Legally Blonde

News & Case Law Update

Autumn 2019

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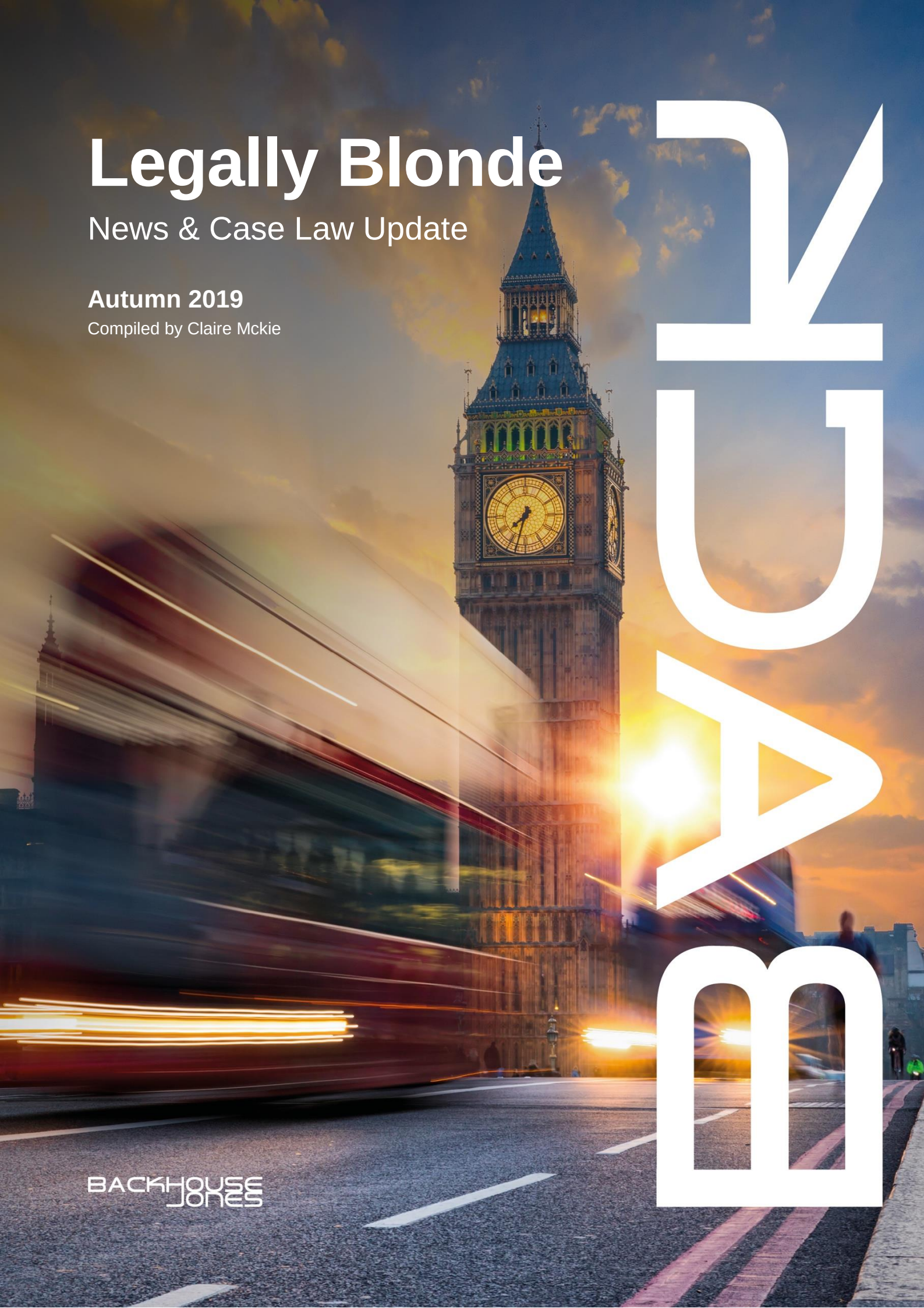

BACKHOUSE JONES

Don't let your company suffer, let us recover your money BACK.

The Classic English proverb "don't cry over spilt milk" is an idiom that has been used throughout the ages to imply that there is no point in worrying about something that has already happened or things that cannot be undone.

How highly you value your milk however is a subjective matter. Take a scenario where a vehicle has been involved in a Road Traffic Accident (RTA) but has only suffered cosmetic damage. When the vehicle arrives back into the yard, with a fresh scrape or dent, the first issue to tackle is liability. In many cases, Backhouse Jones are instructed by self-insured operators to defend against a claim where the operator's employee/vehicle is to blame for the RTA. In other examples, an operator will instruct Backhouse Jones to act in order to recover monies from the other side where a RTA has occurred at no fault of the Company. Both are key areas of expertise within the Insurance Litigation team at Backhouse Jones.

The question for the readers of this article to ask themselves is, what action would I take?

Haulage and PCV sectors are dependent on strict timelines and in many cases, operate a narrow profit margin. Time is money and it is often the case that an operator will see one of their vehicles with a new bump but consider the time required to investigate or get the insurers involved to be too onerous and costly. In other words, they let it go. In other cases, the vehicle may be unroadworthy and it is left in the yard, waiting for an engineer to assess the situation and schedule the repairs; this again brings rise to a loss of use claim.

Fundamentally, every bump and knock incurred collectively brings down the value of an operator's fleet. In addition, depending on the situation, where a vehicle is deemed unroadworthy it can sometimes attract unwanted attention from the DVSA which naturally causes further ramifications in terms of the operator's O-Licence.

How can Backhouse Jones' recoveries team assist?

Knowledgeable, experienced and robust, Backhouse Jones' recoveries team acts for several large PCV and HGV companies, handling low level repair costs to multi-million-pound claims in addition to dealing with claims to recover monies for damage repairs, loss of use, hire fees and other litigation costs. Typically, the seasoned team with a pragmatic approach, will recover in the region of 92% of repair costs.

A recent case saw Backhouse Jones' solicitor, Claire Mckie, instructed to act on behalf of an international PCV operator. The claim was brought as a result of a none-fault crash in France. The crash rendered the coach unroadworthy, leaving the operator to organise the hire of a replacement coach to accommodate the passengers together with a recovery vehicle to transport the damaged vehicle back to the UK. After delays with the impounding of the vehicle and repairs (at no fault of the operator), Backhouse Jones were instructed to help recover losses being suffered by the operator.

Although presented with issues involving insurance companies and jurisdiction, the case was settled in favour of the client operator resulting in a six-figure sum recovery.

Accidents do happen, however the choice to instruct Backhouse Jones and recover your companies' losses is in your hands. For a discussion about how Backhouse Jones can assist you in your insurance litigation and recovery matters please call 01254 828 300.

BUSTER ANGUS STARK V TABITHA LYDDON (2019)

The Claimant had been riding his motorcycle. The Defendant was driving her car and exiting a pub cark par. The Defendant intended to turn right across the carriageway. The Defendant stated that she had seen not the Claimant's motorcycle approaching so she began her manoeuvre into the carriageway. She had crossed the first carriageway when she was struck by the Claimant's motorcycle. It was held that both parties were to blame. The Defendant had not looked properly to her right and she had not indicated. However, the Claimant was travelling at twice the legal speed limit and it was held he bore a heavier share of blameworthiness. Liability was apportioned 70:30 in the Defendant's favour.

KHAN V AVIVA INSURANCE LIMITED (8 AUGUST 2019)

The Claimant claimed for personal injury and credit hire following a road traffic accident. The Claimant's claim for personal injury failed, but the claim for credit hire was successful. The Defendant alleged fundamental dishonesty and while the Judge found that the Claimant had not proved his claim for injury, he was not fundamentally dishonest.

The Defendant argued that the Claimant should be awarded small claims costs as the personal injury element was the reason the claim was allocated to the fast track. It was held that individual parts of a claim cannot be allocated to different tracks. In addition, as the Defendant had alleged fundamental dishonesty it was found to be appropriate that the claim be allocated to the fast track. No application was made to re allocate the claim. Therefore the fast track was the appropriate track and the Claimant was awarded fixed costs under the fast track fixed cost regime of CPR 45.29B.

SUDHIRKUMAR PATEL v (1) ARRIVA MIDLANDS LTD (2) ZURICH INSURANCE PLC (2019) EWHC 1216(QB)

The Defendant's applied under the Criminal Justice and Courts Act S57 for a personal injury claim to be to be struck out as fundamentally dishonest. The Claimant had suffered a collision with a bus owned by the First Defendant and suffered cardiac arrest and brain haemorrhage. The Claimant's claim was based upon injuries which meant he could not communicate and required complete care. Surveillance showed he injury to be feigned.

Further, the Claimant's son had later given a more accurate picture of the Claimant's disabilities to another neurologist which showed that he and the Claimants dishonesty was aimed at supporting the claim. The application was granted and the claim was struck out.

SHAFTESBURY PLC v CHINA TAIPING INSURANCE (UK) CO LTD (2019) QBD (TCC) (Waksman J) 16/05/2019

The Claimant sought to amend their Claim Form and served it on the Defendant's Solicitors. The Claimant obtained default Judgement and the Defendant applied to set it aside on the basis that it had not been served properly and in any event, and it had filed a defence before the request for the Default Judgement. It was held that the amended Claim Form and Particulars of Claim had not been properly served on the Defendant insurer. Serving the Claim Form on the Solicitors who acted for the operator and its insurer was not proper service. The Default Judgment would have to be set aside on the basis that the Claimant could not properly apply for Judgement in default.

FZO v (1) ANDREW ADAMS (2) HARINGEY LONDON BOROUGH COUNCIL (2019) EWHC 1286 (QB)

The Claimant has made a Part 36 offer to accept a sum which was less than what was awarded. The Defendant was ordered to pay an additional penalty sum under r36.17(4)(d) however no interest was payable on that sum.

ATHIR AL-BALHAA (First claimant / Appellant) v (1) BURNETTE RAPHAEL (2) RMG RESIDENTIAL MANGEMENT GROUP LTD (3) TERMHOUSE (CALRENDON COURT) MANAGEMENT LTD (4) CLAREDON COURT (LONDON) FREEHOLD LTD (Defendants/Respondents) (2019) EWHC 1323 (QB)

The Claimant applied for relief from sanction after having his claim struck out following non-compliance with an unless order regarding the service of the bundles. The Claimant argued that at first instance the Judge had not considered the three stage test. On appeal it was held that although the Judge had not specifically applied the three stage test it was clear he had considered all three stages. Non-compliance of an unless order was serious, significant and without good reason and the refusal of the relief was not disproportionate.

NEWHAM LONDON BOROUGH COUNCIL v ARBOLEDA – QUICENO (2019)

The Claimant had injured his knee in 2015 while playing football on an Astroturf pitch in the local authority's recreation grounds. The Claimant alleged that the injury had occurred due to a hole in the Astroturf and referred to injuries such as fractured tibia. A pre proceedings admission was made. The Claimant stated that the value of the claim would be £50,000 and then in 2018 filed for another £3 million due to unemployment, chronic pain etc. The local authority applied to withdraw the admission as it now denied liability and alleged the claim was fundamentally dishonest. The application was heard on papers and the Master refused the withdrawal. In refusing the withdrawal the Master relied on prejudice and the administration of justice and while the allegation of fundamental dishonesty had a realistic prospect of success the evidence supporting it was weak and it contained inconsistencies. It was held that there

was a limit on the type of examination that should take place at a interlocutory stage and it was wrong to make a Judgement beyond the "realistic prospect of success". The Court therefore allowed the admission to be withdrawn.

BARLOW v WIGAN COUNCIL EWHC 1546 (QB)

The High Court found that the highway was maintainable at public expense despite no evidence of intention for it to be a highway when it was constructed. The vital questions in any case are: was it a highway at the time of the accident? And was it constructed by a highway authority? If it is a highway and if it was constructed by a highway authority, it is a highway maintained at the public expense and a duty us owed under s.41 of Highways Act 1980.

CALONNE CONSTRUCTION LTD v DAWNUS SOUTHERN LTD (2019)

After a claim was issued the Defendant made a Part 36 offer to settle. The Defendant went on to file and serve a Defence and Counterclaim. The Claimant failed to beat the offer, but the Claimant argued that it should be rendered invalid as it was made before the Counterclaim was entered. It was held the Defendant's proposed Counterclaim had to be treated as part of claim for the purposes of Pt 36. Given that parties could make Pt 36 offers at any time, and even before the commencement of proceedings, it could not be right to say that a Pt 36 offer could not be made in relation to an as yet unpleaded Counterclaim. It would therefore not be rendered invalid. Nor would it be rendered invalid by reason of the fact that it contained provision for interest to accrue at a particular rate after the expiry of the relevant period.

SULLIVAN v RUHAN & ORS (2019)

The Claimant applied for judgement in default against the Defendants on the basis that they had failed to file Acknowledgements of Service. D2 and D3 were domiciled and resident in the Isle of Man and Switzerland respectively. They did not have legal or beneficial title to the property and only stayed for short periods of time on payment of a fee. In the absence of valid service, the application for D2 and D3 were denied.

CARL FERRI v IAN GILL (2019)

On 26 January 2015, the Claimant had been riding his bicycle when the Defendant's opening car door struck him. The Claimant suffered injuries to his arm, abdomen, back, neck and left shoulder. He

instructed a firm of solicitors and a report from the general practitioner states he was expected to recover in 4 months. However, the Claimant did not recover as originally expected and he went on to recover an award of £42000. His Solicitors argued that "exceptional circumstances" had arisen and while the claim was originally suitable for the portal, it ultimately was not, therefore costs should be assessed by way of detailed assessment and not under the fixed costs regime. At first instance the Judge agreed. On Appeal it was held that the claim should be remitted to another Master.

WILLERS v JOYCE & ORES (2019) EWHC 937 (Ch)

Correspondence marked "without prejudice save as to costs" was held as admissible when arguing non party cost orders when the contents of the correspondence shows a failed mediation attempt. The High Court did not accept that, by marking the correspondence without prejudice save as to costs, the respondent lawyers were confining the relaxation of the without prejudice rule to the hearing of an application for costs against the Claimant.

MR v COMMISSIONER FOR THE METROPOLIS [2019] EWCH 1970 (QB)

The Claimant claimed for false imprisonment and assault. The Claimant offered by way of Part 36, that the matter be settled in the sum of nil pounds, with an admission of liability plus reasonable costs. At trial he was awarded £2750 but with no order for costs. The Court considered the offer and found that Part 36 consequences should apply. The Claimant was awarded costs form the expiry of the relevant period of the offer. However, the original order of "no Order" for costs prior to the expiry of the relevant period remained unaltered.

CABLE V LIVERPOOL VICTORIA INSURANCE COMPANY LIMITED

A claim worth 2.6 million was lodged in the portal despite the portal limit being £25000. A Judge held that not at any point could this claim have been valued at £25000 or less. To lodge the claim in the portal was an abuse of process and as such the claim should stand struck out.

SMITH ASHWELL MAINTENANCE [2019] 1 WLUK 541

The Claimant claimed for an injury to his ankle while he was at work. The Claimant alleged significant disability as a result of the ankle injury and, further that it hindered his ability to work. Surveillance showed that this was not the case. The Judge found that that while there had been a degree of embellishment which affected the Claimant's reliability, he was not dishonest and a substantial award was made. The decision in this County Court Judgement turns on its facts and it should be evaluated within a wider case law context.

R & S PILLING (T/A PHOENIX ENGINEERING V UK INSURANCE LIMITED (2019) UKSC 16

A car being repaired on private premises caught fire and caused significant damage. The insurer for the premises paid out but sought to recover the loss from the motor insurers. It was held that the car was not being "used" in line with the Road traffic Act. Although the repairs could be said to have arisen out of the use of the car, it did not follow that the property damage was caused or arose out of that use. Therefore, the motor insurer was not liable to indemnify the vehicle owner for the property damage.

FOR ALL RELATED ENQUIRIES, PLEASE CLAIRE ON 01254 828300

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