IN THE COUNTY COURT AT CANTERBURY **Claim No.039LR464**

BETWEEN:-

MISS KAYLEE JERROM

Claimant

~ and ~

SERCO LEISURE OPERATING LIMITED

Defendant

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

1. This judgment deals with the Defendant's application to withdraw an admission pursuant to the former CPR Practice Direction 14 paragraph 7.2. At the hearing on 29 January 2024 the Defendant was represented by Mr Jones of counsel and the Claimant by Ms Livesey of counsel. In view of the potential size of the claim on the Claimant's case and the importance of the application to both parties, I reserved my judgment at the conclusion of that hearing.

Chronology

2. Miss Jerrom, the Claimant, was born on 20 February 1982. On 14 October 2018 she had a fall when she was a visitor to Maidstone Leisure Centre, which was operated by the Defendant. The statement in support of the Defendant's application concedes that Miss Jerrom was a lawful visitor at the time of the accident.

3. On 24 January 2019, 3 months after the accident, the Defendant was notified of the claim by the Claimant's solicitors. On 5 February 2019 the Defendant requested that the case should be dealt with via the Portal for Low Value Personal Injury (Employers' Liability and Public Liability) Claims ("the Portal").

4. On 12 February 2019 the Claimant's solicitors submitted a Claim Notification Form ("the CNF") in accordance with the Pre-action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims. The CNF valued the case at up to £10,000, rather than the alternative option available of up to £25,000.

5. The CNF asked for a brief description of the injury sustained as a result of the accident and the response given on behalf of the Claimant was:

"The Claimant has suffered bruised buttocks, bump to back of the head and pain and stiffness to her neck and back".

6. She had not taken time off work as a result of the accident. She had attended hospital on 15 October 2018, the day following the accident. Although a medical professional had recommended rehabilitation, none was specified.

7. So far as the circumstances of the accident were concerned, the time was given as 13.45 and the following description of the facts was included:

"The Claimant was at the swimming pool with her family. When she got out of the pool and went to the changing rooms to feed her baby, she slipped over outside the changing room. The Claimant suffered a bad fall and also the baby was dropped in the fall".

8. The accident was reported to the receptionist on the date it occurred.

9. The Claimant alleged in the CNF that the Defendant was liable for the accident as follows (in so far as the very unclear copy of the CNF can be deciphered):

   a. Failing adequately or at all to maintain the poolside.

   b. Failing to institute and / or maintain any or any adequate regime for the inspection of the condition of the poolside.

   c. Failing to take any or any reasonable care to see that our client would be safe in using your premises as a lawful guest.

   d. Causing or permitting the poolside to be or become or to remain a danger and a trap to persons lawfully using your premises by reason of allowing the smooth tiles to be become slippery.

   e. Failing to institute or enforce any or any adequate system of inspection of the poolside whereby the fact that the inadequate monitoring/warning of the defect within the area warranted the defect to be unnoticeable to a person navigating the area, would have been detected and remedied prior to our client's accident.

   f. Failing to place any permanent fixed marks or warning signs upon or around the smooth tiles to state that (i) the smooth tiles were in existence (ii) the position of the same.

   g. Exposing our client to an unnecessary and foreseeable risk of injury.

   h. Failing to carry out any or any adequate risk assessment and a safe environment for your patrons.

   i. A breach of the duty of care owed under section 2 of the Occupiers' Liability Act 1957.

10. The CNF's statement of truth was signed by the Claimant's legal representative.

11. The Defendant's then claims handlers, the Davies Group, submitted a Compensator's Response dated 9 April 2019 in which the Defendant admitted the following:

    a. Accident occurred.

    b. Caused by defendant's breach of duty.

    c. Caused some loss to the claimant, the nature and extent of which is not admitted.

    d. The defendant has not accrued defence to the claim under the Limitation Act 1980.

12. On 20 April 2019, 6 months after the accident, the Claimant was examined by Mr Ali, an associate specialist in orthopaedics. In his report dated 25 April 2019 he recorded that the accident caused injuries to Miss Jerrom's lumbar spine, right hip and the back of her head. She was continuing to suffer severe symptoms in her back and right hip and moderate head symptoms. Her psychological symptoms were said at that stage to have resolved. According to Dr Ali's report, the Claimant denied any involvement in previous accidents resulting in injury. The material accident occurred when she slipped and fell due to the floor of the changing room being wet. Dr Ali recommended that she was referred to an orthopaedic surgeon.

13. That report was served on the Defendant on 7 November 2019 following service of the Stage 2 Interim Settlement Pack in accordance with the Pre-Action Protocol. The Defendant then paid the £1000 interim payment requested on behalf of the Claimant.

14. In the meantime the Claimant had been further examined, this time by Mr Jeer, a Consultant Trauma and Orthopaedic Surgeon, on 12 June 2019. He recorded in his report dated 10 August 2019 that the accident occurred when she slipped as a result of the floor of the changing room being wet.

15. His report noted that she continued to complain of severe low back pain with radiation despite ongoing physiotherapy. He recorded that she had no pre-dating low back issues. She had suffered a pubic ramus fracture 12 years before, but Mr Jeer did not consider that this was relevant and nor was the transient numbness that she had experienced in her leg when she was pregnant again likely to be related to the material incident. She had had an MRI scan on 25 July 2019 that indicated a disc protrusion at L5/S1. She reported back dominant pain. She felt that the leg gave way and as a result she fell regularly.

16. An examination of Miss Jerrom was "*virtually impossible*" because "*she was in agony*". There was significant impairment of straight leg raising and severe pain when sitting. In contrast to Mr Ali, Mr Jeer referred to the ongoing

psychological impact of the accident and the injuries. He also reported significant interference with Miss Jerrom's everyday activities at section 4 of his report. He recommended that a psychological report should be obtained. He also recommended that she should be referred to a spinal surgeon.

17. On 1 October 2019 Miss Jerrom was examined by Dr Willows, a Chartered Clinical Psychologist. His report is dated 11 October 2019 and recorded the Claimant saying that the accident occurred as follows:

> "Whilst out of the pool and carrying her young baby in her arms, a pool attendant "*threw bucket of water across the floor*" causing Miss Jerrom to slip and, at the last moment, to drop her baby as she fell heavily to the ground".

18. Dr Willows concluded that the Claimant had developed moderate-severe exacerbation of pre-existing symptoms of anxiety and depressed mood. The exacerbation was variable, but ongoing. He recommended a course of Cognitive Behavioural Therapy (CBT) and treatment in "*a pain management component*".

19. On 3 December 2019 the Claimant was examined by Mr Quaile, a Consultant Orthopaedic and Spinal Surgeon. His report dated 6 December 2019 gave the accident circumstances as follows:

> "She tells me that she rinsed off in a shower and was then walking out when she encountered water on the floor. This caused her to slip and fall".

20. She had undergone a course of physiotherapy and a nerve root block without improvement. She told Mr Quaile that:

> "she was previously fit and well and denied any spinal problems prior to the index accident".

21. Mr Quaile reviewed her medical records and he noted a history of sciatica and low back pain in 2009, stress related problems in 2009, an entry in December 2009 noting pain in the neck and sciatica intermittently since she fell off her horse and broke her pelvis dislocating her shoulder three years before. There was a further entry relating to low back pain in 2011 and a reference to back pain (as well as neck pain) in 2014. There were several further entries over the years relating to stress.

22. Mr Quaile recorded that she was still complaining of pain at the lumbosacral junction which radiated in her groin, particularly on the right side. Her back symptoms outweighed her leg symptoms indicating that neurological compression or irritation was less significant than mechanical back pain. He described significant interference with the Claimant's activities of daily life at section 9 of his report. On examination he said that she:

"presented with signs of biopsychosocial distress including the yellow flags of fear inhibition, catastrophizing behaviour and hypervigilant behaviour".

23. She was also positive for a number of Waddell signs which he described as "*testing for inappropriate illness behaviour*".

24. Mr Quaile was of the opinion that the Claimant had pre-existing degenerative changes in her spine, including the disc protrusion at L5/S1. He attributed a 1-2 year exacerbation period to the material accident. He considered that the psychological factors in the case meant that the Waddell signs had to be interpreted with caution. Although from an orthopaedic perspective a gradual resolution of the symptoms back to the Claimant's pre-accident state within the exacerbation period would have been expected, he considered that the Claimant needed to be assessed by a clinical psychologist or consultant psychiatrist.

25. Mr Quaile's report was sent to Dr Willows who prepared an addendum report dated 12 January 2020. He considered that Mr Quaile's conclusions were consistent with Miss Jerrom's presentation at the time of his assessment and that was such as to suggest "*an overlap and interaction between physical and psychological factors.*" He recommended that this "*interplay should be the focus of the psycho intervention with a focus upon Pain Management*" as he said that he had recommended in his first report.

26. At this stage the first Covid lockdown from March 2020 caused a delay in the progress of the case. On 27 August 2020 the Claimant's solicitors requested a further interim payment and they then served the report of Mr Jeer and the first report of Dr Willows on 11 September 2020. The Defendant paid a further interim payment of £1000 in December 2020.

27. I pause to consider the position of the parties at this point. The claim remained in the Portal with no indication to the Defendant that the claim was valued by the Claimant's solicitors at in excess of the original £10,000 limit. However, on the evidence of Mr Jeer and Dr Willows that had been served, the Defendant's claims handlers knew that the Claimant was complaining of significant ongoing symptoms, that there was a finding on MRI of a disc protrusion, that Mr Jeer recommended that the opinion of a spinal surgeon was required, and that Dr Willows was recommending the involvement of pain management expertise in the case.

28. Further, in the report of Dr Willows there was an account, apparently from Miss Jerrom, which alleged that a pool attendant had thrown water on the floor and that it was this which was the precipitating cause of the Claimant's accident. That was apparently an allegation (if pursued by the Claimant) of a positive act of negligence on the part of the employee, that was not included in the original

allegations of failures to act contained in the CNF in relation to the systems employed and the nature of the tiles in situ.

29. In my judgment, even though the claim was not (wrongly) taken out of the Portal by the Claimant's solicitors at any stage prior to the issue of proceedings, it was, or should have been, quite plain to the Defendant's claims handlers by the end of 2020, when the second interim payment was made, that this was a claim that had clearly had the potential to be significantly in excess of the original £10,000 limit and, further, a claim which had a complexity to it because of the pathology found on MRI, the overlap between the physical and psychological aspects of the case, and the impact on the Claimant's everyday activities.

30. The Claimant was re-assessed by Mr Quaile (remotely) in January 2021 and the reports of Mr Quaile and the addendum report of Dr Willows were served on the Defendant in February 2021.

31. In my judgment, once the Defendant had sight of these additional reports, there can have been no doubt about the complexity and potential value of this claim had the Defendant's claims handlers given the case any proper consideration. It is right that the Claimant's solicitors did not withdraw the case from the Portal as they should have done, but it would have been (or should have been) obvious to the claims handlers that the claim was not a low value PL case even though, at the outset when the admission was made by the Defendant, it was appropriately assessed as such by the claims handlers based on the information available in the CNF.

32. In accordance with the advice of Mr Quaile and Dr Willow, a pain management expert, Mr Bhadresha, was instructed by the Claimant's solicitors and he examined Miss Jerrom in March 2021 and then again in September 2021.

33. In his first report dated Mr Bhadresha said that the Claimant told him that she slipped on a wet floor. There is no mention of an employee throwing a bucket of water. Her pain scores were 10/10 in the first 24 hours, the first 6 months and at the time of his examination (both 'at best' and 'at worst'). At section 7 Mr Bhadresha recorded the very significant impact the ongoing pain was said to be having on Miss Jerrom. Although she had always suffered some back ache and mild sciatica, the pain was nowhere near the level that it now was. CBT had helped her psychologically, but other forms of treatment had either not helped or had made the situation worse (apart from aqua therapy, but she panicked too much going into the water). She was taking Duloxetine and Pregabalin (increasing dose).

34. Mr Bhadresha said that she gave a clear account of the accident and subsequent events, there were no inappropriate findings during his examination and there was, in his opinion, no inconsistency between the facts of the incident,

the Claimant’s complaints and his physical examination findings. He reserved his final prognosis until after she had undergone the further nerve root block recommended by her orthopaedic surgeon and also a review in the pain clinic for possible tender point injections and further medication changes. If those interventions were not helpful then she might require a pain management program with input from clinical psychologists as recommended by Dr Willows.

35. The first report of Mr Bhadresha was served on 19 May 2021. The Claimant’s solicitors indicated that they could not assess the final value of the claim until they had a final prognosis.

36. A further interim payment of £2,000 was requested by the Claimant’s solicitor on 29 July 2022, which the Defendant agreed to pay on 14 September 2022.

37. In his second report dated 7 September 2021 Mr Bhadresha confirmed that the Claimant’s symptoms remained the same, and possibly worse, as they had been in March 2021. The impact on her daily activities had not changed. The nerve root blocks had not helped. She had been discharged by the pain clinic because she was still being seen by the orthopaedic services. She had stopped taking medication due to its side effects. She continued to have weekly physiotherapy which was helpful.

38. Mr Bhadresha was of the opinion that her ongoing symptoms were due to a degree of central sensitisation affecting her upper mid-back and shoulder area and nerve irritation affecting the right L5/S1 nerve root. He considered that her presentation was genuine. She was unfit for her previous occupations as a dental nurse or radiographer. She was likely to be troubled with pain for the foreseeable future. He recommended a pain management program that would assist her in managing her pain, although it would not reduce the pain she suffered.

39. The claim form was issued on 14 September 2021 and stated that the claimant expected to recover between £50,000 and £75,000. The claim form was then amended to claim up to £500,000 (with the additional issue fee being paid). The Amended Particulars of Claim are dated 4 January 2022. The proceedings were deemed served on or about 11 January 2022.

40. Mr Bhadresha’s second report was served with the proceedings along with the Schedule of Loss claiming damages (excluding general damages) in excess of £444,000.

41. The Defendant instructed DWF LLP solicitors to act on its behalf on 12 January 2022 and an acknowledgement of service was filed and served by the Defendant on 17 January 2022, together with a request for a 28 day extension of time to 8 March 2022. A further extension until 22 March 2022 was agreed

by the Claimant's solicitors on 3 March 2022, with a draft consent order being approved by the court on 22 March 2022.

42. The Defence was served in accordance with the agreed extension together with the application to withdraw the admission. The Defence denied liability notwithstanding the pre-commencement admission of liability and pleaded contributory negligence.

43. On 13 April 2022 the Claimant issued an application to strike out the Defendant's application. That was supported by a statement from a paralegal at Irwin Mitchell LLP, the Claimant's solicitors, Eleanor Buckley.

44. On 3 May 2022 the proceedings were transferred to the County Court at Canterbury.

Defendant's Application

45. As I have already noted, the Defendant's application to withdraw its pre-action admission of liability was issued on 22 March 2022. For reasons that are not clear from the court file, but are likely to be related, at least in part, to the impact of Covid 19 upon the civil courts, but also to the particular issues in the County Courts in Kent, not least, until very recently, the lack of salaried district judges, the application was not listed until 23 May 2023. In fact that hearing does not appear to have gone ahead, again for reasons that are not clear, and it was relisted on 19 October 2023.

46. However, on that occasion Deputy District Judge Van Der Wal considered (understandably) that the one hour time estimate for the hearing was inadequate. He also considered that, given the pleaded value of the claim, the application should be heard by a Circuit Judge. He gave directions and the application was thereafter listed before me on 29 January 2024.

47. The Claimant had issued an application to strike out the Defendant's application. However, on 19 October 2023 it was confirmed that the Claimant did not pursue that application and the order of DDJ Van Der Wal dismissed that application dated 12 April 2022.

The Law

48. CPR 14.1B (now CPR 14.3) provided that, unless the other party agrees, admissions made under the EL/PL Protocol can only be withdrawn with the permission of the Court after the commencement of proceedings (CPR 14.1B(2)(b)(ii) and (3)(b)).

49. Although applications to withdraw admissions are now governed by the new CPR 14.5, that only came into effect from 1 October 2023. Therefore, since the

application was issued prior to that date, both parties agreed that it is governed by paragraph 7 of the previous Practice Direction to CPR 14, which is in slightly different terms to the new provision.

50. CPR 14PD7 provided as follows:

> 7.1 An admission made under Part 14 may be withdrawn with the court's permission.
>
> 7.2 In deciding whether to give permission for an admission to be withdrawn, the court will have regard to all the circumstances of the case, including—
> (a) the grounds upon which the applicant seeks to withdraw the admission including whether or not new evidence has come to light which was not available at the time the admission was made;
> (b) the conduct of the parties, including any conduct which led the party making the admission to do so;
> (c) the prejudice that may be caused to any person if the admission is withdrawn;
> (d) the prejudice that may be caused to any person if the application is refused;
> (e) the stage in the proceedings at which the application to withdraw is made, in particular in relation to the date or period fixed for trial;
> (f) the prospects of success (if the admission is withdrawn) of the claim or part of the claim in relation to which the admission was made; and
> (g) the interests of the administration of justice.

51. I was referred to a number of cases in which the exercise of the discretion to permit or to refuse the withdrawal of a pre-action admission has been considered.

52. In *Woodford v Stopford* [2011] EWCA Civ 266 the Court of Appeal confirmed that "*a wide discretion*" is conferred on the court to allow withdrawal of a pre-action admission. After setting out the factors in 14PD7.2, Ward LJ said the following at paragraph [26]:

> "These factors are not listed in any hierarchical sense nor is it to be implied in the Practice Direction that any one factor has greater weight than another. A judge dealing with a case like this must have regard to each and every one of them, give each and every one of them due weight, take account of all the circumstances of the case and, balancing the weight given to those matters, strike the balance with a view to achieving the overriding objective. Cases will vary infinitely and the weight to be given to the relevant factors will inevitably vary from case to case. Sometimes the lack of new evidence and the lack of explanation may be the important considerations; in others prejudice to one side or the other will provide a clear answer and in all the interests of justice will sway the balance. It would be wrong for this court to circumscribe the manner of the exercise of this discretion or to give any more guidance than is trite, namely, carry out the task set by the Practice Direction, weigh each of the identified factors as well as all the other circumstances of the case and strike a balance with due regard to the overriding objective."

53. In *Wood v Days Healthcare UK Ltd* [2017] EWCA Civ 2097 Mrs Wood's solicitors had confirmed to the loss adjusters of the prospective defendant (Days Healthcare UK Ltd) 6 months after the October 2009 accident that they

considered that the case would fall into the fast track (indicating a limit of £25,000). A few months later, in June 2010, the loss adjusters formally conceded liability and confirmed that there were no allegations of contributory negligence. Medical evidence was served at the end of 2011 indicating that Mrs Wood had lost the use of her hand following an operation to her injured shoulder. In August 2012 her solicitors informed the loss adjusters that she had been left with a right hand with severely reduced function. Proceedings were issued in October 2012 claiming damages in excess of £300,000. The case on breach of duty was pleaded in full notwithstanding the previous admission of liability.

54. Days Healthcare UK Ltd (the first defendant) applied to withdraw the pre-action admission made on its behalf. The first instance judge refused the first defendant permission to withdraw its admission of liability notwithstanding the increase in the potential value of the claimant's case, saying "*that is a risk which is inherent in any personal injuries claim*". She considered that the loss adjusters "*took a calculated risk that the value of the claim might increase after the admission*". She also found that, had the loss adjusters had access to a particular report which was relevant to the issue of liability at the time of the admission, then it is unlikely that liability would have been admitted. On the judge's finding, the loss adjusters should have realised that the report was missing and, had they taken reasonable steps to investigate, they would have realised that there was a defence to the claim.

55. Summary judgment was also granted by the judge to the claimant against the second defendant on a claim in contract.

56. In the Court of Appeal Davies LJ, giving the only judgment, with which the other appeal judges agreed, found that the judge's decision to refuse permission to withdraw the admission was erroneous.

57. Firstly, the Court of Appeal found that highly material new evidence had come to light, namely as to the extent of the injury caused and, in consequence, quantum. The case had gone from one of less than £25,000 in 2010 to one in excess of £300,000 in 2012. Davies LJ considered that there was a contrast between an increase of a few thousand pounds and a ten-fold increase, as there was in that case. She referred to the fact that the loss adjusters had not acted alone in their original assessment of the value of the claim. The claimant's solicitors had also accepted that over time the claim "*had changed entirely in character and amount*".

58. Davies LJ said this at [41]:

> "A significant point that troubles me, on the judge's approach, is this. This was, in 2010, being presented as (currently) a modest personal injury claim, suitable for the fast track. Changes in litigation procedures and in the applicable costs regime provided, in 2010 as now, every

incentive on grounds of proportionality for parties – and particularly, perhaps, defendants and their insurers – speedily to settle such claims. The Personal Injury Protocol was designed to facilitate that. The judge's stark approach – that a risk of increase in quantum is inherent in any such claim – would in my view tend to discourage speedy admission of liability in (then) small claims; admissions made having regard to considerations of saving costs and of proportionality. It would tend to discourage them for fear of a subsequent withdrawal of admission of liability being refused on the basis advocated by the judge, even where quantum has in the interim enormously and unexpectedly increased. This is precisely one of the points validly made by Judge Purle QC, sitting as a Judge of the High Court, in his decision (in a case on facts to some extent analogous with the present case) in Blake v Croasdale [2017] EWHC 1336 (QB) at paragraph 28 of his judgment: a point which I would wholly endorse."

59. Further, although the loss adjusters should have asked for the report that impacted on the issue of liability, Davies LJ considered that their failure to do so indicated that the admission of liability was an error, rather than a calculated risk as the judge had found.

60. At paragraph [45] Davies LJ confirmed that the Rule and Practice Direction require:

"a global approach, requiring evaluation of all the relevant circumstances in deciding whether it is just and fair to permit a party to withdraw a pre-action admission".

61. After considering all of the relevant factors, she concluded at paragraph [50] that:

"… the entire "change in character and amount" of the claimant's claim in 2012 (to adopt the language of her own solicitors) should, given all the circumstances, have justified the grant of permission to withdraw the pre-action admission. That conclusion is then reinforced when one has due regard to the existence of the summary judgment against D2".

62. Paragraph [28] of the judgment of HHJ Purle QC in *Blake v Croasdale & another* [2017] EWHC Civ 1336 (QB), the High Court decision to which Davies LJ referred with approval in *Wood*, followed the judge having set out the factors in 14PD7.2:

"…, under (a) the grounds upon which Esure seeks to withdraw the admission is, in brief, that it initially considered that it was dealing with a low value claim, although it soon came to realise, and indeed appeared to realise from the outset, that the case was not suitable for the portal. There was nothing in the material it received to indicate a claim running into millions and therefore proportionality persuaded Esure to adopt a pragmatic approach of not taking the ex turpi defence in a claim which, to make good the costs of that defence, would or might have exceeded the benefit to be derived from endeavouring to settle, upon the footing of an admitted liability, a relatively small claim. Moreover, the defence may well fail. In my judgment, Esure's approach was a perfectly sensible one and I do not consider that it is to be criticised for what has been described, in my judgment erroneously, as a last-ditch effort to avoid liability. It is correct to say that the material enabling Esure to raise the defence has been available to Esure from an early stage, but Esure cannot possibly have imagined that it was facing a multi-million pound claim when the claimant's own solicitors considered it appropriate to have started the claim within the portal. Even when the initial medical evidence was served in November 2015,

Esure could not then have foreseen that this was what is now described as "a catastrophic" claim running into many millions of pounds, its response then being to make an offer of £100,000 net. Accordingly, it seems to me that Esure should be entitled to withdraw its admission and that to refuse to do so would discourage defendants, especially insurers, from acting proportionately, which would make the giving of admissions in like cases where it is appropriate, in the interests of reasonableness and proportionality, to give them, more difficult to secure."

63. *Royal Automobile Club v Wright* [2019] EWHC 913 (QB) was a case in which the claims handler of the defendant's insurer assessed that the claim was unlikely to be in excess of £25,000. However the claimant's solicitors disagreed and they refused the insurers' suggestion that the case should be submitted via the Claims Portal. The claims handler stated that the two sides would have to "*agree to disagree*" and then, a couple of months later, informed the claimant's solicitor that liability was admitted.

64. The letter of claim in that case had referred to fractures to the fibula and tibia, the development of complex regional pain syndrome and to the need for the claimant's solicitor to instruct experts in orthopaedics, pain and psychiatry.

65. The claimant's solicitors then did instruct a variety of medical experts over the following months and a number of interim payments were made on behalf of the defendant. Just under 11 months after the admission of liability, a schedule of loss was served by the claimant claiming damages of just in excess of £1,000,000. The defendant's legal representative took issue with the increase in value and also raised contributory negligence for the first time. The claimant was invited to consent to the withdrawal of the admission, but, in response, proceedings were issued by the claimant's solicitors relying upon the admission.

66. The Queen's Bench Master who heard the application refused permission to the defendant in *Blake* to withdraw the admission having considered the factors in 14PD7.2. It was noted by Master Davison that it was conceded by the claimant that the defendant was entitled to pursue the allegation of contributory negligence notwithstanding the admission of liability.

67. On appeal by the defendant, William Davis J. noted that the correspondence from the claimant's solicitors made it "*crystal clear to anyone in the position of the claims handler … that this was a claim that was anything but straightforward. It was … going to involve the instruction of three medical experts*". Further, he found that there was nothing in the conduct of the claimant's solicitors that had given the impression that it was a claim of modest size. There would be prejudice to the claimant in having to recall the circumstances of the accident 4 years before, but there was substantial prejudice to the defendant if the application was refused because they face a

substantial claim. The application to withdraw was not made shortly after it was made, although it was made shortly after the issue of proceedings.

68. William Davis J then said this in relation to factor (g), the interests of the administration of justice, at paragraph 17:

> "If clear and unequivocal admissions which have led to a substantial investigation of quantum and to interim payments being made apparently without question can be withdrawn many months later, there will be real damage to the administration of justice. It undermines the basis on which parties to this type of litigation conduct themselves."

69. The decision of the Master to refuse permission to the defendant to withdraw the admission was upheld by Willliam Davis J.

Analysis

(a) the grounds upon which the applicant seeks to withdraw the admission including whether or not new evidence has come to light which was not available at the time the admission was made

70. The Defendant's application is supported by a statement from Mr Gatzouris, a consultant solicitor employed by the solicitors for the Defendant. He relies upon the fact that the claim was issued in the Portal with a value up to £10,000 and he states that at the time of the admission there was limited information available to the claims handler. An admission was made within the 40 day limit so that the case remained in the Portal for low value claims. However, since the time when the admission was made, the value of the claim has increased substantially on the basis of evidence that was not available to the claims handlers.

71. Mr Gatzouris states that the investigations undertaken on behalf of the Defendant since the issue of proceedings have established that the Defendant had a potential defence based on the footfall in the location, the system of monitoring, cleaning and inspection, the appropriateness of the flooring material, the cleaning product applied each night, the presence of a cleaner on duty, the instructions to other members of staff and the appropriate signage in place to warn of the possibility of a wet floor.

72. However, the Defence served does not particularise the matters that are set out in Mr Gatzouris' statement about system, the flooring etc. and no witness statements or documentary evidence has been served in support of the application.

73. Another ground relied upon by Mr Gatzouris is a suggestion that Miss Jerrom "*has provided varying versions of what happened at the time of the index*

accident to such an extent that the Defendant questions the veracity of what the Claimant had stated".

74. This is presumably a reference, in particular, to the account apparently given by Miss Jerrom to Dr Willows which is set out earlier in this judgment. However, it is an account that was also given in the statement of the paralegal from the Claimant's solicitors, Eleanor Buckley, dated 12 April 2022 who said the following at paragraph 4 (with the bucket of water allegation repeated at paragraph 11(b) of the statement):

> "The Claimant left the pool and began walking to the changing rooms to feed her baby son whom she was carrying. AS she walked towards the changing rooms, she suddenly and without warning slipped sustaining injury as a result. The Claimant will say that an employee of the Defendant had thrown a large bucket of water and cleaning product on the floor but did not adequately clean the floor or remove the liquid. There was no warning signs (sic) and nobody in the vicinity to advise the Claimant of the heightened risk of falling."

75. Further, paragraph 8 of the Defence alleges that Miss Jerrom had given a misleading pre-accident history to the medical experts and Mr Jones, counsel for the Defendant, relied upon that as being an additional factor that was potentially relevant to the issue of liability, namely her reliability and veracity as a historian and her credibility as a witness.

76. So far as the increase in value in the case is concerned, in addition to the situation at the time of the admission being made, Mr Jones emphasised that at no point had the Claimant's solicitors withdrawn the case from the Portal or notified the Defendant that they now considered the case to be a substantial one. Even when the proceedings were issued, the original limit was £75,000, although that was not something that was communicated to the Defendant at that time. However, the suggestion by Mr Jones is that, if the Claimant's solicitors did not appreciate that the claim was worth several hundred thousand pounds when they first issued the claim form, why should the Defendant?

77. On behalf of the Claimant Miss Livesey submits that it is not sufficient for a Defendant to seek to withdraw an admission on purely economic grounds notwithstanding what is said in *Wood*. She points out that an additional factor in *Wood* in relation to the position of the claimant in that case was the fact that the claimant had summary judgment against another defendant. Therefore the claimant was sure to recover damages in contrast to this case.

78. Further, the Claimant relies upon the fact that, in reliance upon the admission, the Claimant's solicitors have instructed a large number of experts and the Claimant has requested and received a number of interim payments.

79. In response to the latter point, Mr Jones points out that any permission to allow the Defendant to withdraw the admission could be conditional upon the Claimant not being required to repay the interim payments.

80. In my judgment there was no reason at the time that the admission of liability was made for the Defendant or its claims handlers to appreciate that this was a case that might be one of substantial value or complexity. Of course it is always possible that any case may subsequently become a larger or more costly claim. However, the limitation of the claim to £10,000 and the description of the Claimant's injuries in the CNF meant that it was properly regarded at that time by the claims handlers as a low value claim that was suitable for the Portal.

81. As I have already found, over time, as further medical evidence was obtained and then served, it was or should have been obvious to the claims handlers, if proper consideration had been given, for example when a further interim payment was requested in the second half of 2020, that the case was one that was more complex and potentially of significantly greater value than had been apparent at the outset. That was the position by late 2020 or certainly by early 2021.

82. However, there is no evidence that the claims handlers did in fact appreciate that the nature of the case had changed significantly. It simply seems that the claim was allowed to continue in the way that it had been, with the Claimant's solicitors continuing to gather expert evidence.

83. Although criticism can be made of the claims handlers for not having appreciated that the value and complexity of the case had changed, equally the Claimant's solicitors can be criticised for not withdrawing the case from the Portal.

84. In my judgment, given the very substantial increase in the value of the claim since the admission was made, as in the case of *Wood*, there was material evidence that was not available to the Defendant at the time the admission was made on the issue of quantum.

85. Further, it is not surprising that no detailed investigation was undertaken by the Defendant's claims handlers before the admission of liability was made. Although this was, on its face, a relatively straightforward occupiers' liability case that did not require a particularly extensive or difficult investigation, given the timescales involved in the Portal process and considerations of proportionality, it was a rational decision for the claims handlers to have made not to investigate liability and, in my judgment, one which is consistent with the approach that is now encouraged in civil litigation.

86. Further, in my judgment, the Defendant's solicitor's statement does provide some indication that, investigations having now been undertaken, there is now evidence available to the Defendant on the issue of liability that was not available at the time of the admission. Although it is not backed by witness or documentary evidence, and there are no particulars given in the Defence, I accept that it is an additional factor that I should take into account.

87. Further, the matters touching on the Claimant's credibility as a witness, both in terms of her description of the accident circumstances, and in relation to whether she has given an accurate history of her previous medical history, were not matters that were known by the Defendant at the time of the admission. However, it is also right to say that those matters, or at least the key points about them, were or should have been apparent once the Defendant had been served with further expert evidence in late 2020 or early 2021.

b) the conduct of the parties, including any conduct which led the party making the admission to do so

88. In this case, in contrast to that of *Wright*, the Claimant's solicitors did make a positive representation that this was a low value case by limiting it to £10,000 and submitting it to the Portal. That was, no doubt, given the description of the Claimant's injuries at that time, appropriate.

89. More importantly, however, in my judgment, at no stage did the Claimant's solicitors withdraw the claim from the Portal or inform the Defendant, prior to the issue and service of proceedings, that the claim was now considered by those advising the Claimant to be a substantial one.

90. However, set against that is the fact that the Defendant had material available to it from late 2020 or early 2021 which would, had it been properly assessed, have alerted the Defendant to the likely value and complexity of the case, as well as to the alleged credibility factors upon which reliance is now placed.

c) the prejudice that may be caused to any person if the admission is withdrawn

91. In my judgment, although the Claimant may be theoretically prejudiced in having to recall the circumstances of the accident, say, 6 years after the event (assuming a trial in late 2024 at the earliest), there is no evidence before me of specific prejudice to her, such as documents no longer being available or potential witnesses not being contactable. Since it is agreed that the issue of contributory negligence is one that the Defendant is entitled to pursue regardless of the outcome of the application, the circumstances of her fall will in any event have to be considered.

92. Further, although she has received interim payments, any prejudice in that regard can be addressed by an order making any permission to withdraw the admission conditional upon her being entitled to retain the interim payments even if she fails on the issue of liability at trial.

93. Of more concern in this case is the fact that, because the Defendant did not give notice of an intention to seek to withdraw the admission prior to the issue of the proceedings, the Claimant's solicitors continued to obtain further expert evidence which they would say was in reliance upon the admission being made. I bear in mind what was said by William Davis J. at paragraph [17] in *Wright*, but that is not, in my judgment, a rule of law. Rather it is a factor to be taken into account along with all of the other factors in 14PD7.2. Further, if the Defendant's conduct caused wasted costs to be incurred, then that would be a matter that could be considered at the conclusion of the case.

94. In any event, I must consider what would have happened if the Defendant had indicated that they were seeking to withdraw their admission in late 2020 or early 2021. That might have resulted in the issue of proceedings earlier, before further expert evidence was obtained by the claimant's solicitors. However, in my judgment, given that the issues of liability and quantum plainly overlap in this case given the points raised by the Defendant concerning credibility and the expert evidence served, if the Defendant had made a successful application to withdraw the admission at that point, the further expert evidence on quantum would still in all likelihood have been obtained by the Claimant's solicitors. This is not a case in which it could be said that there would have been an early trial on liability so as to avoid the potential wasted costs of investigating quantum further if the Claimant failed at the liability trial.

95. Miss Buckley, the Claimant's solicitors' paralegal, states at paragraph 12 of her statement that to grant the application "*will cause the Claimant further significant unnecessary distress*". I have no doubt that, based on all of the medical evidence that I have read, the Claimant will be distressed if the Defendant is granted permission to withdraw its admission. In view of the psychological factors apparently at play in this case, I would readily accept that she may suffer considerable distress and that this may itself impact upon her perception of pain and other symptoms. That is a factor that I take into account when considering the exercise of my discretion.

(d) the prejudice that may be caused to any person if the application is refused

96. The prejudice to the Defendant if the application is refused is potentially substantial. If, as is contended, the Defendant has a good defence to the claim based on the investigations that have now been undertaken, then to refuse the Defendant permission to withdraw the admission would result in the Defendant

paying potentially substantial damages to which the Claimant, on that basis, was not entitled.

97. I bear in mind that the value of the case has increased from less than £10,000 to, on the Claimant's case, a figure up to £500,000, that valuation being echoed in the Schedule of Loss served with the proceedings which, excluding general damages, is pleaded at over £444,000. That is an even greater increase than that in *Wood* in which the Court of Appeal considered that the magnitude of the increase in value was a material factor in finding that the first defendant in that case should be permitted to withdraw its admission.

e) the stage in the proceedings at which the application to withdraw is made, in particular in relation to the date or period fixed for trial

98. I have effectively dealt with this factor under the conduct issues at b). The application was made promptly after the issue of the proceedings in this case, but an intention to make such an application could have been communicated by the Defendant's claims handlers much earlier. However, for the reasons that I have already explained, I do not find that this would have made any material change to the course of events save that proceedings may have been issued somewhat earlier.

(f) the prospects of success (if the admission is withdrawn) of the claim or part of the claim in relation to which the admission was made

99. This is not a factor on which I consider that I can make any firm findings. As I have indicated, the Defendant has not produced any evidence beyond assertion to support its case on primary liability. Further, I do not know what Miss Jerrom will say in response to the credibility issues raised.

100. However, taking into account what is said by Mr Gatzouris, as well as the apparent change in account of the accident circumstances by Miss Jerrom, and the credibility issues identified, I cannot find that Miss Jerrom is bound to succeed in establishing liability in this case if I permit the Defendant to withdraw its admission.

(g) the interests of the administration of justice

101. I have already dealt with the issue of the Claimant's solicitors continuing to assemble quantum evidence even after the point at which, with hindsight, the Defendant's claims handlers could and should have appreciated that this was now a complex case of potentially significant value. Ultimately I do not consider that an earlier indication of the Defendant's intention would have affected the likely course of events so far as expert evidence is concerned.

102. Further, I consider that factor (g) requires me to have regard to the considerations mentioned in *Blake* and in *Wood*, namely that insurers and claims handlers should be encouraged to make early admissions and deal with cases proportionately. If they are disincentivised from acting in that way, then that will increase the cost and time for cases to be resolved and that is something that impacts upon the civil justice system and upon individual policy holders generally, because of the overall upwards pressure on premiums due to increased costs and because of the adverse effect upon the efficiency with which claims are dealt.

Conclusion

103. Where a case has risen in value and complexity in the way that this case has, particularly when I take into account the additional factors relating to the Claimant's credibility, and even though the claims handlers could have appreciated earlier that this was a case in which the admission should be withdrawn if possible, I have no doubt that, taking into account all of the factors in 14PD7.2 and the overriding objective, I should grant permission for the Defendant in this case to withdraw the admission of liability.

104. Although it is important that claimants can in general rely upon admissions on liability made by or on behalf of defendants, granting permission in an exceptional case such as this does not affect that general position. In the vast majority of cases where admissions are made, the cases will be settled or, if they are not settled, they will be dealt with in accordance with the Pre-Action Protocol and the Part 8 procedure if a claim has to be issued. It is only in rare cases that the complexion of the case will change so radically, as it has in this case, such that permission to withdraw an admission will be granted.

105. In reaching my decision I have taken into account the chance that the Claimant's prospects on the issue of liability have been adversely affected by the passage of time, although no evidence of specific prejudice has been adduced, but also the inevitable distress that she is likely to suffer as a consequence of the issue of liability being reopened. However, I have come to the conclusion that those factors are outweighed by the other matters to which I have referred in this judgment.

106. I therefore grant permission to the Defendant to withdraw the admission of liability made by the claims handlers on 9 April 2019. However, that permission is conditional upon there being no order for the Claimant to repay the interim payments pursuant to CPR 25.8(2) even if she fails to establish liability in this case.

107. The order that I will make follows the submission of an agreed draft order by the parties having considered the draft version of this judgment.

HHJ Catherine Brown

County Court at Canterbury

12 February 2023