

Our ref: NEC/ES/WAL182-1
Your ref:
Date: 25 January, 2006
Please Ask For: Nevil Croston



bryanandarmstrongsolicitors

Mr D A Walker
29 Cauldon Drive
Holmehall
Chesterfield
Derbyshire
S40 4UB

Dear Mr Walker

Re: Professional Negligence

As you know, the Judgment is to be handed down on Monday, 30th January at the Royal Courts of Justice.

We have authority to let you know the gist of what that Judgment will be.

Regrettably, the Judge has found in favour of the Defendants and that your case for negligence against Mr Chruszcz and Irwin Mitchell has failed.

We are sorry to give you such news which we fully understand will come as a devastating blow to you.

Ourselves, Susan Rodway QC and Paul Stewart have put in a huge amount of work on this case and thought that there were reasonable prospects of success, but the Judge has not accepted the evidence and arguments put forward on your behalf.

It was felt that you had a reasonable case on primary liability, but it has always been the situation that we considered that there would be difficulties over the issue of contributory negligence.

However, the Judge has not gone on to consider that question because he has decided that there was a risk of failure on primary liability in the case in 1996 and that the Defendants were entitled, in the circumstances, to assess that as a serious risk and, therefore, entitled to advise you as to settlement on the day of the hearing.

The Judge has not accepted that the Defendants confused the issues of primary liability and contributory negligence; that your representatives at the time were justified and reasonable in assessing that the reliability of your evidence and performance in the witness box were central to success and that it was correctly identified that your evidence may well be rejected and, thus, there was a serious risk that you would lose the case.

Criminal
Defence Service



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We understand that he considers the evidence that you would have given as to timing of the lowering of the bucket to have been crucial against the inference from the Defendants that you had unexpectedly and without warning jumped onto the machine, on the Defendant's case in the original proceedings and considers that your representatives were entitled to take into account how you might have given your evidence in Court and how you may have come across as a person.

We also understand that the Judge will say that he concludes that you did have a choice about settling or not and that the decision was left to you. If you had continued to decline the advice the case would have been fought for you in 1996.

When the final version of the written decision is available, obviously, you will be entitled to a copy, but we feel that it is appropriate to advise you in advance of the main findings.

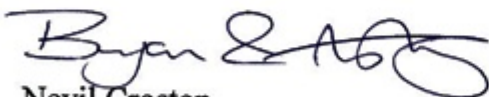
We regret that we cannot go into any more detail at this stage and it will not be possible to make any further representations to the Judge, who has heard the evidence and made his decision.

You will also appreciate that inevitably we have to provide a report to the Legal Services Commission in respect of your Legal Aid. This will come to an end with this decision (subject to the question of whether there is any prospect of an Appeal).

There is the question of costs. Strictly, there is no restriction on an award of costs against a person who is Legally Aided and has lost, but there are in existence regulations which put limits on liability as to the amount (if any) which can be ordered. Any Order has to be a reasonable one, having regard to all of the circumstances, including the financial resources of all of the parties in the proceedings and their conduct in connection with the dispute. This is usually dealt with by way of a separate Application.

Some comment was made by the Defendants' representatives in Court that the reality was that they would not make recovery against you and, therefore, we do not know whether they will consider pursuing this. They do have the power to apply for costs against the Legal Services Commission under Section 11 of the Access to Justice Act 1999. There are strict time limits for them to do this and they would have to show that they will suffer severe financial hardship unless an Order is made against the LSC. This would not involve you personally.

Yours sincerely



pp
Nevil Croston

Partner

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