

CASE NOTES

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AM v (1) Dr Shah (2) Medway Community Healthcare (3) Medway NHS Foundation Trust

Quantum: clinical negligence delayed diagnosis of cervical spine abscess

Settlement on 5 February 2018

Facts

The claimant (AM) was a 65-year-old retired IT consultant at the time of his injury in June 2012.

On 25 May 2012, AM felt a sudden painful crick in his neck. He became unwell and feverish.

On 28 May and 30 May 2012, AM saw his GP, Dr Shah (D1), who prescribed anti-inflammatory analgesia on both occasions.

On 1 June, AM had a home visit from Dr Shah as he was now unable to pass urine and his legs felt weak. Dr Shah diagnosed a urinary tract infection and prescribed antibiotics.

Later that afternoon, AM deteriorated and his wife called an ambulance which took him to Medway Maritime Hospital, D3. AM was referred by A&E to the GP out-of-hours service based at the hospital, called MedOCC (D2).

AM saw a GP at MedOCC who noted the diagnosis of UTI and referred AM to the hospital's urology team.

The urology team diagnosed urinary retention secondary to constipation. A blood test showed raised infection and inflammatory markers. AM was given IV antibiotics and admitted.

On 3 June, a lumbar puncture was performed which found raised pressure and yellow coloured cerebral spinal fluid (xanthochromia). AM was transferred to the Critical Care Unit.



By 5 June, the claimant's legs and arms became completely floppy and he was unable to get out of bed.

On 6 June, an MRI scan of the spine was performed and showed an epidural abscess spanning C4-C7, exerting pressure on the spinal cord.

AM was transferred to King's College Hospital for emergency cervical decompression and drainage of the abscess.

The surgery came too late and AM was diagnosed with incomplete tetraplegia. He required a wheelchair to mobilise and suffered bladder, bowel and sexual dysfunction.

The claim

AM sent letters of complaint to Dr Shah and Medway Maritime Hospital.

Dr Shah admitted she should have realised there was a problem arising from the spine on 1 June 2012. The hospital pointed the finger at MedOCC, a

separate entity under Medway Community Healthcare, saying that the GP failed to pass on key information about AM's stiff neck and leg weakness.

The expert evidence obtained indicated there was a delay by all three potential defendants in diagnosing the cervical spine abscess and performing surgery. Antibiotics alone were insufficient given that AM's spinal cord was being compressed.

Pre-Action Protocol letters were sent, but liability was not admitted.

Court proceedings were commenced. In D1's defence, the admission made by Dr Shah in her complaint response was resiled and liability denied.

D2 also denied liability. The hospital, D3, admitted breach of duty in that a neurological cause for the urinary retention should have been considered on 1 June 2012 (the day AM first attended at the hospital). However, causation was denied.

At the costs and case management hearing in May 2016 the parties were given permission for six liability experts in the fields of GP, A&E, urology, microbiology, physician and neurosurgery.

Permission was given for five quantum experts in the fields of spinal rehabilitation, care, OT, physiotherapy and accommodation.

The claimant was given permission to serve an amended particulars of claim specifying when the surgery ought to have been performed, based on D3's breach of duty admission in its defence.

It was alleged that the surgery should have been performed by the morning of 2 June and AM would have avoided all of his injury.

In D3's amended defence it admitted that the surgery should have taken place by the morning of 2 June; however, it made no admissions as to what difference this would have made to AM's clinical outcome.

The claimant therefore applied for summary judgment.

Two days before the hearing D3 admitted that AM would have avoided his tetraplegia, but it denied causing the bladder and bowel dysfunction, although this too was later admitted.

Once full admissions had been obtained from D3, the claimant discontinued the claims against D1 and D2 on the basis that D1 and D2 bear their own costs and the claimant reserved the right to claim his costs relating to D1 and D2, from D3.

Accommodation claim

The claimant's schedule of loss amounted to £3.3 million (having increased from £2.6 million due to the change in the discount rate to -0.75%).

D3's counter schedule was £1.3 million.

The main difference between the parties was the accommodation claim. It was agreed by both sides that the claimant needed to move to single storey accommodation, but the defendant offered nil on the basis of the negative discount rate.

AM claimed the full cost of the new property, but offered the defendant a legal mortgage with the effect that the property would revert back to the defendant on the later of the claimant or his wife's death. At this stage the *JR v Sheffield Teaching Hospitals* appeal had not been settled.

Settlement

A joint settlement meeting took place on 3 November 2017. The trial was due to commence on 12 March 2018.

At the JSM the defendant offered £1.7 million and the claimant offered £2.5 million, but no further progress was made.

A few weeks later the defendant made a Part 36 offer of £2 million. The claimant responded with four offers: (1) a Part 36 offer at £2.3 million including provisional damages (2) a Part 36 offer at £2.5 million on a full and final basis (3) a *Calderbank* offer at £2.3 million (with provisional damages)

attaching the legal mortgage and (4) a *Calderbank* offer at £2.5 million (full and final) attaching the legal mortgage.

On 2 February 2018, the defendant made a *Calderbank* offer of £2.4 million on a full and final basis, open for acceptance for seven days. This offer was accepted by AM on 5 February 2018, five weeks before trial.

Andrew Ritchie QC and Stephen Glynn of 9 Gough Square, instructed by Stewart Young of Stewarts, acted for the claimant.

Ashby v D1, D2

The claimant was employed by the first defendant as a maintenance fitter working at an ASR recycling plant owned and operated by the second defendant. The recycling comprised metal waste extraction from multiple materials and sources.

Materials were ground down to the smallest level to allow for metals to be extracted with dust created as a result.

Conveyors were open to the surrounding area and dust would be blown off into the surrounding environment.



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The claimant spent time cleaning and maintaining the machinery, which caused movement of inhalable dust.

The claimant was not provided with breathing apparatus or a mask.

As a result of the exposure to the hazardous materials, he developed bilateral pneumonia which caused multiple organ failure and permanent lung damage.

Liability and causation were strongly disputed by both defendants, alleging that the claimant had been provided with

appropriate PPE including masks, and that the problems with his lungs were not related to his working environment, but a pre-existing condition.

Following an inspection of the site it was determined that there were high levels of dust present, although the components of the dust could not be confirmed without further investigations.

Expert evidence was provided by three occupational hygienist experts on behalf of all parties.

Despite the strongly disputed claim, the case settled by way of JSM in the gross sum of £145,000.

The claimant's net award totalled £100,000 after all relevant benefits were deducted.

Andrea Ribchester-Hodgson supervised by Amy Smitheringale, both of Spencers Solicitors, acted for the claimant

Berrymans Lace Mawer acted for the first defendant and Plexus acted for the second defendant

ASSISTANCE

Alfred Herbert Limited – asbestos exposure evidence required

We are currently investigating a claim for compensation on behalf of our client who has been diagnosed with mesothelioma.

He was exposed to asbestos whilst working for Alfred Herbert Limited at Edgwick Works in Coventry, one of the largest machine tool manufacturers, as an apprentice draughtsman from 1958 until 1963. Our client recalls working in the foundry at the works.

Any asbestos exposure evidence from similar claims would be much appreciated.

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INSURER ASSISTANCE

Palmer Hall Timber Company Limited

Registered Address: Aldwych House 81 Aldwych, London, WC2B 4HQ

Company Number: 00237914

Date of Incorporation: 14/03/1929

Dissolved: 15/06/1999

Period sought: 1959 – 1961

Contact: Kirstie Louise Devine / Sonia Akram ref: 05256693-00000001 / IRWIN MITCHELL LLP / Wellbar Central / 36 Gallowgate / Newcastle-upon-Tyne / NE1 4TD / DX: 317201 Newcastle-upon-Tyne 51 / Tel: 0191 279 0136 / Fax: 0191 230 2478 / Email: kirstie.devine@irwinmitchell.com / Sonia.akram@irwinmitchell.com 05256693-00000001

Cala Homes (Yorkshire) Limited formerly Victor Homes /Victor Group Ltd / Delmorgan Ltd

Company Number 02282487

Of Cala House, 54 The Causeway, Staines, Surrey

Nature of business: Construction

Period sought: 1985 – 1990

Contact: Brian Robinson / ROBERTS JACKSON LTD / Sandfield House / Water Lane / Wilmslow / SK9 5AR / DX: 20807 Wilmslow / Tel: 0800 001 4496 / Fax: 01625 456629 / Email: Brian.Robinson@robertsjackson.co.uk

ED Williams & Sons

West Camden Works, High Street, Runcorn, Cheshire, WA7 1AJ

Period sought: 1966-1967

C Chapleo & Sons

Leyburn, North Yorkshire

Period sought: 1948-1975

Contact: Mark Ellis / TILLY BAILEY & IRVINE / York Chambers / York Road / Hartlepool / TS26 9DP / DX: 60650 Hartlepool / Tel: 01429 264101 / Fax: 01429 274796 / Email: mellis@tbitlaw.co.uk

David Holland MSc(Bioengineering), BSc(Hons) Pod Med, F.BCPA.

David M Holland Podiatry

An experienced clinical podiatrist. I can provide fast, concise and accurate Claimant, Defendant and Single Joint Reports.



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