

Order for costs obtained against Claimant's expert

[*Robinson v (1) An NHS Trust and (2) Dr Mercier*]

In a judgment handed down today, Hill Dickinson LLP secured a third party costs order against Dr Mercier, who had acted as an expert witness for the Claimant. He is now required to pay £50,543.85, representing the costs that were incurred as a consequence of his advice.

Synopsis

Dr Mercier, a General Dental Practitioner, accepted instructions to act for the Claimant in a case concerning treatment provided by a Maxillofacial Surgeon; specifically an extraction performed under general anaesthetic.

At Trial Dr Mercier conceded that he did not have any experience of performing an extraction under general anaesthetic over the last 20 years, had *no* experience of consenting a patient for extraction under general anaesthetic and that he was not as well placed as the Defendant's expert witness (a Consultant Maxillofacial Surgeon) to comment on the case. The Claimant discontinued her claim during the Trial, following Dr Mercier's evidence.

In her judgment, Ms Recorder Hudson concluded that "*but for Dr Mercier's report, this claim would not have been brought*". She felt that he had shown a flagrant disregard for his duties to the Court and that he did so from the outset in preparing a report on a subject matter in which he had no expertise. She rejected submissions on his behalf that the Defendant Trust could in any way be criticised for having failed to take action itself to bring the point to the attention of Dr Mercier, his legal advisers, or the Court before trial.

Relevance

This judgment is the second significant third party costs order made against an expert in clinical negligence litigation. It ought to serve as a further warning to experts that they must report strictly within their own area of expertise, both in terms of specialty and also having regard to their contemporaneous practice.

It also highlights that the duty of an expert cannot be delegated either to their instructing solicitor, or to the representatives of the other party in the litigation.

Mr Giles Colin of 1COR was instructed for the NHS Trust.

David Locke

Mark Owen