When should plaintiffs be precluded from District Court costs recovery?

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Rua Joan O'Hanlon v Archibald Gordon Shaw *(unreported, District Court, no.7 of 1993, Maryborough, Botting DCJ, 5,10.93)* Since the increase in the Magistrates Court's Jurisdiction to $40,000, a question of concern for plaintiff's lawyers in personal injuries matters is whether costs can be recovered on the District Court Scale, if the plaintiff proceeds in the District Court, but fails to obtain more than $40,000 damages.

This question was considered by Judge Botting in the case of O'Hanlon v Shaw. The plaintiff received something like $9,000 damages and the defendant's counsel argued that as, upon any view of the plaintiff's case, it must have been apparent that the claim would always be within jurisdiction of the Magistrates Court, costs on the appropriate Magistrates Court Scale should be awarded.

The plaintiff's counsel submitted that under the Magistrates Court Scale of costs and fees as it stood, there were problems in recovering a fair sum to represent the costs of litigants in personal injuries actions in the Magistrates court.

Judge Botting said: " That is a submission, I must say, which I have heard a number of times repeated when entertaining such arguments. It seems to me that until the rules of the Magistrates Court are changed to enable successful plaintiffs to recover a fair amount for their expenditure in prosecuting claim in that jurisdiction that there is a lot to be said in favour of not penalising the plaintiffs who allege (sic) to proceed in this court, albeit that it might be fairly clear, indeed very apparent, that the damages likely to be awarded will be less than those(sic) which the Magistrate Court has jurisdiction.

Judge Botting then proceeded to make the usual order that the defendant pay the plaintiff's costs of the action to be taxed. In effect, this was awarding costs on the District Court scale applicable to matters in which less than $50,000 is recovered.

Expert hired by manufacturer in prior litigation could not be disqualified from testifying in subsequent action against manufacturer.

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English Feedlot, Inc. V Norden Lab., Inc., 833 f. Supp. 1498 (d colo. 1963).

A US District Court held that an expert retained by a manufacturer to investigate and settle claims involving cattle vaccines could not be disqualified from testifying for a cattle owner in a subsequent vaccine products liability action against the manufacturer.

The court noted that to disqualify an expert, a party must show it (1) reasonably believed a confidential liability action against the manufacturer had existed and (2) had disclosed confidential information to the expert.

Applying that test here, the court found the manufacturer was objectively reasonable in concluding the expert would keep its communications confidential. The court reasoned that the expert had been hired to settle consumer complaints about the vaccine and thus was not an independent consultant. Moreover, the manufacturer instructed the expert to label his cover letter "privileged and confidential-work product" to prevent claimants from acquiring it should a lawsuit result.

The court found, however, that the manufacturer had not disclosed any confidential information to the expert. The court noted that the parties'