

Developments in the UK: the year in review

Alison Brooks, London

1998 has proved to be a challenging year for Plaintiff lawyers in the U.K. with some cause for celebration:

1. Quantum

A landmark decision by the House of Lords in the cases of *Wells, Thomas and Page*, held that future damages will now be assessed using a discount rate of 3% per annum, consistent with returns on index linked government stocks. The Court also gave approval to actuarial evidence, stating that it should only be departed from for good reason and Defendants can no longer claim a discount against contingencies of life. It was realised that this Judgement would have an enormous impact on damages and shortly after this decision a Court awarded over £3million for a cerebral palsy claim. It was also hinted that there would be a move towards encouraging more structured settlements.

2. Date of knowledge

Recent decisions on date of knowledge have still found against Plaintiffs in many cases although a 1998 decision by the High Court agreed that where a leading consultant advised the Plaintiff that there had been no negligence time would not run until a later positive report was received.

3. Burden of proof

Where there has been an omission by a defendant, proof of what would or should have been done still has to be established by plaintiffs following the 1997 case of *Bolitho*. Courts are now more inclined to question an experts evidence but the burden on Plaintiffs remains onerous in these cases.

4. Legal Aid

Next year will see the removal of legal aid for personal injury claims and legal aid will only be issued to specialist lawyers in medical negligence cases. Conduct of

these claims by experienced lawyers is welcomed as being in the clients interest but there is concern that fixed fees proposed for the work will provide inadequate remuneration. More importantly under existing proposals there will be no legal aid for most low value claims including fatalities where there is no loss of dependancy.

5. Conditional Fees

These agreements are becoming more widely used in the UK with an increase in the number of after the event insurers in the market. However we have seen increasingly strict criteria applied by insurers to assess when a case will be underwritten. Fortunately in the tobacco litigation (where insurance could not be obtained) the Courts refused to order that the Plaintiffs solicitor should be personally liable for costs if the claims did not succeed.

6. The Future

So what does the future hold? Under Lord Woolf's reforms pre action protocols have been drafted. These should promote more openness between the parties and the plaintiff may also soon be able to put forward offers to settle with cost penalties against a defendant. Compulsory mediation is also being considered in the UK

Case management by the Courts will continue with stricter timetables for exchange of evidence.

Plaintiff lawyers are preparing to meet the higher standards which will be required of them and it is hoped that change will not be governed solely by economic concerns. However my visits to Australia unfortunately suggest a repeat of history in the UK. The Millennium will no doubt see a continued struggle to preserve legal aid and common law rights for Plaintiffs in this country. ■

Alison Brooks is a solicitor with Kingsley Napley in London, email abrooks@kingsleynapley.co.uk

"I'm
a Lawyer.
Not a
Scientist."

Your time is precious.

That's where Unisearch can help.

Unisearch provides access to thousands of qualified experts, *nationally*.

Specialists who can confidently address issues of technical fact & expert opinion.



It's an unbiased, highly professional service that has helped over 10,000 clients in 20,000 cases throughout Australia, since 1959.

From Failure Investigation, to Workplace Assessment, we have the locally - based expert you need.

Backed by the considerable resources and expertise of several leading Australian universities.

So, save yourself some valuable time. Just pick up the phone, and call Unisearch.



20 000 Projects, 2000 Experts—One Phone Call

Phone: (02) 9385 5590

Fax: (02) 9662 4265

Email: consulting@unsw.edu.au

Web: www.unsw.edu.au/unisearch



THE UNIVERSITY OF
NEW SOUTH WALES

3712/B