

AUDITOR OF THE COURT OF SESSION

PARLIAMENT HOUSE, EDINBURGH, EH1 1RQ

RUTLAND EXCHANGE No. 304

031 225 2595 Extn. 309

Additional Fee

in causa

[REDACTED] MSP
Pursuer
against
[REDACTED] GHB
Defenders

EDINBURGH. 17th March 1992

The Auditor has been asked to fix the amount of the additional fee for reponsibility awarded to the solicitors for [REDACTED] in terms of the Legal Aid (Scotland) (Fees in Civil Proceedings) Regulations 1984, Schedule 1, Section 2, under heads (a), (b), (c), (e) and (f) awarded by the Court by interlocutor of 10th July 1991.

[REDACTED] raised an action in the Court of Session, Scotland, on 15th July 1985 against [REDACTED] in which he alleged that the doctors responsible for his treatment at Dr. Gray's Hospital, Elgin, had failed to exercise due care, caution and diligence in diagnosis and treatment of a condition which resulted in his death on 20th October 1986 and following upon which his widow, [REDACTED], was sisted as Pursuer in the action.

The action was clearly a difficult one. Firstly, the facts were complicated because of [REDACTED]' medical history. At the time he first consulted a doctor about his condition in 1978 he was serving in the Royal Air Force and during the relevant period he was seen by a number of medical officers, specialists and his general practitioner who, in April 1979, diagnosed a testicular tumour. [REDACTED] averred that it was not until about July 1983 that he was advised that, had the cancer been diagnosed earlier than April 1979, he would probably have been cured. A question also arose as to whether he had been called for a further medical examination at an earlier stage or having been so called had failed to attend.

Legal difficulties arose, one of which was whether the case was time-barred by reason of [REDACTED]' failure to raise an action within the three year period commencing with the diagnosis of his condition in April 1979, which plea [REDACTED], and subsequently [REDACTED], sought to overcome by various explanations for no action having been raised earlier.

Establishing the facts was made all the more difficult when the principal witness, [REDACTED], died before giving evidence. A further legal question arose in consequence of [REDACTED] having married [REDACTED] in April 1981 when he was already suffering from a terminal illness and, although she was a "relative" of her late husband within the meaning of Section 1 of the Damages (Scotland) Act 1976, it was contended by the Defenders that she had suffered no loss within the meaning of Section 1 (3) and (4) of the Act.

A procedural debate took place on the averments relating to [REDACTED]' alleged loss which resulted in these averments being excluded from probation. This decision was, however, appealed to the Inner House who decided that the Lord Ordinary had been premature in his decision to dispose of that difficult and novel question on the pleadings alone and the averments were restored for consideration at a proof before answer.

A proof took place on 15th February 1991 and lasted in all thirteen days including two days for speeches.

[REDACTED] resided in Lossiemouth, her solicitors were in Glasgow and they had Edinburgh solicitors to attend to the action in the Court of Session.

There were some 900 sheets of productions to be considered, principally medical records.

The Pursuer led four medical witnesses in support of her claim, [REDACTED], a Consultant General Surgeon from London, [REDACTED], a Consultant Urologist from Manchester, [REDACTED] a Consultant Oncologist from Glasgow and [REDACTED], a Consultant Urologist from Glasgow. The Defenders led the evidence of the two doctors blamed by the Pursuer and also the evidence of [REDACTED] a Professor of Surgery and a Consultant Urologist in Edinburgh and [REDACTED], a Consultant General Surgeon with Highland Health Board.

██████████' solicitors had to devote considerable time and attention to the preparation of the case, involving complicated matters of fact stretching over a period of some thirteen years and they had to achieve a detailed understanding of the pathological condition from which ██████████ ██████████ was ultimately diagnosed as suffering and consideration had to be given to medical standards of diagnosis and treatment as then practised. The Pursuer's solicitors had to instruct experts in different fields of medical expertise to advise in the appreciation of the medical records and the reasonable interpretation thereof.

After consideration of all the evidence, the Court found established that ██████████ was in possession of sufficient knowledge in November 1982 to alert him to the seriousness of his condition and that any delay in treatment would affect the prognosis. Sundry efforts were made by ██████████ ██████████' then solicitors who in August 1983 applied for legal aid. The Lord Ordinary in his opinion records "That application was not granted until June 1985 owing to administrative difficulties then facing the Legal Aid Board." The Court absolved the Defenders on the ground that the action was time-barred and, after examination of the evidence did not find fault established.

The foregoing synopsis does not pretend to set out all the facts and various aspects of the case which are much more fully rehearsed and considered in the Opinion of the Court which extends to some 68 pages.

The Auditor, having considered the process and the Lord Ordinary's Opinion and having perused the Legal Aid account running to some 74 pages, fixes the additional remuneration payable to ██████████' solicitors for their responsibility in the conduct of the case at the sum of SIX THOUSAND TWO HUNDRED AND FIFTY POUNDS (£6,250.00) excluding Value Added Tax.

The Auditor has also been asked to consider the fee charged by ██████████ ██████████ for attending at Court to give evidence over a period of two days amounting to £2,000 exclusive of travelling and incidental expenses.

██████████ is a Consultant General Surgeon/Senior Lecturer in Surgery, University College and Middlesex Hospitals School of Medicine. He gave evidence on the second and third days of the proof commencing at 3.00 p.m.

on the second day and finishing at 3.30 p.m. on the third day.

In this case, the experts had obviously to be sought from outwith the area of Grampian Health Board. The Professor of Surgery at Edinburgh University was enlisted by the Defenders and the Pursuer's advisers were, therefore, obliged to seek the help from elsewhere of a specialist in that field with comparable experience in diagnostic techniques in use at the relative time.

There are no prescribed scales for the allowance of remuneration of expert witnesses and the Auditor understands that the Board did not impose an initial limit of fee in respect of this expert witness. However, solicitors must, in seeking expert advice, ascertain the likely cost of it as much in a legal aid case as in one privately funded. In considering a reasonable daily rate to be allowed for a suitable expert Consultant general surgeon appearing as a witness, the Auditor has consulted with the Royal College of Surgeons, Edinburgh, and, as it has not been shown to the Auditor's satisfaction that it would not have been possible to obtain equivalent expertise either elsewhere in Scotland or in England at a lower cost, he taxes the fee at ONE THOUSAND FOUR HUNDRED AND FORTY POUNDS (£1,440.00) exclusive of Value Added Tax.



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PARLIAMENT HOUSE, EDINBURGH, EH1 1RQ

RUTLAND EXCHANGE No. 304

031 225 2595 Extn. 309

WITNESS FEE

in causa

[REDACTED]

Pursuer

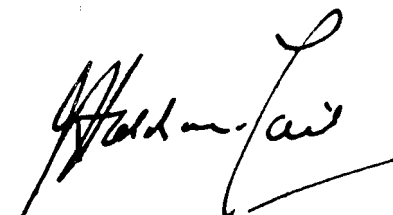
against

Grampian Health Board

Defenders

EDINBURGH. 31st March 1992.

The Auditor refers to his previous Report dated 17th March 1992 and in respect of the two-day Court attendance of [REDACTED], Consultant Urologist, Cheadle, claimed in the sum of £1,600.00 and having heard the solicitor for the Pursuer and the representative of the Scottish Legal Aid Board and having consulted with the Royal College of Surgeons, Edinburgh, taxes the fee at the sum of ONE THOUSAND FOUR HUNDRED AND FORTY POUNDS (£1,440.00) exclusive of Value Added Tax.



AUDITOR OF THE COURT OF SESSION

THE SCOTTISH LEGAL AID BOARD

ACCOUNTS COMMITTEE - CIVIL ACCOUNTS DEPARTMENT
PROPOSED SETTLEMENT - CIVIL ACCOUNT

COURT: Court of Session	LOCATION: Edinburgh
PROCEEDINGS TYPE: Reparation	
IAC effective from 17/12/86 Case concluded on 12/7/91 Account rec'd on 20/10/91	

IA Reference No.

3	7	8	0	6	0	2	7	7	8	8	6
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Solicitor's IA Code No.

0	3	2	5	5	3
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Name of Solicitor's Firm: Gillam Mackie
Name of Assisted Person: XXXXXXXXXX

Account as Rendered		Amount offered																
		<u>NOMINATED SOLICITOR</u>	VARIABLE AT CURRENT RATE	EXEMPT FROM VAT	VARIABLE AT PREVIOUS RATE 15 %	VARIABLE AT PREVIOUS RATE %												
8,247.79	Fees	7,375.25																
9,077.79	Outlays		7,756.79															
989.75	Posts & Incidents	885.05																
	Counsel Fees (to Sol)																	
9,692.50	Counsel Fees (F.S.)	7,950.00		1,186.00														
TOTAL AS CLAIMED	In the offer the 10% statutory deduction has been applied to solicitor's fees of £																	
28,007.83	IAA payment deducted £	Solicitor's Reference	<table border="1" style="display:inline-table"><tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr></table> P G													Amount Offered	<table border="1" style="display:inline-table"><tr><td>£25.153.09</td></tr></table>	£25.153.09
£25.153.09																		
		VARIABLE AT CURRENT RATE	EXEMPT FROM VAT	VARIABLE AT PREVIOUS RATE %	VARIABLE AT PREVIOUS RATE %													
1,201.02	Fees	1,169.92																
247.60	Outlays		247.60															
144.13	Posts & Incidents	140.40																
	Counsel Fees (to Sol)																	
	Counsel Fees (F.S.)																	
TOTAL AS CLAIMED	In the offer the 10% statutory deduction has been applied to solicitor's fees of £																	
1,592.75	IAA payment deducted £	Amount offered to local solicitors			<table border="1" style="display:inline-table"><tr><td>£1,557.92</td></tr></table>	£1,557.92												
£1,557.92																		

Name of Local Solicitor's Firm : Hamilton Burns & Moore

ADDITIONAL FEE (WHERE APPLICABLE) (PRE. VAT):

	%	£6,250.00
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Principal abatements, adjustments agreed subject to Subcommittee approval: Solicitor £720.00 Outlays Expert Witnesses daily rate £400.00 reclaiming motion - no legal aid £180.00 excessive copies of judgment	Counsel £350.00 To Proof fee
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Other significant aspects of case:

Productions (903 sheets)
13 day proof, 62 page judgement
Sanction for four Expert Witnesses/Snr. Counsel

Bookkeeper	
Supervisor	
Manager	
Accounts Assessment	