

## ADMINISTRATION & MANAGEMENT COSTS

On 25 February 2003, White J delivered her judgment in Willett & Anor –v– Futchter. The decision concerns the obligation of a defendant to pay as a head of damage administration and management costs of the damages fund, for a plaintiff brain damaged as a consequence of a defendant's negligence.

The second plaintiff sustained severe brain injury as a consequence of a motor vehicle accident occurring in 1979 when she was approximately nine weeks of age. It was determined that the second plaintiff was unable to make any decisions about the appropriate management of her settlement funds and an administrator was appointed to manage the fund. The Court considered the fund administration and management costs which were recoverable as a head of damage and determined that some but not all of those fees and charges were recoverable.

Since the Court of Appeal Decision in Wills –v– Bell brain injured claimants have been able to recover a sum in excess of the establishment and administration costs which have previously been paid by defendants for many decades. In Wills –v– Bell the court considered that additional costs (without specifying what) were recoverable from the defendant because those costs and services flowed directly from the Plaintiff's needs generated by the wrong. Mackenzie J agreed with White J's judgement in this regard without elaborating on the issue of management fees.

In Willett & Anor –v– Futchter her Honour concluded that she was wrong in her determination in the Court of Appeal in Wills –v– Bell ( judgment of 11 October 2002.). She considered, having had in Willett an opportunity to consider evidence in respect to the items of charge, that only the establishment and administration costs are a recoverable head of damage. This evidence was not available to the Court of Appeal.

Whilst a decision of a single judge cannot overturn a decision of a superior court, the effect of White J's decision of 25 February 2003 in Willett is to put into question the obligation of a defendant to pay management fees beyond establishment and administration costs, and raises the possibility that Wills –v– Bell may not be good law. An application for special leave to the High Court was filed in Wills –v– Bell prior to the determination in Willett, and is yet to be heard . Until further comment comes from the courts on this issue, it would be wrong to assume that an insurer will always be obliged to contribute more than establishment and administrative costs as Wills –v– Bell suggests towards this head of damage.

### CASE ALERT

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#### FOR FURTHER INFORMATION PLEASE CONTACT

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