



MAKING EXPERTS WORK FOR YOU

WORKSHOP NOTES: DISCUSSION ONE

Gabriel Farmer, Robert Sowersby & Daniel Neill, Guildhall Chambers

Discussion One: The joint expert who “decides the case”

You act for the Defendant in a personal injury claim brought by Homer (35), a previously fit man with no history of back pain, who suffered a liability-admitted rear end RTA collision. His evidence is that he was wearing a seat belt but there is no other evidence on that issue and there are no recorded seatbelt injuries. It is 2 ½ years post-accident and Homer still suffers low back pain. This prevented him working as a computer programmer, so that he lost his job six months after the accident. He is also restricted in heavier tasks around the home and cannot drive long distances. He has had monthly physiotherapy. There is an x-ray and an MRI. Mr Rivera, orthopaedic consultant, is jointly instructed. He has prepared 2 reports. He states:

1. Having examined the Claimant, in a case like this I do not need to see any of the physiotherapy notes, or the x-ray or MRI.
2. I believe that Homer was wearing a seatbelt at the time of the accident.
3. His *first* report indicates ‘I expect Homer’s problems to resolve within 12 months of the incident; he should have been able to return to work after 2 months, and any domestic tasks (pacing himself) after 3 months’. His *second* report states that Homer has not recovered as expected, and that it is therefore clear that the injuries caused in the accident will last indefinitely.
4. I have examined victims of whiplash for 20 years, and do not consider it helpful to refer to any literature in reaching my opinion.

Issues

1. Is there anything in that opinion you can legitimately challenge?
2. Should you pose questions to Mr Rivera or not?
3. Should you make an application to obtain a further report on a single instruction?
4. Will you succeed and if so, why?
5. What happens/should happen to Mr Rivera’s evidence?



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Discussion Two: Replacing experts

The Claimant obtains a report from an orthopaedic expert (Mr Dumb). By mistake, he refers to the existence of Mr Dumb's report in early correspondence, but never discloses the report. He serves proceedings several months later, and serves a medical report from Mr Smart. You are permitted to rely on orthopaedic evidence and obtain a report from Mr Dumber. The report agrees in all material respects with Mr Smart. You do not serve Mr Dumber's report, and want to obtain a second report (from Mr Razor). The Claimant's representatives refuse to permit the Claimant to attend an appointment with Mr Razor. You apply to the Court for permission to rely upon Mr Razor's evidence, and to seek disclosure of Mr Dumb's report.

Issues

1. Does the Claimant need permission to rely on Mr Smart's report?
2. Does he have to disclose Mr Dumb's report? Why?
3. Would your opinion be different if Mr Dumb made an error-strewn review of the Claimant's medical records?
4. How likely are you to get permission to rely on Mr Razor? Why?
5. Will you have to disclose Mr Dumber's report?
6. Assuming Mr Razor does see the Claimant, and then produces a report which includes an insulting reference to her weight: will this make any difference to your right to rely on him? Will it affect the weight the court gives the report?
7. What if Mr Razor's report contains an error-strewn review of the Claimant's medical records?

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