Overview of Psychological Injury

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Definitions

- Recognized psychological illness as defined in DSM IV or ICD 10
- Not grief, fear, sorrow, distress, anxiety or other normal human emotions

Who can sue?

(1) Primary Victims

- Claimants who suffer both physical and psychological injury
- Claimants who do not suffer physical injury, but who are within the area of physical risk created by the Defendant’s negligence and who suffer psychological injury (Page v Smith [1996] 1 AC 155)
Claimants who are not within the area of physical risk but:-
• genuinely and reasonably believe that they are at physical risk, and
• it is reasonably foreseeable to some one in D’s position, that a person of ordinary fortitude in C’s position would reasonably be in such fear of immediate personal injury as to suffer shock-induced psychiatric injury

McFarlane v EE Caledonia Ltd [1994] 2 All ER 1;
Hegarty v EE Caledonia Ltd [1997] 2 Lloyd’s Rep 259

Overview of Psychological Injury

Who can sue?
(2) Secondary Victims
• Claimants who suffer psychological injury as a result of injury to some one else
• Control mechanisms:
  • Shock
  • Means of perception
  • Physical and temporal proximity
  • Close ties of love and affection

Overview of Psychological Injury

Who can sue?
(2) Secondary Victims: Control Mechanisms
• Shock
  • The sudden appreciation by sight or sound of a horrifying event that violently agitates the mind
  • Not a gradual realisation
Overview of Psychological Injury

Who can sue?
(2) Secondary Victims: Control Mechanisms

- Means of perception
  - By seeing the accident or its immediate aftermath
  - By hearing the accident or its immediate aftermath
  - Not as a result of communication by a third party

- Physical and temporal proximity
  - Presence at the scene of the accident
  - Coming upon the immediate aftermath of the accident
  - Meaning of “immediate aftermath”

- Close tie of love and affection with the injured person
  - Rebuttable presumption in the case of parent/child and husband/wife
  - Otherwise must be proved by evidence
Overview of Psychological Injury

Who can sue?

(2) Secondary Victims

- Secondary victims are claimants who suffer psychological injury as a result of injury to someone else.
- And who satisfy the control mechanisms:-
  - Injury induced by shock
  - Direct perception of the accident or its aftermath
  - Presence at the scene of the accident or its aftermath
  - A close tie of love and affection with the injured person

(3) Other Categories?

- Rescuers
- Involuntary participants
- Prisoners/detainees (Reeves v Commissioner of Police for the Metropolis [2000] AC 360)
- Owners of damaged property (Attia v British Gas [1988] QB 304)
- Parties to certain types of contract (McLoughlin v Jones [2002] 2 WLR 1279; Fairley v Skinner [2002] 2 AC 712)
- Victims ofDK: and "outrageous practical jokes (Wilkinson v Downton [1897] 2 QB 57)
- Victims of harassment (Protection from Harassment Act 1997)
Overview of Psychological Injury

“...a patchwork quilt of distinctions which are difficult to justify”
(Lord Steyn in *White v Chief Constable of South Yorkshire Police* [1999] 2 AC 455)

“...in this area of the law, the search for principle was called off in *Alcock...*” (Lord Hoffman in *White*)

Overview of Psychological Injury

Proving/Quantifying the Claim

Liability Issues

- Proof that C is a primary or secondary victim, or that C falls into a special category of claimants entitled to bring a claim for psychological injury alone
- Source material:
  - Claimant’s own account
  - Other witness evidence
  - Records from emergency services
  - Medical/Occupational Health/Personnel records

Overview of Psychological Injury

Proving/Quantifying the Claim

Proof of Psychological Injury

- Expert issue
- Source material:
  - Claimant’s own account
  - Other witness evidence (spouse/partner, family, work colleagues, etc)
  - Medical/Occupational Health/Personnel records
Overview of Psychological Injury

Proving/Quantifying the Claim
Causation of Psychological Injury

- Expert issue
- Where there are several possible causes of a Claimant’s psychological illness, the Claimant can establish causation by showing that the Defendant’s breach of duty made a material contribution to his psychological injury

Overview of Psychological Injury

Proving/Quantifying the Claim
Treatment of Psychological Injury

- NHS
- Rehabilitation Code
- Private treatment as recommended by medico-legal experts

Overview of Psychological Injury

Proving/Quantifying the Claim
Apportionment of Liability for Psychological Injury

- Expert issue
- In principle, a Defendant is only liable for that proportion of the injury that his negligence has caused
- However if the injury is indivisible, a Defendant who has made a material contribution is liable for the whole of the injury
Overview of Psychological Injury

Proving/Quantifying the Claim
Quantifying Losses due to Psychological Injury
• Where a pre-existing disorder has been exacerbated, or the onset of a condition has been accelerated, damages will be limited by the period of exacerbation/acceleration
• Quantification of financial losses will also take account of contingencies, including psychological illness that the Claimant may have suffered in any event

Overview of Psychological Injury

Proving/Quantifying the Claim
Quantifying Losses: Potential Heads of Claim
• Past and future treatment costs
• Effect on employment
• Care and assistance/emotional support
• Travelling expenses
• General Damages for PSLA

Overview of Psychological Injury

Practical considerations
• When/how to raise the issue with a client
• Choice of medico-legal expert
• Provision of information to the medico-legal expert
• Up-dating reports
• Treatment: Decisions as to treatment & mitigation of loss; cost of treatment & interim payments; stay of proceedings pending treatment
• Attendance of experts at trial: perspective and costs