

IN THE MANCHESTER COUNTY COURT

Civil Justice Centre  
Bridge Street  
Manchester  
M60 9DJ

Wednesday, 5th November, 2008

BEFORE:

**HIS HONOUR JUDGE HOLMAN**

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BETWEEN:

**DIANE WARBURTON**

**Claimant**

**- and -**

**HELEN HORNE**

**Defendant**

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MR HUGHES appeared on behalf of the claimant.  
MR PAUL appeared on behalf of the defendant.

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**Judgment, closing remarks**

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Wednesday, 5th November, 2008

**Judgment, closing remarks**

B JUDGE HOLMAN:

1. I said that I would make some additional general remarks. In my view further observations about low velocity claims are now appropriate and I intend to direct that a transcript be prepared of these comments so that they can be circulated more widely.

C 2. As I mentioned earlier, the medical experts were in complete agreement. If I accepted the claimant's version of events, then on the balance of probability injury had been sustained; if I accepted the defendant's version, then injury was unlikely. Thus, the trial revolved around my assessment of the lay evidence.

D 3. In recent months I have now seen a succession of joint statements to the same effect. It is therefore opportune to revisit the approach which has been adopted since the Court of Appeal decision in Casey v Cartwright. It is, in my view, now showing clear signs of running contrary to the overriding objective enshrined in Part 1 of the Civil Procedure Rules. The starting point is that the vast majority of these claims are of modest value. In the normal course of events they would be allocated on paper to the Fast Track and, entirely consistent with Lord Woolf's original concept in the Access to Justice Report, would proceed through to trial without any interim hearings. At present under the Casey guidelines the defendant has to make a witness statement, which may on occasions generate a statement in reply, and there is then a directions hearing. If the Judge is satisfied that none of the exceptions in Casey apply, as here, the defendant incurs the expense of a medical report with a trawl through the claimant's medical records, notwithstanding the Law Society general guidance against this in modest claims. There is then a second directions hearing which may lead, dependent on the identity of the claimant's original medical expert, to an application for a further expert. If, as now appears to be a common situation, the outcome is agreement, such as in this case, then all that has happened is that there has been additional expense which is disproportionate to the amount at stake, delay and additional call on scarce court resources without advancing the primary issue further.

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4. It is now more than two years since the Court of Appeal decision in Casey. The insurers and legal advisors of defendant motorists have notably failed to identify any cases which, in accordance with the invitation in Kearsley v Klarfeld, could be used as test cases before a High Court Judge. Casey was going to be heard by a High Court Judge for entirely different reasons.

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5. Delta V has disappeared off the radar. Engineers have usually become involved now only where there is an issue about consistency of damage. The more polarised medical experts have ceased to be the usual experts. Against that

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background, I return to my initial judgment in Casey where I said this:

“They”

- by which I meant low velocity impact cases -

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“are fact sensitive. There is an abundance of variable factors. All that can safely be said at this stage is that there cannot be injury unless

(i) there is vehicle occupant displacement and that the lower the impact speed the less likely it is that injury will be sustained;

**C**

(ii) the assessment of the lay witnesses by the trial judge has proved crucial.”

**D**

6. In those circumstances I invite the defence teams to reflect and ask themselves whether the Casey procedure is now serving any useful purpose other than to enhance the remuneration of lawyers and doctors. Provided the claimant’s medical evidence is limited to condition and prognosis, and the trial judge does not fall into the trap of taking the view that just because there is a medical report the claimant must have suffered injury, then the majority of these cases can be resolved simply by calling the lay evidence, which quite often will be limited to the two drivers.

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7. There will, I recognise, be the occasional case where greater investigation is necessary - for example, where there is a major issue over consistency of damage, but, by and large, it seems to me that there is no reason why these claims should not be returned to their rightful place in the mainstream Fast Track.

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8. I do not yet say that that is my definitive final view. I have deliberately couched this as an invitation to the defence teams to reconsider the position. We need to bear in mind that at the moment there are limited numbers of judges, who are authorised in this jurisdiction to deal with these claims, because of the particular problems which they were thought to present. If in reality the likely outcome is that the doctors simply defer to the trial judge, then no useful purpose is likely to be served and much time and money can be saved.

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