



Recovery Of Loss Adjuster Fees

There has been a limited amount of press concerning the case of *Cuthbert v. Gair* (*EWHC 90114 Costs*) and the issue of recoverability of Adjusters fees as a disbursement.

The basic case facts were that Susan Cuthbert claimed damages for personal injuries suffered at a horse show held at the Defendant's equestrian centre in 2004.

Gair's Insurers appointed Loss Adjusters to investigate the claim under the pre-action protocol. The Loss Adjusters corresponded with the claimant's Solicitors, prepared witness statements, considered the medical report and repudiated liability. This was rejected and thereafter Defendant Solicitors were nominated and papers sent to them.

Shortly before Trial, the claim was discontinued. The Defendant's costs were assessed by the Court, but the Claimant appealed against the Order on the grounds that fees of £1,850 allowed in respect of Loss Adjuster's fees should not be recoverable.

It was held that these costs were not recoverable as:-

1. This was not a recoverable Solicitors' disbursement (work was carried out prior to Solicitors' appointment.)
2. The costs were not incurred by the Defendant but by the Insurers.

Solicitors would not incur disbursement fees for work they carry out themselves. However, sometimes they instruct others to act as agents to carry out certain tasks on their behalf. These fees are recoverable as part of the Solicitors' bill of costs.

In this case, most of the work was carried out before a Solicitor was appointed and involved tasks a Solicitor would normally do.

The fees were not therefore recoverable as a disbursement.

CPR 48.6(3) provides that a litigant in person (i.e. no Solicitor representation) is entitled to recover relevant disbursements if they had been incurred by a legal representative on that person's behalf. Expert's fees, for example, could fall into this category.



On this occasion, although Solicitors were not appointed at the time, it was not the Defendant, but the Insurer, that incurred the cost.

Accordingly, there was no right of recovery by the Insurers.

A small proportion of the Loss Adjuster's work, however, was carried out after the Solicitor was instructed. Were these fees recoverable as part of the Solicitors' costs? The costs judge held they were not, because there was no evidence of any agency relationship between the Solicitor and the Loss Adjusters.

In the view of the Liability SIG committee this case does not break new ground and merely reaffirms the status quo. Adjusters' fees are not usually recoverable unless incurred by directly working for the Defendant or their Solicitors.

Historically, Insurers have not sought to recover Adjusters' fees as between Insurers. It remains to be seen whether this case has a dramatic effect on Insurers' handling of liability claims across all disciplines. It must be borne in mind that at the outset of a claim investigation it is not possible to determine whether a recovery and/or indeed a winning position is achievable.

The Supreme Court Costs Office considered two aspects: pre-action, pre-defence Solicitors appointment; post-action with defence Solicitors. It will be difficult to overcome the former, given this decision, but attention, both by Insurers and Loss Adjusters, needs to be given over to formal agency agreements between the defence Solicitor and Loss Adjuster, post-action.

In short, absence a formal agency agreement as between Solicitor/Adjuster and fees submitted to the defence Solicitors, Adjusters fees will not be recoverable. The Market have not addressed and/or appreciated this 'gap'. As commented, not all cases litigate.