

LA Marine Personal Injury bulletin



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Defending Personal Injury claims in England and Wales – The Jackson Report

Shipowners and operators face an array of potential personal injury claims from paying customers on leisure craft, to stevedore claims on commercial vessels and claims from their own employees and crew. In many cases the size of the claims are between GBP5,000 – GBP10,000.

The personal injury protocol dictates the way in which claims are handled prior to the issuance of any legal proceedings in England. The protocol puts an extremely heavy burden on shipowners/employers to produce documentation to support their defence of any potential claim. That burden is much heavier for defendants than it is for a customer/ stevedore/ employee claimant making a claim.

The cost of preparing a defence of a personal injury claim, particularly for smaller but important claims, can often involve an extraordinary amount of management time and effort. Even if the defence is a good one, the biggest factor in dealing with these claims is often the risk of being responsible for the claimants' lawyers' costs if the defence is not accepted. Personal injury actions brought by claimants are almost exclusively processed under the Contingency Fee Scheme ("CFA"). This means that if the case is settled the defendant will end up paying his own legal costs as well as the claimant's legal costs, plus any premium uplift in those costs which can range from 27% - 100%, plus any independent referral fee. It is often the case that the costs of the claimant's solicitors can be two or three times the size of the actual claim that is settled.

Sir Rupert Jackson was recently commissioned to produce a report on civil litigation costs. The Jackson report was published on 14 January 2010. It could have far reaching consequences for personal injury work. If his recommendations are taken up it will amount to a fundamental re-structuring of the market for both claimants and defendants.

The report recommends that:-

- (a) Both success fees and ATE insurance premiums should cease to be recoverable from defendants.
- (b) Any success fee would be recovered in the claimant's damages but up to a maximum of 25% of those damages.
- (c) Awards for general damages for pain, suffering and loss of amenity are to be increased by 10%. A working group is to be set up to look at the level of general damages.
- (d) Lawyers are not permitted to pay referral fees in respect of personal injury cases.
- (e) In personal injury cases the claimant would not have the burden of paying the defendant's costs if successful. The defendant would however have the burden of paying the successful claimant's costs. This is referred to a one way costs shifting exercise.
- (f) Perhaps the most radical suggestion from the Jackson report is that there should be "fixed costs" for fast track personal injury cases. It is proposed that there should be a dual system which will mean costs are fixed for certain types of cases and in other cases there is a financial limit on costs recoverable. The idea is for costs to be fixed in the fast track for all types of claims. A costs council will be established to review fast track fixed costs.

Many of these suggestions would be welcomed. A fixed costs system, certainly in relation to the recoverability of legal costs by a successful claimant solicitor, would hopefully bring about substantial reductions in the current levels of costs currently being paid by employers and insurers. The one way cost shifting exercise would not be to a defendants advantage but in reality this is probably what is happening already in many cases

LA Marine, Lester Aldridge LLP advises owners and operators in the marine field and provides a comprehensive defence service to personal injury claims at competitive rates

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