

## OUTER HOUSE, COURT OF SESSION

[2012] CSOH 30

NOTE BY LORD STEWART

in the cause

SYBIL CLARK

Pursuer

PD2846/09

against

DAVID SHIRRA

Defender

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**Pursuer: Smith QC; J McConnell, advocate; Gildeas Solicitors**

**Defender: J Thomson, advocate; Andersons Solicitors LLP**

14 February 2012

### Introduction

[1] Counsel have asked me to issue this Note of a ruling made during a Civil Jury Trial in this personal injuries action today. The matter has been dealt with immediately before speeches in the absence of the Jury. Liability has been conceded in this case.

### Ruling

[2] Senior Counsel for the Pursuer has made an application to be permitted to put the Defender's statement of valuation of claim before the Jury who are about to determine the damages to be awarded to the Pursuer. Senior Counsel wishes to refer to the statement of valuation of claim in his speech to the Jury. The application is opposed by Counsel for the Defender. Having heard the submissions of Counsel I shall refuse the application.

[3] Statements of valuation of claim are required to be lodged by both parties in terms of RCS 43.9. The Practice Note No 2 of 2003 states that the valuations "are not binding upon the parties who make them. It is, however, intended that these statements should reflect a real assessment of the value of the claim and accordingly it will be open to either party to found upon the making of its own statement of valuation or upon that of the other party."

[4] The only case law cited to me is a reference in the standard text, A M Hajducki QC, *Civil Jury Trials* 2<sup>nd</sup> edition (2006), pages 187-188, where it is stated: "where the jury has been made aware of what sum was being sought by the pursuer by way of solatium in either the evidence or submissions of counsel (for instance by having had its attention drawn to the statement of valuation) then it should be told to disregard any such sums in considering what it would consider to be a fair figure to award under this head"; and page 188, Note 42: "This direction was given by Lord Carlaway in *Sneddon v Deutag Services*, 1 Nov 2004, but the jury then proceeded to award the pursuer the same sum for solatium as had appeared in his statement of valuation,

possibly showing how difficult it is to erase such information from the minds of the jurors once they have become aware of it."

[5] There are four reasons why I rule that the valuation must not be disclosed to the Jury:

- The leading objective of the RCS Chapter 43 procedure is to facilitate early settlement by bringing parties to discussion around fully informed and realistic valuations of the claim. That objective will be subverted if anything in the procedure discourages parties from making realistic valuations, for example if parties are aware that any concession to realism in their valuations will be founded on in front of a Jury;
- The Practice Note does not say for what purpose it is envisaged that valuations may be founded on. I find it difficult for the moment to see why it should be "open to either party to found upon the making of its own statement" when addressing the Jury. The terms of the Practice Note are equally, or perhaps more consistent with valuations being founded on for procedural purposes and in relation to questions of expenses after the event;
- The valuations in the present case, as is standard, include items such as interest calculations extraneous to the Jury's deliberations. There are also references in both valuations to the *Judicial Studies Board Guidelines*, justifying different figures for solatium. It is not uncommon for case law to be cited in valuations. This sort of material is useful in discussions between parties: but it risks confusing the Jury and distracting them from their proper task;
- I see no point in material being put before the Jury if the Jury has to be told, in terms of Lord Carloway's direction reported to have been given in *Sneddon v Deutag Services*, that the Jury must then disregard it.

[6] Senior Counsel for the Pursuer has been unable to persuade me that any prejudice will arise to the Pursuer if the application is refused. Senior Counsel is to be commended for having given Counsel for the Defender and the Court notice of this application and for making the application in advance of speeches in the absence of the Jury.

### **Postscript**

[7] Since delivering the above ruling I have read the article by R Milligan QC mentioned in the Note of Submissions prepared by Junior Counsel for the Pursuer [R Milligan, "Statements of Valuation of Claim", Rep. B. 2003, 53(Sep), 4-6, especially section 6]. The view offered by Mr Milligan appears to coincide with the view I have expressed above.