

## CASE PLAN (NON FAMILY)

Format in accordance with Funding Code Guidance Para 15.3.9.

### NAME OF CLIENT

AB

### NAME OF FIRM

XY & CO

### NATURE OF PROCEEDINGS

Clinical Negligence

### CASE INFORMATION

#### **A. Summary of Case**

The client had an operation at Barchester Hospital on 1st January 1997 to remove his appendix. During the operation he received an excessive amount of anaesthetic which has resulted in serious brain damage.

#### **B. Objectives**

The claim is for compensation in excess of £2 million. Liability has not yet been admitted but at some stage it is likely to be conceded. There are unlikely to be any realistic arguments on causation. Limitation is not in issue. Ultimately the case is likely to be concerned solely with the issue of quantum. A likely award would be no less than £2 million.

#### **C. Case Analysis**

The claim is based on negligence. Proceedings were commenced in October 1999 following a negative response to the Protocol letter. The primary allegation is that the anaesthetist failed to monitor the levels of anaesthetic being administered during the client's operation and as a result the client suffered brain injury. The medical evidence obtained on behalf of the claimant wholly supports an allegation of breach of duty and further that the injury is entirely attributable to the breach. The case is considered to be legally very strong. The defendants own medical evidence signally fails to address the claimant's case. In the early stages of the action there was a suggestion that the hospital may allege a manufacturing defect in the equipment. This was not pleaded formally in the Defence. No Part 20 claim has yet been served.

## Case Issues

Describe legal issues of liability, causation, limitation or quantum separately and the prospects of success on each.

### **a. Liability: Describe the issues and assess the chances of success:**

Being able to satisfy a Court on the balance of probabilities that the conduct of the anaesthetist fell below that expected of a reasonably competent professional.

Refuting any defence subsequently raised (by permission of the Court) that there was a manufacturing defect in the equipment.

% chance of success on liability = 90%.

### **b. Causation: Describe the issues and assess the chances of success:**

Demonstrating that the injuries are due to the excess levels of anaesthetic.

% chance of success on causation = 90%.

### **c. Limitation: Describe the issues and the chances of success:**

The action is clearly being brought within the limitation period.

% chance of success on limitation = 100%.

### **d. Quantum: Describe the issues specify quantum and who assessed it:**

Leading Counsel initially valued the claim at £2 million and remains of that view. The major part of the claim relates to loss of future earnings and care costs.

### **The favourable facts are:**

1. The claimant was a fit healthy person prior to the operation.
2. The operation was comparatively minor.
3. The operation was not inherently risky.
4. There were no complications involved in the surgery.
5. No satisfactory explanation for the claimant's injury has been advanced by the hospital.
6. There is expert medical evidence strongly supportive of the claim.

**There are no unfavourable facts.**

**D. Funding Code Assessment**

The legal merits of the claim are very good at present. The claim is valued at £2 million/£2.5 million. Likely costs of the proceedings if the action were proceed to trial on all issues would be in the region of £150,000. It is considered that the costs/benefit ratio is easily satisfied.

**E. Case Theory**

The client is likely to succeed since the claimant's medical evidence which has not been effectively challenged by the Defendants medical evidence clearly supports the allegation that the conduct of the anaesthetist admitted to be an employee of the Hospital Trust fell below the standard of a reasonably competent anaesthetist. There is no evidence that there was any manufacturing defect. The Defendants medical evidence is wholly unconvincing.

**CASE ACTIVITIES & COSTS INFORMATION**

<b>F. &amp; G. (i) Costs To-Date</b>	
<b>WORK</b>	<b>COSTS</b>
The case has reached the stage of exchange of witness statements including expert medical evidence. Full disclosure and inspection has taken place. Counsel have given a very positive opinion on success. A final conference with Leading and Junior Counsel and medical experts for which authority has been given has been arranged. Subject to any further directions given by the Court at the pre-trial review the case is ready for trial on liability only (Split Trial Order 2.5.99)	Profit Costs 50,000 Counsel's Fees 22,000 Disbursements <u>8,000</u> <b>TOTAL COSTS <u>80,000</u></b>

**(ii) Future Overall & Staged Costs**

KEY EVENTS & DATES	WORK	TIME ESTIMATE IN HOURS		COSTS
		SOLICITOR	COUNSEL	
	The outstanding work can be broken down into the following stages			<b>RATES APPLIED:</b> Prescribed Rates/Contracted Rates
<b><u>Stage One</u></b>	<b><u>Stage One</u></b>			<b><u>Stage One</u></b>
Pre-trial review fixed for 10.3.00	Preparation for pre-trial review including instructions to junior counsel (Panel member).	2 hours	3 hours	
	Attendance at pre-trial review (Panel member).	3 hours	3 hours	<b><u>Solicitor</u></b> <span style="float:right">£</span>
	Travel	1 hour	1 hour	Solicitor time 20 hrs @ £70 p.h. 1,400 Travel 2 hrs @ 25% of £70 p.h. <u>35</u>
				<b><u>£1,435</u></b>
Consultation with Counsel fixed for 21.3.00	Preparing for pre-trial consultation (Panel Member)	2 hours	2 hrs each Counsel	<b><u>Counsel</u></b>
	Attending pre-trial consultation. (Panel member).	3 hours	3 hrs each Counsel	Leading Counsel's time 11 hrs @ £90 p.h. 990 Junior Counsel's time 14 hrs @ £50 p.h. 700 Travel 1 hour @ 25% £50 p.h. <u>12.50</u>
	Travel	1 hour		<b>Total</b> <b><u>£1,702.50</u></b>
Pre-trial preparation	Preparing for trial including brief to Leading and Junior Counsel and Court bundles. Attending to all necessary pre-trial arrangements including expert witnesses	8 hours	6 hours Leading Counsel 3 hours Junior Counsel	Disbursements - Expert attendance <b>1,200</b>
	Client correspondence and attendances.	2 hours		

<u>Stage Two</u>	<u>Stage Two</u>	<u>SOLICITOR</u>	<u>COUNSEL</u>	<u>Stage Two</u>
Liability Trial fixed for 4 days commencing 1.10.00	Attending trial on liability for 4 days, 2 days Panel member, 2 days assistant (6 hours a day attending).	24 hours	24 hours	Solicitors time 24 hrs @ £70 p.h. 1,680 Travel 8 hrs @ 25% of £70 p.h. 140 <b><u>£1,820</u></b>
	Travel & Waiting (2 hrs per day).	8 hours	8 hours each Counsel	Leading Counsel's time 24 hrs @ £90 p.h. 2,160 Junior Counsel's time 24 hrs @ £50 p.h. 1,200 Travel Ld Counsel 8 hrs @ 25% £90 180 Travel J Counsel 8 hrs @ 25% of £50 p.h. 100 <b>Total</b> <b><u>£ 5,040</u></b>
<u>Stage Three</u>	<u>Stage Three</u>			Disbursements - expert attending trial <b>4,000</b>
Quantum trial preparation to be carried out between October 2000 and December 2000.	The case is likely to succeed at trial on liability and the case will proceed to assessment of damages. There remains the likelihood of settlement but should the action proceed to a further hearing on quantum the following work will need to be carried out and a revised case plan with fully detailed costings will be submitted at that time. Provisional costings appear in Stage Three.			<u>Stage Three</u>
	Further preparation of case including Collating and updating medical and other expert evidence in relation to condition and prognosis and quantum issues generally (10 hrs Panel member, 5 assistant).	15 hours		Solicitor time 39 hrs @ £70 p.h. 2,730 Travel 5 hrs @ 25% of £70 p.h. 87.50 <b><u>2,817.50</u></b>
	Considering Defendants Counter Notice and Schedule on damages. Consulting on telephone with Leading Counsel (Panel member).	2 hrs		Leading Counsel's time 24 hrs @ £90 p.h. 2,160 Junior Counsel's time 3 hrs @ £50 p.h. 150 Travel Ld Counsel 4 hrs @ 25% £90 90 Travel J Counsel 1 hrs @ 25% of £50 p.h. 12.50 <b>Total</b> <b><u>£2,412.50</u></b>
				Disbursements - Expert attendance <b>5,000</b>

		<u>SOLICITOR</u>	<u>COUNSEL</u>	
CMC - during December 2000	Preparing instructions to counsel to attend CMC (Panel member).	2 hours		
	Attendance at further CMC for directions with Junior Counsel (Panel member).	3 hours	3 hours	
	Travel	1 hour	1 hour	
	Preparing Brief to Counsel (Leading Counsel alone).	3 hours		
Quantum trial - March 2001	Completing pre-trial preparation.		4 hours	
	Attending trial on quantum 2 days (6 hours a day) (Panel member).	12 hours	12 hours	
	Travel & Waiting (2 hours per day).	4 hours	4 hours	
	Client correspondence and attendances.	2 hours		
<b>Conclusion - Review of Case Plan</b>	Report to LSC on: a) Outcome of case. b) Final cost of case. c) Achievement of objectives. d) Lesson learnt in terms of the content of the case plan, or alternative conduct of the case to achieve quicker disposal or better value for money (see Sections 15.3.17 Funding Code Decision Making Guidance).			

<b>(iii) Costs Summary</b>				
	<b><u>Profit Costs</u></b>	<b><u>Counsel's Fees</u></b>	<b><u>Disbursements</u></b>	<b><u>Total</u></b>
Section F. & G. Part (i) Costs	£50,000	£22,000	£8,000	£80,000
Section F. & G. Part (ii) Costs	£6,222.50	Leading Counsel £5,580 Junior Counsel £2,025	£10,200	£24,027
<b>Total of F. &amp; G. Part (i) and F. &amp; G. Part (ii) £106,015</b>				
<b>H. Cost Sharing Agreement</b>				
There is no cost sharing agreement in force with other parties.				

## **CASE MANAGEMENT INFORMATION**

<b>I. Team Personnel (including Solicitors Employees, Experts and Counsel and/or Solicitor Advocate)</b>
<p>The case will continue to be conducted throughout by Mr. D.E. who has been a member of the Law Society's Clinical Negligence Panel since its inception and is a partner in the firm. The major decisions on management and strategy have been taken by him. He has been assisted by F.G. who is a Legal Executive and has been with the firm for 6 years concentrating on clinical negligence work. The division of the work has been as follows:</p> <p>DE - overall conduct and supervision of the case as to management, strategy and research and medical evidence analysis, instructing and briefing counsel, attendance at court.</p> <p>FC - collation of hospital records, obtain lay witness evidence, preparing proofs.</p> <p>The firm has a Legal Aid Board Clinical Negligence franchise and has conducted numerous cases to a successful conclusion for the past 10 years. The</p>

case is well within the competence of the firm which is adequately resourced to conduct it.

### Experts

The expert witnesses are Dr. A.B. & Professor B.C. recognised authorities in their field of anaesthetics and are members of the Institute of Expert Witnesses. They have been selected from the firm's list of approved experts. Their charging rates are reasonable and both have substantial forensic experience.

### Counsel

Mr. G.H. QC Leading Counsel and Miss I.J. Junior Counsel will represent the claimant under authority granted by the Legal Services Commission. They have an extensive clinical negligence practices and Mr. G.H. QC is a joint author to one of the leading text books in the area. He has a high success rate in cases. He has been involved in the case from an early stage.

**I confirm that a copy of this case plan has been sent to the client/litigation friend. He/She has been advised that if the case is successful some of the costs of the work set out in the case plan may not be paid by the other side and instead would be taken out of the clients compensation.**