Resiling from admissions of liability

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Personal Injury analysis: If the amount of damages claimed for personal injury increases dramatically after proceedings are issue, can a defendant resile from a pre-action admission of liability? Laura Hibberd of 9 Gough Square examines the Queen's Bench Division's approach in SE Wood v Days Health UK.

Original news

SE Wood v Days Health UK [2016] EWHC 1079 (QB), [2016] All ER (D) 85 (May)

The Queen's Bench Division dealt with six applications in proceedings brought by the claimant against five defendants (D1–D5) in which she claimed that they were liable for an injury she sustained when the riser unit of her wheelchair malfunctioned.

What was the background to the case?

The claimant had been supplied with a wheelchair by her primary care trust. The trust had since been dissolved and the Secretary of State, D2, had assumed its liabilities. The trust had ordered the wheelchair from its stockholder, D5, which in turn had obtained it from the assembler, D1, which had put the wheelchair together by combining a riser unit from a manufacturer, D4, and a chassis from another manufacturer. Following complaints from the claimant, the trust subsequently changed the chassis and fixed a new riser unit, again produced by D4. Several months later, the accident occurred and the claimant commenced her personal injury action. She contended that she had a contract with the trust to supply her with the riser unit, but D2 maintained there was no contract. D1 initially admitted liability. Among the applications, the claimant applied for summary judgment on whether she had a contract with D2 and D1 applied to withdraw its admission of liability. The court found the claimant had had a contract with D2, the contract was breached and the breach caused some injury, although the extent of that injury was called into question by D2. The court also refused to allow D1 to resile from its pre-action admission.

What were the key issues in this case?

Two of the six applications constituted the majority of the judgment:

- D1's application to resile from its pre-action admission of liability, which was opposed by C and D2, and
- the claimant's application for summary judgment against D2

I shall focus on D1's application to resile from its admission of liability, save to say that Mrs Justice Laing DBE did grant summary judgment to the claimant (para [56]).

D1's application required the court to consider all the circumstances of the case, including the factors laid out in CPR PD 14.7.2(a)–(g). It appears the real ground of D1's application was that the claimant's claim had increased significantly in value since 2010 when the admission was made. At the pre-action stage, the claimant's solicitors advised that the claim was considered to fall into the fast track. However, the claim had drastically increased in value to potentially £300,000.

What did the court decide and why?

The court first considered, in accordance with CPR PD 14.7.2(a), whether any new evidence had come to light since the admission. It was held that there was no new evidence about the accident circumstances and that the admission was made after D1 had inspected the wheelchair. There were concerns raised that D1 not been sent a report by the Medicines and Healthcare products Regulatory Agency (MHRA) when making its admission. However, it was decided that, even if that were the case, a reasonably diligent investigator would have realised this at the time and sought the document whilst investigating the claim.

As mentioned, the real ground for the application was the significant increase in the value of the claim. However, as Mrs Justice Laing rightly commented, that was a risk inherent in any personal injuries claim. A commercial decision was taken by D1 through its loss adjusters, weighing up that risk against the costs of litigation, and liability was admitted. The fact that the claim had now increased in value was not a good reason to allow a defendant to resile from its admission.

The court then went on to consider, under CPR PD 14.7.2(b), the conduct of the parties, the issue of delay being raised by both the claimant and D1. The court was not particularly swayed by submissions that there was delay by D1 between admitting liability, intimating its desire to resile from the admission, and the hearing. D1 had acted promptly once proceedings were issued. The delay in the hearing being listed was not because of D1's conduct, despite the claimant submitting that a year had been lost due to D1's (successful) application for disclosure from the claimant.

D1 argued that the claimant's delay in waiting until the end of the limitation period before issuing her claim meant it could not apply to withdraw its admission until proceedings were issued, but once the claimant had issued proceedings, it made the application promptly. The court was not willing to criticise the claimant for issuing when she did, and for later adding in D2 and D3 due to D1's indication that it would apply to withdraw its admission.

In considering the conduct of the parties and delay, the court found, on the balance of probabilities, that the claimant's solicitor had not sent the MHRA report but did send D2's letter which included photographs and the visit report. It was held that it was not likely that D1's loss adjusters would have admitted liability had it seen the MHRA report in 2010. However, any failure to send the Medicines and Healthcare products Regulatory Agency (MHRA) report did not cause the admission and D1 had the means to obtain it before making the admission. D1's conduct was criticised for the delay between the date of the admission and its first indication that it would be withdrawn.

Under CPR PD 14.7.2(c), both the claimant and D2 argued that prejudice would be caused should the admission be withdrawn. The court found that the claimant would lose a certain claim against D1 and instead face defended claims against D1, D2 and D4. It also found that she had suffered an 'intangible prejudice and sense of injustice' because D1's conduct had prevented her from inspecting the defective wheelchair: parts of it had since been destroyed and it had been stored poorly in the interim period. Furthermore, other relevant documents had been destroyed by the defendants, and the other defendants had lost the opportunity to conduct their own investigations promptly.

Although D1 was considered to have reasonable prospects of defending the claim, it was, on balance, in the interests of justice and finality to hold it to its admission. The fact that the claimant had obtained summary judgment, in part, against D2 was not a reason to allow D1 to withdraw from its admission. The merits of any contribution proceedings which D1 had a right to bring were also not considered to be a good reason to permit the withdrawal.

What conclusions could practitioners take from this decision?

This case perhaps serves as a warning for defendants, and loss adjusters in particular, to ensure a thorough investigation is undertaken at an early stage before any admission is given. That includes obtaining the relevant documentation from the claimant—a clear error in this case. Even if an admission is made, retaining records and enabling inspections to take place remains essential so as not to prejudice the claimant or any other potential defendants in later stages of the claim. This judgment is also a clear precedent that simply because a claim has increased in value, and significantly in this case, does not provide sufficient grounds to permit a defendant to resile from an admission. Defendants and loss adjusters are seen to have taken that risk into account upon making the admission and, it seems, will be held to it.

Interviewed by Robert Matthews.

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