

FATAL ACCIDENT CLAIM.
MOTORCYCLIST KILLED WHEN SLOW MOVING DUMPER
TRUCK PULLED OUT IN FRONT OF HIM

The deceased was killed when riding his Yamaha YZF-R6 motorcycle along a straight section of road near Market Deeping, Lincolnshire. The Barholm Road lies beside the extensive Tarmac Precast Concrete Works at Tallington. Due to the nature of the works, large slow moving trucks regularly emerged onto the Barholm Road, which connects to the A16.

On the 12th of May 2006, the deceased, a 43 year old business man, was riding along the Barholm Road, when a DAF 4-axle Rigid Goods Vehicle (the truck) passed the works exit and drew onto the road. The truck was moving at less than 5 mph, and moved across the road, taking up the majority of both carriageways, intending to turn right, against the direction of travel of the motorcyclist. At the time of the collision the truck wholly blocked the road. It is likely that the truck driver's manoeuvre, from leaving the work's exit to its final position across the road, took some 3 seconds, covering a distance of 8.6 m.

The approaching motorcyclist carried out emergency braking, and left a skid, but it was of short length, tending to suggest that the motorcyclist had not seen the truck or otherwise reacted late to its presence. Motorcyclist and motorcycle struck the truck in a position just behind the cab, and despite attempts to reduce the speed of the motorcycle, the impact was sufficient to wholly distort the front section of the motorcycle and kill the rider. The post mortem analysis indicated that the motorcyclist had consumed alcohol before the collision (blood alcohol recorded as 80 mg per 100 ml blood, i.e. at the legal limit).

Primary liability for the accident was admitted on behalf of the truck driver. It was conceded that he had not paused when entering the road at the work's exit, and nor had he seen the oncoming motorcyclist until the truck was well across the road. Of more difficulty was the assessment of the level of responsibility to be attributed to the deceased motorcyclist. The speed limit for the road was 60 mph, and it was likely that the motorcyclist had exceeded this. In attempting to calculate speed, reference was made to Bike magazine for July 2002, where test results for five similar motorcycles were considered. The Yamaha YZF-RF was included in this appraisal, and it was noted that the top speeds and acceleration for all the machines were similar. Up to 80 mph the average acceleration was about 0.73g, between 80 and 115 mph it was about 0.32g and between 115 and 135 mph it was about 0.18g. Where the motorcycles were accelerated in top gear from 40 mph the rate of acceleration was a constant 0.2g up to 140 mph. However, those results were reached using test riders, and it was doubted that a 'lay rider' would be able to achieve such performance. Having considered this material and the circumstances of the accident the precise speed of the motorcyclist, prior to braking, remained an unknown.

There remained the following issues:

- (a) Straight road, with unlimited visibility approaching the work's exit where the truck emerged.
- (b) Likelihood of excessive speed on behalf of the motorcyclist, and
- (c) Consumption of alcohol, which would have reduced the motorcyclist's response time.

The claim has now settled, with no specific resolution of the issues identified, but with the Claimant receiving £170,000.00 in respect of her claims arising from the death of her partner.

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Simon Wheatley
Call: 1979
Part-time Judge Advocate: 1995

Practice Areas: Clinical Negligence, Personal Injury,
Product Liability, Public and Regulatory Law

Simon's principle area of practice is maximum severity personal injury claims and brain damage cases. He has detailed knowledge and experience of medical claims across the whole spectrum of clinical practice; and has represented a range of defendants, including the MOD, in a variety of cases involving Army and RAF personnel.

Clinical Negligence

In clinical negligence, Simon specialises in claims involving injury at birth, cerebral palsy, failure to diagnose, failure to inform, and a variety of procedures including laparotomy and laparoscopy. He advises on and participates in settlement negotiations and periodic payment structures, as well as representing clients in the High Courts.

In the wider sphere of healthcare law, Simon's detailed medico-legal knowledge is highly valued in professional negligence cases. He acts both for and against doctors, dentists and vets.

Personal injury

In a wide-ranging PI practice, Simon undertakes actions for both claimants and defendants that include industrial accidents, chemical injuries, RSI and 'stress at work' claims involving workplaces such as hospitals, universities and factories. In particular he is well known for his specialist experience of claims involving head injuries and of the need to obtain proper resources and rehabilitation in the early stages of the claim.

He is highly regarded for his expertise in military claims, such as service bullying and discrimination.

Product Liability

By virtue of his in-depth knowledge of medical matters, Simeon is often instructed to act for claimants in major health care product liability cases.

Public & Regulatory Law

Simon's expertise in clinical, dental and veterinary negligence means that is often instructed on behalf of professionals to

appear before their respective disciplinary bodies. He also undertakes inquests which involve the consideration of extensive medical evidence and where issues as to the quality of medical care arise.

Key cases

- *Owens v Velindre NHS Trust* [2007] LTPI 8/11/2007: Out of court settlement. The claimant, a 30-year-old woman, received £300,000 after the results of a smear test were incorrectly reported as being negative. She subsequently underwent a hysterectomy which caused her to suffer from loss of fertility and a neuropathic bladder. General Damages for PSLA valued at £80,000
- *Goldhawk v Blue Diamond* (2007): Patient Approval. Window cleaner fell 25 feet onto concrete below. Claimant sustained multiple injuries, including brain damage. Allegations by the defendant that prior to the fall the claimant had been seen on the window ledge, without his harness. Claimant had no memory of his actions due to his injury. Negotiated settlement of £1,000,000 with damages for PSLA valued at £150,000
- *Westcott v Royal Berkshire and Battle Hospitals NHS Trust* (2005): failure to diagnose herpes simplex encephalitis
- *E S (by her mother & litigation friend DS) v Chesterfield & North Derbyshire Royal Hospital NHS Trust* (2003) EWCA Civ 1284; (2004) Lloyd's Rep Med 90: Court of Appeal allowed application by child to rely on evidence of two experts in the same specialism (obstetrics). Now the leading case on the instruction of multiple experts
- *Royal Bank of Scotland Plc v Etridge (no.2)*; *Barclays Bank Plc v Harris*; *National Westminster Bank Plc v Gill*; *Barclays Bank Plc v Coleman*; *UCB Home Loans Corporation Ltd v Moore*; *Kenyon-Brown v Desmond Bankes & Co* [2001] UKHL 44 (2002) 2 AC, 773: the leading House of Lords case on the rights of a wife against the bank in circumstances where her husband had obtained her signature to the mortgage by duress and misrepresentation.

Publications

- *Challenging expert instruction* - Personal Injury Law Journal, December 2007, p.10-13: Review of the decision of HHJ MacDuff QC, sitting as an additional judge of the High Court in *Kay v West Midlands Strategic Health Authority* (2007). In that case the judge refused to permit the claimant to instruct a further expert, and proposed a new procedure compared to *Daniels v Walker* [2000]
- *Expert witnesses: The expert as a dangerous animal* - PILJ, August 2004, p.13-14: on the need for court-run registers of expert witnesses. Co-authored with Steven Gray
- *Witnesses in clinical negligence cases* - Clinical Risk, May 2004: on the distinction between lay and expert witnesses

Seminars

Simon lectures on medico-legal topics, including the use of medical experts in clinical negligence cases and the application of multipliers. Papers given include:

- Stress at Work
- Damages in Care Claims
- Adaptations, Aids & Accommodation

Appointments

- Part-time Judge Advocate (1995). Presides at Army and RAF Courts Martial for up to four weeks per year, with experience in Germany, Scotland, England and Northern Ireland

Memberships

- Professional Negligence Bar Association
- Action against Medical Accidents (AvMA)
- Personal Injury Bar Association
- Midland Circuit

Languages

- French

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