APIL YORKSHIRE REGIONAL MEETING
14 NOVEMBER 2019
ADMISSIONS WORKSHOP

Workshop

- Given the terms of the PI Protocol, and general law, do any of the statements by a defendant amount to an "admission of liability"?
- Please answer "yes" or "no"
- If "no" – is there any admission – and if so of what?
- Are there tactical considerations for the claimant to consider on any of the statements – and if so what?

Question 1

- The defendant “admits a breach of duty”?
- NO
- But there is an admission of breach of duty (though not necessarily the factual circumstances/that any accident occurred eg breach of S 41 Highways Act 1980 but that was not the cause of any accident).

Question 2

- **The defendant “admits breach of duty and causation”?**
- **YES**
- **Limitation not put in issue.**

Question 3

- The defendant “admits negligence”?
- NO (½ point for YES)
- But there is admission of breach of duty (and probably the factual background).

Question 4

- **The defendant “admits an accident caused by breach of duty”?**
- **NO**
- **But there is an admission of the fact of the accident; and**
- **There is also an admission of breach of duty; so is there really a issue on causation?**
- **How do you <u>want</u> to interpret the (ambiguous) “admission”?.**

Question 5

- The defendant “admits sub-standard medical treatment caused by breach of duty”?
- NO
- But there is an admission of breach of duty; and
- The fact of sub-standard treatment
- With clinical negligence there may well be a genuine issue on causation.

Question 6

- **The defendant “admits liability but denies causation”?**
- **NO**
- **An oxymoron!**
- **But there is an admission of breach of duty (and probably the factual background); and**
- **This may be regarded as ambiguous and, tactically, open to interpretation**
- **So, again, how do you <u>want</u> to interpret the “admission”?.**

Question 7

- **The defendant “admits liability but makes no admission as to the extent of injury loss and damage”?**
- **YES**
- **Causation of <u>some</u> damage is effectively admitted – the extent is an issue on quantum**
- **Limitation not put in issue.**

Question 8

- **The defendant “admits primary liability but alleges contributory negligence of 30%”?**
- **YES**
- **Primary liability is still “liability”**
- **Limitation not put in issue.**

Question 9

- The defendant “alleges contributory negligence by the claimant”?
- NO
- There is no “admission”.

Question 10

- The defendant is “willing to concede primary liability on the basis of 30% contributory negligence by the claimant”?
- NO
- This is an offer.

Question 11

- **The defendant “suggests a figure of 30% contributory negligence on the part of the claimant”?**
- **NO**
- **This is an offer.**

Question 12

- **The defendant states that “we do not require you to prove negligence”**
- **NO**
- **There is no “admission”.**

Question 13

- The defendant states that “liability is not an issue”
- YES (half point for NO)
- Whilst not using a term such as “admit” or “accept” when dealing with liability this ought to suffice, but the cautious practitioner might wish to set out the understanding of what has been said.

Question 14

- The defendant indicates that “our insured is minded to settle the claim so please provide details on quantum”
- NO
- Tactically, if it is a case the claimant wishes to settle, that invitation may be taken up but otherwise the defendant might be reminded that the protocol anticipates disclosure of information on quantum in return for an admission of liability.

Question 15

- The defendant “admits liability but reserves the position on limitation”?
- NO (PI Protocol – but YES common law so 1 point for each answer)
- There is an admission of the fact of injury, breach of duty and causation
- The limitation point would prevent this being an “admission of liability” under the PI Protocol – but probably not under the general law.

Law

- What is an “admission”?
- What is a “liability”?
- What is an “admission of liability”?
- What is a “pre-action admission”?
- What about contributory negligence?.

Admission?

- What is an “admission”?
- For there to be an admission it will, usually, be necessary for words such as “admit” “concede” or “accept” to be used, see…
- Belt v Basildon & Thurrock NHS Trust [2004] EWHC 785 (QB).

Liability?

- What is “liability”?
- Gregg -v- Scott [2005] UKHL 2 Hale LJ...
- “It is now hornbook law that damage is the gist of the action in negligence. The defendant owes a duty to take reasonable care of the claimant, the breach of which has caused the claimant actionable damage.”

Admission of Liability?

- What is an “admission of liability”?
- In Parrott -v- Jackson [1996] P.I.Q.R. P394 the Court of Appeal reviewed earlier rulings, on what amounts to an admission of liability, dealing with both Blundell -v- Rimmer [1971] 1 W.L.R. 123 and Rankine -v- Garton & Co [1979] 2 All E.R. 1185.
- Admissions were “negligence” – still good law?

Pre-action Admission?

- What is a “pre-action admission”?
- Where the PI Protocol, the Clinical Negligence Protocol or the Disease Protocol applies Part 14.1A provides that, by notice in writing, a personal may “admit the truth of the whole or any part of another party’s case before commencement of proceedings” if…
- That is done after receipt of a “letter before claim” or stated, in any event, to be made under Part 14.

Contributory Negligence?

- What about contributory negligence?
- Raising an issue on contributory negligence should not prevent, where the admission is otherwise sufficiently clear, an admission of liability
- Where there is an admission that may not preclude an argument by the defendant there has been contributory negligence on the part of the claimant.

Practice

- Keeping a claim within a low-value protocol
- Disclosure of quantum under the PI Protocol
- Issuing proceedings
- Judgment
- Offers
- Costs
- Pre-action admissions – binding?

Recent Case

- **THE ROYAL AUTOMOBILE CLUB LTD v WRIGHT**
- **[2019] EWHC 913 (QB)**
- **QBD (William Davis J) 26/03/2019**

Background

- The claimant was employed by the defendant at the club in Pall Mall
- During the course of her employment the claimant was injured when she fell down a flight of stairs.

Background

- The claimant's solicitors send the defendant a letter of claim in accordance with the PI Protocol giving details of the injuries which included fractures of the fibula and tibia of the right leg and complex regional pain syndrome.

Background

- The defendant responded suggesting that as the value did not appear to exceed £25,000 the claim should be submitted under the EL/PL Protocol, a request the claimant's solicitors declined.

Background

- On 8 September 2016 the defendant admitted liability
- On 4 August 2017 the claimant disclosed information on quantum, including a schedule putting the value at just over £1 million.

Background

- On 9 April 2018 the defendant, on the basis the letter of claim conveyed the impression was a “relatively simple and straightforward orthopaedic matter” and “damages would be modest”, suggested that the earlier admission on liability “may have been unwarranted”.

Background

- The claimant issued proceedings and the defendant applied to withdraw the admission.

Judgment

- The Master referred to the factors set out in paragraph 7.2 PD 14
- Permission to withdraw the admission was refused
- The defendant appealed.

Appeal

- New evidence: the Master was right to be unimpressed by an argument there was new evidence on quantum which changed the nature of the claim and justified withdrawal of an admission – the letter of claim made the nature of the case clear.

Appeal

- **Conduct: the claimant's solicitors had done nothing to give the impression this was a claim of modest size**
- **Prejudice: the claimant would be prejudiced, given the elapse of time, if it was now necessary to investigate liability.**

Appeal

- **Stage of the proceedings: whilst the application was made shortly after issue the overall timescale had to be considered.**

Appeal

- **Interests of the administration of justice: there would be real damage to the administration of justice if having had an unequivocal admission and interim payments being made that admission could be withdrawn much later.**

Appeal

- Prospects of success: the Master did not need, as he had done, to effectively conclude the claimant was bound to succeed, only to consider what the prospects of success were and here it was enough to say the claimant had "perfectly legitimate prospects of success".

Appeal

- **The appeal was dismissed.**

So…

- It is essential to decide whether a claim should, or should not, go into a low value protocol at the outset
- If a claim that turns out to be of high value goes into a low value protocol the defendant will probably not be held to any admission: Wood v Days Health UK Limited [2017] EWCA Civ 2097.

And…

- If a letter of claim is sent the defendant is on notice of the potential value
- The “interests of the administration of justice” is an important factor, particularly where the admission has been made some time ago and relied on, for example the making of interim payments.

And Also…

- The requirement for the court to consider prospects of success does not mean having to determine the claim is likely to succeed, this is just one of the factors which are of equal importance, see Woodland v Stopford [2011] EWCA Civ 266..


Scores?