came to light that the claimant had put what was probably a replacement vehicle on cover on his insurance policy before commencing credit hire.

Comment: the QBE claims handler was prompted to investigate the claim after seeing a bulletin from our Motor Technical Unit setting out some of the tell tale signs of inflated credit hire claims. This success highlights the importance of circulating market intelligence.

Fraud

“Crash for Cash” Driver Jailed: R v Mohammed Patel- Manchester Crown Court (2009)

A fraudster who charged £500 a time to crash vehicles by slamming on his brakes whilst driving in front of unsuspecting third party motorists was sentenced to four and half years imprisonment at Manchester Crown Court. Mohammed Patel was reported to have caused 93 crashes in a three year period allowing the various owners of the cars he was driving to make fraudulent claims estimated as being worth roughly £1.6m.

The fraud came to light when Patel was spotted by workers at an office overlooking one of his favourite locations for causing crashes being repeatedly involved in low speed collisions whilst driving a variety of cars.

Comment: one of the claims featured in the prosecution involved a QBE insured Network Rail vehicle and a Toyota Yaris driven by Patel. A video clip of this incident was recently featured in a BBC news item about the case.

Fictitious Accident: Zeb v Broughton-Birmingham County Court (2009)

In this QBE case the claimant alleged that he and his passenger were injured when our policyholder's coach collided with his stationary car. The policyholder denied that any accident had occurred.

“Patel was prepared to put lives in danger to make money. I have no doubt that people driving on the Roads of Greater Manchester are safer with this individual behind bars. This abuse of the insurance claims system has implications for all law-abiding road users.”

Greater Manchester Police Specialist Operations Branch

“.....the possibility that another emergency vehicle might drive into the junction against a red light at the very moment that PC Price drove into it was remote in the extreme. I consider that in imposing a duty on him to drive in such a manner that he could stop in the event of another emergency vehicle emerging from Linthorpe Road, the judge placed an unreasonably high burden upon him”.

Mr Justice Owen

At trial the claimant applied to amend several important particulars including the location of the accident, type of damage to his car and even his own name! The court refused to permit these amendments and went on to dismiss the claim.

When asked to explain the many inconsistencies in his evidence the claimant told the court that he suffered from undiagnosed dyslexia!

Comment: whilst some of the fraud encountered by the insurance industry is highly sophisticated some of it is not!

Liability

Two Emergency Vehicles in Collision: Craggy v Chief Constable of Cleveland –Court of Appeal (2009)

In a highly unusual accident a police car and a fire engine on their way to two separate emergencies collided at a traffic light controlled cross roads. The police driver had a green light in his favour and the lights were red against the fire engine. The fire engine driver treated the red traffic light as a give way signal as the driver of an emergency vehicle is entitled to do, not anticipating the presence of the police car. Both vehicles were displaying flashing blue lights and sounding their sirens.

The fire engine driver was injured and sued the police driver for damages. At first instance the judge held that the police driver was negligent in that he should have been able to stop when another emergency vehicle entered the junction. He found two thirds contributory negligence on the part of the fire engine driver.

The police driver successfully appealed. The Court of Appeal held that to expect the police driver to have driven in such a way as to be able to stop in case another emergency vehicle had entered the junction at the same time was to impose an unreasonably high standard on him. The circumstances of the accident were highly unusual and not ones that a driver could reasonably be expected to anticipate. The cause of the accident was the claimant's negligence in entering the junction against a red light when it was unsafe to do so.

Comment: the Court of Appeal does not expect even professionally trained drivers to anticipate such highly unlikely occurrences.



Completed 4th January 2010 – Copy Judgments and source material for the above items can be obtained from John Tutton (contact no: 01245 272756, e-mail: john.tutton@uk.qbe.com).

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