

IN THE SUNDERLAND COUNTY COURT

Claim No. 3YL57731

44 John Street  
Sunderland

Thursday, 13<sup>th</sup> February 2014

Before:

DISTRICT JUDGE MALIK

Between:

ANTHONY BULMER & OTHERS

Claimants

-v-

J. LAMB

Defendant

\_\_\_\_\_  
Legal Executive for the Claimants:

MR. LUND

Litigation Executive for the Defendant:

MR. BRIGHT  
\_\_\_\_\_

JUDGMENT APPROVED BY THE COURT

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APPROVED JUDGMENT

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1. THE DISTRICT JUDGE: These are joint claims by Anthony Bulmer, Stacey Lawton, Linda Lawton and Debbie-Lee Curry against Mrs J Lamb, arising from a road traffic accident which is said to have occurred on 13<sup>th</sup> August 2012. The proceedings were issued a little while ago and there has been some stagnation of the proceedings for reasons which I do not need to go into in this extempore judgment, but suffice it to say it was listed for a telephone conference at which the claimants are represented by their legal representative, Mr Lund, who is a legal executive, and the defendant is represented by Mr Bright, who is a litigation executive.
2. The majority of the directions have been agreed by the legal representatives, and part of the same is that, given the number of claimants plus the defendant, for the matter to be allocated to the multi-track, not because of the complexity but simply because it is likely to spill over two days. I have agreed to that allocation for those reasons.
3. There is an issue now regarding costs budgeting, for which I will give directions in due course. I say ‘an issue’ – it is really a non-issue but a practicality given that it is necessary to consider costs budgeting in multi-track cases. I do not need to go through the agreed directions, save to say that it is unfortunate that the court did not have on the court file the case summary or indeed the draft directions from the claimants’ solicitors, but I accept Mr Lund’s position that they had been emailed to the court as required. That is, unfortunately, a shortcoming on the part of the court service, for which I apologise. It was impossible for me to request the same to be emailed directly to me whilst conducting this telephone hearing because I am having some difficulties with my own judicial laptop.
4. That said, the contentious issues between the parties are in relation to their expert evidence. Before I go into the medical evidence, the claimants seek permission to obtain a further report from Legal & Technical Assessors to be filed and served by 30<sup>th</sup> March, to which Mr Bright, on behalf of the defendant, raises no objections, so long as it is simply a factual report and is not a forensic report. I understand this report will be simply a factual update and, to that extent, that permission will be granted.
5. The contentious issue, as I have already noted, is in relation to the medical evidence and specifically in relation to the first claimant, Anthony Bulmer, and the third claimant, Linda Lawton, being given permission to rely upon what is referred to as the psychology report of Marie Pope, dated 17<sup>th</sup> September 2012 in the case of Mr Bulmer, and of Jacquie Smith, dated 13<sup>th</sup> September 2012, in respect of Linda Lawton.
6. The claimants’ position is quite simply that Part 35 of the Civil Procedure Rules does in fact anticipate others doing the work and that is exactly what has happened in this case vis-à-vis the psychology reports, it being the claimants’ legal representative’s submissions that whereas the work was undertaken by Marie Pope in the case of Bulmer and Jacquie Smith in the case of Linda Lawton, that was under the supervision of Dr King and is therefore permissible. It is also submitted that where psychological injuries are identified – and in the context of these four claimants, that is only two out of the four – the same was done early with a view to facilitating any CBT treatment which may be necessary in the early course, which allows for mitigation and, so submits Mr Lund, will be to the defendant’s benefit.

- A 7. Apart from those submissions, the two claimants seek to rely upon a statement from Dr King which is dated 18<sup>th</sup> December. There are two statements from Dr King in respect of each of Bulmer and Lawton, which were received recently and which I had an opportunity to read. As I highlighted during the course of the hearing, they appear to be in identical terms and certainly written in what I would consider to be on a generic basis. The statements of Dr King seek to justify her position in the context of these reports and I bear those matters in mind.
- B 8. Mr Bright, on behalf of the defendant, raises objections on two fundamental points: firstly, on the issue of proportionality, submitting, as he has, that this is a standard textbook low velocity impact case and the impact was minor to the extent that there was not, as he put it, a single scratch to the vehicles, and in the circumstances it would not be standard to seek a psychological report; the second, and more fundamental, in my view, objection is that (*inaudible*) carried out the reports and objection is being raised because it is not accepted that the assessments were undertaken by Dr King but indeed by the assistant and the assistant does not fall within the category of being an expert in so far as the various rules are concerned.
- C 9. It is also submitted that that the psychological reports, having been obtained when they were, in September 2012 – the claimants had not even been seen by a medical expert at that stage; that is to say by Dr Sweeney, in respect of Bulmer being 7<sup>th</sup> December 2012, which followed the examination on that particular day, and in relation to Lawton, the report also from Dr Sweeney, being 15<sup>th</sup> December, which followed an examination of her on 31<sup>st</sup> October 2012.
- D 10. I enquired of Mr Lund to assist me with paragraph 8 from the statement of Dr King, where she says this:
- E “I was requested by OML [*that is On Medical*] and EPRL to interview and assess the claimant and provide a psychology report regarding her psychological symptoms.”
- F Mr Lund clarified that on 14<sup>th</sup> August 2012, a day after the accident, a referral was made to On Medical, and it was following that, where there is the triage assessment, that matters were then taken further
- G 11. The other observation I raised during the course of the hearing – in relation to Dr King’s statement but it was specifically in relation to paragraph 20:
- H “Analysis of the data, application of clinical judgment and formulation of professional opinion, diagnosis and prognosis, together with any (*inaudible*) for further intervention, are all arrived at by myself.”
- I queried how that could be the case when the reports are dated 17<sup>th</sup> September, and signed by Marie Pope, in the case of Bulmer, and 13<sup>th</sup> September, signed by Jacquie Smith, in the case of Lawton, whereas the signatures of Dr King in respect of each report are as follows: 23<sup>rd</sup> September 2012, for Bulmer, and 21<sup>st</sup> September for Lawton, that is between 6 & 8 days later.
12. I am not satisfied, in the particular circumstances of these claims, that the reports comply with CPR 35.10(3) and Practice Direction 35.32 in that they do not set out the instructions from Winn Solicitors or On Medical. I am not satisfied on the evidence

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before me that the work was undertaken by Dr King for the reasons already stated but specifically in relation to the date when the reports were signed. There is no evidence before me as to what Dr King actually did in the context of these claims and for the preparation of these reports. It also seems to me, in the particular circumstances of this case, that it is more likely than not that the actual authors of the reports are Marie Pope and Jacquie Smith and they are not and cannot, in my view, be classed as experts.

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13. For all those reasons, the claimants are not going granted the permission that they seek to rely on the reports of Marie Pope dated 17<sup>th</sup> September 2012 and Jacquie Smith of 13<sup>th</sup> September 2012 in the cases of Bulmer and Linda Lawton respectively. Unless there is anything I have omitted, that is my judgment.

*(End of judgment)*

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