

AUDITOR OF THE COURT OF SESSION

PARLIAMENT HOUSE, EDINBURGH, EH1 1RQ

RUTLAND EXCHANGE No. 304

031 225 2595 Extn. 309

ADDITIONAL FEE

in causa

CC

██████████ v. ██████████  
██████████

TGGHB

EDINBURGH. 5th May 1992.

The Auditor has been asked to fix the amount of the additional responsibility fee awarded in terms of heads 2(a), (b), (c) and (d) of Schedule I to the Legal Aid (Scotland) (Fees in Civil Proceedings) Regulations 1984 to the solicitors for ██████████ by Interlocutor dated 16th July 1991.

This was an action of damages raised by ██████████ on 12th June 1987 arising out of alleged negligence of a Consultant Plastic Surgeon and a Consultant Neurologist. ██████████ was also sued as being vicariously responsible for the alleged negligence of the other two defenders.

The negligence alleged related to the circumstances in which consent was given for the carrying out of an operation on 10th September 1973 on ██████████ who was at that time 13 years of age. The consent to the operation was, therefore, of necessity, parental consent.

The operation was a major one involving intra-cranial and extra-cranial procedures. It was a cosmetic operation, the intention being to remedy a mild deformity of ██████████ skull and face, there being a dent in the left-hand side of her forehead.

The operation was a very lengthy one which took some fifteen hours. Thereafter ██████████ underwent some 14 further operative procedures and in addition had about a further 13 hospital admissions involving various checks, investigations and treatments.

Because the action was raised after the three year period within which such actions should be raised, the consent of the Court had to be obtained to

the action being pursued and, after a preliminary proof on the issue of time bar, the case was allowed to proceed.

The pursuer's case put very briefly was initially based on two grounds. One was that, as [REDACTED] deformity was minor and as there were no medical or psychological conditions requiring for its cure the alteration of the whole structure of [REDACTED] face no competent surgeon exercising the requisite skills could have advised that such an operation should be carried out. The other ground was that [REDACTED] parents had not been given sufficient information by the Consultants to appreciate the risks inherent in a branch of surgery which at that time was in its infancy.

The proof in the action lasted 16 days during the course of which a commission had to be arranged to take the evidence of an expert witness, [REDACTED], and Lord Milligan, who conducted the proof, also carried out the commission, such was the importance attributed to the evidence to be given by that witness.

For much of the proof [REDACTED] case was conducted on the two alleged grounds of fault but, after a considerable amount of evidence had been led and some evidence from the defenders had been heard, the first ground of fault was no longer insisted upon, leaving the sole ground of fault based on the alleged inadequacy of information given by the two Consultants to [REDACTED] parents to enable them to give informed consent to the operation.

The Court took almost six months to consider the evidence. On 23rd April 1991, in a Judgment running to 108 pages in which the evidence and legal issues were meticulously considered and analysed, the Court found that [REDACTED] and her parents had not proved that either of the Consultants had failed in the provision of the information as alleged. It had been recognised at the outset that credibility of the witnesses would determine the case, and with the passage of time since the original operation and the emotional stresses suffered by [REDACTED] and her parents during the intervening years, it had become more than difficult for them to recall important meetings and conversations with the degree of accuracy necessary to discharge the burden of proof which lay on [REDACTED].

██████████ solicitors were faced with a formidable task. They were first of all faced with the difficulty of persuading the Court to allow the action to proceed out-of-time. This was vigorously opposed and a preliminary proof was held and the defenders thereafter marked an appeal against the allowance of a proof but subsequently abandoned their appeal.

The case presented difficult and novel questions arising out of pioneering developments in the field of plastic surgery and the solicitors had to become thoroughly conversant with the relevant vocabulary and techniques to understand what was being described by the skilled witnesses. They had also to seek experts in a highly specialised area of surgery who were able to comment on the various aspects of the operative procedures carried out. This in turn required perusal of a very large numbers of medical records and consideration of relevant medical textbooks and papers.

The fact that the operation had occurred many years prior to the raising of the action made even more difficult than usual the precognosing of material witnesses and this had to be done with exceptional care.

So far as the importance of the case to the client was concerned, the outcome of the various surgical procedures had resulted in her appearance having become disastrously worse than prior to the first operation and such was the effect of the resultant disfigurement, that she had attempted suicide and been advised to see a psychiatrist on a regular basis. Her whole lifestyle had been materially altered. ██████████, at the time the action was raised, was resident in Liverpool and that increased the solicitors' difficulties in communicating with, and advising her.

██████████ had suffered a tremendous amount of mental upset and mental distress over a period of some 17 years, and she was aware of the necessity of her having to submit to further surgical procedures in the hope of improving her appearance. The solicitors were consequently acting for a client who believed that she had suffered irreparably at the hands of the medical profession and it was not capable of contemplation that she should even consider that she was not receiving the fullest support and maximum effort from her legal advisers in the conduct of her action. This, therefore, necessitated the full-time care and personal attention of the very experienced court solicitor throughout the conduct of her case over a period of four years.

The Auditor, having considered the Process and the detailed Account together with other papers and medical reports given to him at the diet of taxation and having heard the submissions on behalf of the solicitors and the Scottish Legal Aid Board, fixes the additional responsibility fee at the sum of NINE THOUSAND POUNDS (£9,000.00) exclusive of Value Added Tax.

#### Skilled Witnesses' Expenses

(1)

██████████  
The Auditor has been asked to tax the charges of ██████████, Consultant Plastic Surgeon, London, a specialist in plastic and craniofacial surgery. Mr. Goldin has charged £1,000 per day for the two days during which he gave evidence in the case.

It was explained to the Auditor that ██████████ was one of the few experts in the field of craniofacial surgery having the necessary degree of knowledge and practical experience necessary to assess and comment on the opinions and evidence of distinguished experts adduced for the defenders including ██████████, Paris, an acknowledged world expert in the relevant field, whose curriculum vitae disclosed an impressive list of major professional appointments in the field of Maxillo Facial surgery and that he was Founding Member of the ██████████, and its President from 1983 to 1987.

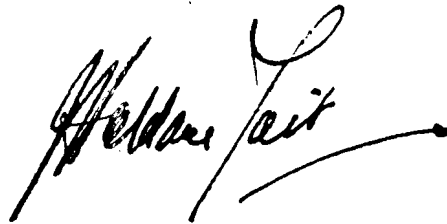
The Auditor, having considered the expertise of ██████████ and read his evidence as recorded in the Notes of Evidence, is satisfied that the fee charged, which includes detailed preparation for giving evidence, although at the top end of the scale, is reasonable in the circumstances of this unique case.

(2)

██████████  
The Auditor has also been asked to consider the claim by ██████████, Consultant Oral Surgeon, Birmingham, for payment of the sum of £500 in respect of a day's cancelled private patients operating list. ██████████ was cited to give evidence on 10th May 1991 in ██████████ case but because the evidence of ██████████ was not completed until 3.45 p.m. on that day the Court decided not to start taking ██████████

evidence preferring that it should be given, if at all possible, in the course of a complete day. It in fact occupied one and a half days.

The Auditor has considered the Minute of Proceedings and notes that on each of the first three days, the Court because of other business was not able to commence taking evidence in [REDACTED] case until, on two days at 11.00 a.m., and on one day at 12 noon. The Auditor is satisfied that if the Court had been able to commence the hearing of evidence on each of these days nearer to 10.00 a.m. it would have been likely that [REDACTED] could have given a substantial part of his evidence on the first day for which he had been cited. The Auditor is satisfied that [REDACTED] claim is reasonable both in amount and in the circumstances, [REDACTED] solicitor having acted reasonably and responsibly in the time-tabling of the witnesses and could have expected that the Court would be able to devote a meaningful amount of time to the hearing of [REDACTED] evidence on 10th May, which in all probability it would have been able to do but for the fact that some four hours of Court time had been required for other business on previous days.



AUDITOR OF THE COURT OF SESSION

## C I V I L   A C C O U N T S   A S S E S S M E N T

Report on Account referred to the Auditor of Court of Session  
to fix an additional fee in terms of the Civil Legal Aid  
(Scotland) (Fees) Regulations 1984, Schedule 5 (2)

Assisted Person:	██████████
Reference Number:	37/80/602988/86
Solicitor:	GILLAM MACKIE, EDINBURGH; HAMILTON BURNS & MOORE, GLASGOW
Nature of Proceedings:	REPARATION
Sum Claimed (excl VAT & Additional Fee):	£36,952.91 <u>£ 6,226.56</u> £43,179.56
Sum Payable (excl VAT & Additional Fee):	£33,875.81 <u>£ 5,764.46</u> £39,640.27
Additional Fee(excl VAT):	<u>£ 9,000.00</u> <u>£48,640.27</u>

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The pursuer underwent a corrective operation to remedy a mild birth deformity of her skull and face and this almost unique operation involved pioneering techniques in cosmetic surgery employed by only a small number of surgeons. The pursuer thereafter required to undergo a further 14 operative procedures and the resultant outcome was that her appearance was materially worse than prior thereto. The pursuer raised an action for damages against the Greater Glasgow Health Board and two doctors and sued for payment of £300,000.00.

This was a very complex medical negligence case which initially went to a preliminary Proof on the question of time bar and was allowed to proceed from there. Sanction was granted to employ a second Junior Counsel to assist the Junior originally employed in the case who actually conducted the Proof. Both Counsel's fees were found to be reasonably stated, particularly when regard is had to the additional fee subsequently allowed to the solicitors. Sanction was also granted to employ a consultant plastic surgeon and an oral surgeon. Both medical experts' charges were taxed by the Auditor and reference is made to his report.

The case involved novel medical questions and under Specification voluminous medical records were recovered which required to be perused and copied prior to lodging. A great deal of preparation was undertaken for the case which eventually proceeded to a 16 day Proof. The Lord Ordinary's judgement, extending to 108 sheets, found that the Pursuer had not proved her case and assolizied the Defenders from the the conclusion of the Summons. The pursuer was found liable in expenses and these were modified to nil.

The solicitor's account extended to 104 pages and clearly reflected the significant amount of work undertaken in this case. Board Officers obtained a sight of various documents, including the Lord Ordinary's Judgement, to assist the adjustment process and following negotiations the solicitor's fees were

abated by approximately £800.00. The assessment of the outlays proved troublesome due to their presentation and lack of supporting vouchers. Ultimately, a number of outlays were abated as they had either been overstated or duplicated.

The solicitors were allowed an additional fee by the Court and reference is made to the Auditor's very detailed report wherein he assessed the additional fee payable at £9,000.00 excluding VAT. The Auditor's fee for assessment the additional fee was fixed at £360.00 plus VAT.

THE SCOTTISH LEGAL AID BOARD

ACCOUNTS COMMITTEE - CIVIL ACCOUNTS ASSESSMENT  
SETTLEMENT DETAILS - CIVIL ACCOUNT

COURT: COURT OF SESSION	LOCATION: EDINBURGH
PROCEEDINGS TYPE: REPARATION	
IAC effective from 13.3.87 Case concluded on 16.7.91 Account rec'd on 8.10.91	

IA Reference No. 

3	7	8	0	6	0	2	9	8	8	8	6
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Solicitor's IA Code No. 

0	3	0	1	9	1
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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 % 8%							
9,317.35	Fees	8,917.35										
14,954.05	Outlays		12,176.95									
236.51	Posts & Incidents	236.51										
	Counsel Fees (to Sol)											
12,545.00	Counsel Fees (F.S.)	10,944.50		1600.50								
<b>TOTAL AS CLAIMED</b>	In the offer the 10% statutory deduction has been applied to solicitor's fees of £											
36,952.91	IAA payment deducted £	Solicitor's Reference	<table border="1"><tr><td>K</td><td>M</td><td>C</td><td>O</td><td>5</td><td>0</td></tr></table>	K	M	C	O	5	0	Amount Offered	<table border="1"><tr><td>£33,875.81</td></tr></table>	£33,875.81
K	M	C	O	5	0							
£33,875.81												
	<u>LOCAL CORRESPONDENT</u>	VARIABLE AT CURRENT RATE	EXEMPT FROM VAT	VARIABLE AT PREVIOUS RATE %	PREVIOUS RATE %							
3,610.89	Fees	3,210.89										
2,522.05	Outlays		2,459.95									
93.62	Posts & Incidents	93.62										
	Counsel Fees (to Sol)											
	Counsel Fees (F.S.)											
<b>TOTAL AS CLAIMED</b>	In the offer the 10% statutory deduction has been applied to solicitor's fees of £											
£6,226.56	IAA payment deducted £	Amount offered to local solicitors			<table border="1"><tr><td>£5,764.46</td></tr></table>	£5,764.46						
£5,764.46												
Name of Local Solicitor's Firm : HAMILTON BURNS & MOORE												
ADDITIONAL FEE (WHERE APPLICABLE) (PRE. VAT):		%	£9,000									
Principal abatements, adjustments agreed subject to Subcommittee approval: <u>Solicitor</u>			<u>Counsel</u>									
£			£									
Other significant aspects of case: PRELIMINARY PROOF ON ISSUE OF TIME BAR. 2ND JUNIOR COUNSEL EMPLOYED. 16 DAY PROOF.			Bookkeeper	<div style="background-color: black; width: 100%; height: 100%;"></div>								
			Supervisor									
			Manager Accounts Assessment									