

SUPPLEMENTARY REPORT OF LORD COULSFIELD'S WORKING PARTY ON COURT OF SESSION PROCEDURE:

WRITTEN PLEADINGS

Background

This report supplements the Report of the Working Party on Court of Session Procedure ("the 2000 Report") published in 2000 and discussed by the Court of Session Rules Council in 2001.

The 2000 Report proposed that there be a requirement for only the most skeletal of pleadings. Those groups invited to comment on the 2000 Report conveyed the view that this proposal was not workable and that a certain extent of pleadings were necessary, in particular in relation to the merits of claims for damages in personal injury actions. The Court of Session Rules Council endorsed that view and rejected the proposals as they stood.

Remit

The Lord President requested that a representative group of the Working Party convene to re-examine the extent to which the original proposals could be revised to an extent that they would address what were seen as the most central deficiencies of that part of the 2000 Report and to report as to how the revised proposals might be implemented. The group has considered the remit and proposes certain revised recommendations.

Membership

The group comprised the following:

The Right Hon. Lord Coulsfield

M.S. Jones QC

R.G. Clancy, Advocate

D.F.B. Stevenson, Thomsons

A.J. Tyler, Balfour & Manson

D. Shand, Keeper of the Rolls and Deputy Principal Clerk of Session

B.C. Beveridge, Legal Secretary to the Lord President (secretariat).

Findings

The members of the group acknowledged that a number of concerns had been expressed and in the light of those concerns, re-examined the reasons which had, in the opinion of the Working Party, supported their original recommendations. Those reasons are set out in detail in the original report and it does not seem necessary to repeat them. In summary, the view of the Working Party was that the system of written pleadings in Scotland had been designed to be simple and had developed greater elaboration in response to pressures, not all of which were well founded: that it encouraged much greater attention to the pleadings than could really be said to be necessary or helpful in a great many of the actions raised in the Court of Session: and that unless extremely well carried out it tended to obstruct rather than facilitate the proper progress of an action. In many of the cases which are intended to be subject to these recommendations, it is clear that the action will settle as soon as sufficient information about the quantum of the claim has been made available. That observation is the justification for many of the proposals in regard to the exchange of parties' statements as to the valuation of the claim in the original report. Where there is any doubt, about the facts, it can in the first instance at least best be resolved by simple statements of the basic factual allegations.

Having considered the observations received, this Committee remain of the view that the Working Party's approach was correct. Elaborate and technical pleading may have a place and a value in cases where there is novelty or real doubt or difficulty, but the majority of reparation cases do not fall into that category. Two particular points from the observations may be noted. Firstly, it was suggested that when the system went wrong that was a consequence of bad pleading or bad judging. That may well be correct, but the problem is that the present system lends itself to those kinds of errors. Secondly it was suggested that it was desirable that parties should apply their minds to their real cases at an early stage and that the present concentration on written pleading enabled that to be done. That observation was, in the view of the Working Party, with which this Committee agrees, contrary to common experience. In fact it is normal that if a case is going to proof it is only finally formulated in a late Minute of Amendment.

Essentially, therefore, we agree that what is necessary is a method of pleading which encourages brevity and simplicity and discourages technicality and artificiality. However, in the hope of achieving acceptance for the proposals in the Report as a whole, some revised recommendations and examples have been prepared. It is difficult to say much more in general terms about what should and should not be incorporated in written pleadings: a great deal must depend on day to day practice in individual cases and on experience. Broadly, the group are emphatically of the view that pleadings should be short and should exclude mere stylistic standard phrases and ritual incantations. Further, in our view, pleadings should be couched in such a way as to require individual answers to particular averments of fact, whether made by the pursuer or the defender, and to discourage general denials.

The group considers that the most effective way to communicate how they propose pleadings should be addressed, is to provide illustrations. Accordingly, there are annexed to this report, the following example pleadings, which take the form of summons and defences:

Illustrations

- Annex I: A representative personal injury road traffic accident case.
- Annex II: A representative personal injury at work case.
- Annex III: A representative asbestos related case.

In each case, the pleadings are taken from 'real' cases. The members of the group who compiled the pleadings initially in each case have revised out any unnecessary details. The group considers that these pleadings are appropriate as models to demonstrate what might constitute a sufficiency in a variety of types of case. In each, the relevant heads of claim are specified but no pleas-in-law are included (or thought necessary).

The group recognises that, while the great majority of cases will be appropriate for this type of pleading, there will, inevitably be exceptions. However, there will still be opportunities for considerable simplification even in cases which, by their nature, are not suitable for such reduced pleading.

It should perhaps be noted that aspects of the pleadings relating to medical treatment and evidence ought, to an extent, to be clear from the outset, as provisions relating to the early recovery of documents are under consideration by others.

Alternatives

It was urged on us that we should recommend that summonses and defences should be replaced, in ordinary reparation cases by printed forms, on the model of those used in Employment Tribunal applications or in Summary Causes. This Committee however thought that, while there was something to be said for the suggestion, it was likely to be too inflexible for the cases likely to fall within the scope of this proposed procedure.

Rules of Court

As noted above, the group does not consider that pleadings can realistically be regulated by Rules of Court. However, it is felt that the form of summons should be prescribed by Rules and should specify certain matters that must be included. It is felt also that there may be some merit in prescribing, to an extent and also by reference to a form in Rules, similar requirements in relation to certain preliminary aspects of the defences.

The group noted two omissions from the draft Act of Sederunt that accompanied the 2000 Report. Those were:

- 1) the absence of an express provision dealing with motions for further specification; and
- 2) the absence of an express provision regulating what action a judge can take if he decides that a case should be remitted to the ordinary roll.

The group understands that both these matters are under consideration by others.

Implementation

It is clear that an amount of time will be necessary for the revised proposals to gain familiarity. The group feels that a detailed Practice Note will be necessary to support this. Also, it is considered that, due to the novelty of the proposals, there may be merit in conducting seminars for both the bar/profession and the bench.

IN THE COURT OF SESSION

June 2001

CLOSED RECORD (AS AMENDED)

in causa

JAMES MARK McIVOR

against

(FIRST) DEREK CHRISTOPHER ALLAN and
(SECOND) PAUL NORMAN ATKINSON ROYAL
& SUN ALLIANCE PLC

Balfour & Manson Solicitors, Edinburgh
Solicitor for Pursuer

HBM Sayers, Solicitors, Glasgow
Solicitor for First and Second Defenders

CLOSED RECORD (AS AMENDED)

in the action at the instance of

JAMES MARK McIVOR, residing at 28 Gareloch Way, Whitburn, West Lothian, EH47 0RS,-

PURSUER

against

(FIRST) DEREK CHRISTOPHER ALLAN, residing at 51 Gareloch Way, Whitburn, West Lothian, and
(SECOND) PAUL NORMAN ATKINSON, 20 Dent Street, Hartlepool,-

DEFENDERS

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IN THE COURT OF SESSION

CLOSED RECORD (AS AMENDED)

I. - SUMMONS

in the cause

JAMES MARK McIVOR, residing at 28 Gareloch Way, Whitburn, West Lothian EH47 0RS, - PURSUER

against

(FIRST) DEREK CHRISTOPHER ALLAN, residing at 51 Gareloch Way, Whitburn, West Lothian and (SECOND) PAUL NORMAN ATKINSON, 20 Dent Street, Hartlepool, - DEFENDERS

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~~ELIZABETH II, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, To~~

~~———— DEREK CHRISTOPHER ALLAN; PAUL NORMAN ATKINSON~~

~~By this Summons, the pursuer craves the Lords of our Council and Session to pronounce a decree against you in terms of the conclusions appended to this Summons. If you have any good reason why such decree should not be pronounced, you must enter appearance at the Office of the Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ, within three days after the date of the calling of the Summons in Court. The Summons shall not call in Court earlier than TWENTY ONE days after the date of service on you of this Summons. Be warned that, if appearance is not so entered on your behalf, the pursuer may obtain decree against you in your absence.~~

~~Given under our Signet at Edinburgh 10 November 1997.~~

~~_____ "Alfred J Tyler"
_____ Solicitor
_____ Balfour & Manson
_____ 54-66 Frederick Street~~

Edinburgh EH2 1LS

Solicitor for Pursuer

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CONCLUSIONS

1 For payment to the pursuer by the defenders jointly and severally or severally of the sum of TWO MILLION POUNDS (£2,000,000) STERLING with interest thereon at the rate of eight per centum per annum from the date of citation to follow hereon until payment.

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2 For the expenses of the action.

"Alfred J Tyler"

Solicitor

Balfour & Manson

54-66 Frederick Street

Edinburgh EH2 1LS

Solicitor for Pursuer

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II. - CONDESCENDENCE FOR PURSUER and ANSWERS THERETO FOR DEFENDERS

COND. 1 The pursuer is James Mark McIvor. He resides at the address in the instance where he is domiciled. His date of birth is 8 August 1978. The first defender is Derek Christopher Allan. He resides at the address in the instance where he is domiciled. The second defender is Paul Norman Atkinson. He resides at the address in the instance where he is domiciled. The pursuer in the present action seeks reparation in respect of loss, injury and damage sustained by him as a result of the fault and negligence of the defenders. The harmful event in consequence of which the pursuer sustained the said loss, injury and damage occurred in Scotland. This Court accordingly has jurisdiction. To the knowledge of the pursuer no proceedings are pending before any other Court involving the present cause of action and between the parties hereto. No agreement exists between the parties prorogating jurisdiction over the subject matter of the present cause of action to any other Court.

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~~ANS. 1 FOR 1ST. and 2ND. DEFS. The averments relating to the first defender are admitted. Admitted that this Court has jurisdiction. Quoad ultra denied.~~

COND. 2 On or about 15 June 1996 at or about 10.30pm the pursuer was travelling as a front seat passenger in a Ford Escort motor car, registration number L653 NSC, which was being driven in East Mains Street, Whitburn, by the first defender. The said vehicle was owned by the first defender's *stopped in a lay-by in East Mains Street, Whitburn.* grandmother. Shortly before the accident hereinafter condescended upon the said vehicle had been parked facing in a westerly direction in a lay-by on the south side of East Mains Street. East Mains Street forms part of the A705 Livingston to Whitburn Road. It is a long straight stretch of road with street lighting all the way along its length. It runs in an approximately east to west direction. A speed limit of 30 mph is applicable on the said road. At the material time visibility was good and the road surface was dry. The first defender drove the vehicle out of the lay-by and proceeded to execute a "U" turn at excessive speed intending to drive in an easterly direction towards East Whitburn. As he did so he failed to check his rear view mirrors for the presence of other vehicles upon the road. He failed to check whether any vehicles were proceeding along the said road in a westerly direction. He failed to use his indicators to warn other road users of his intention to pull out and across the west bound carriageway. He failed to display lights on his vehicle as he pulled out from the lay-by. As he turned out of the lay-by he drove into the path of a Ford Sierra motor car, registration number A895 PNW, which was being driven in a westerly direction along East Mains Street at speed by the second defender. The second defender was driving at a speed of approximately 80mph. The second defender was unable to stop his vehicle and accordingly collided with the car being driven by the first defender. The second defender had failed to note the presence of the vehicle being driven by the first defender. He had driven at such speed along the road that he was unable to brake sufficiently to avoid colliding with obstacles emerging into the path of his vehicle, such as the motor car being driven by the first defender. Immediately prior to the accident the vehicle being driven by the second defender was observed by pedestrians walking along the said road to be

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~~driving at such a speed that it became air-borne after passing over a hill at the East Whitburn bridge. As a result of the said accident the pursuer sustained the serious loss, injury and damage hereinafter condescended upon. Following the accident the first defender was convicted of offences under Sections 3, 143(1), 143(2) and 178(A) of the Road Traffic Act 1988 on a narration of the foregoing at Linlithgow Sheriff Court on 3 June 1997. The defenders' averments in answer are denied except insofar as coinciding herewith.~~

ANS. 2 FOR 1ST. and 2ND DEFS. Admitted that on or about 15 June 1996 at about 10.30pm the pursuer was travelling as a front seat passenger in a Ford Escort motor car which was being driven *by the first defender and was stopped in a lay-by* in East Main Street, Whitburn. ~~by the first defender. Admitted that before the accident the said vehicle had been parked facing a westerly direction on the south side of the road. Admitted that the East Main Street forms part of the A705 Livingston to Whitburn Road. Admitted that it is a long straight stretch of road. Admitted that the first defender proceeded to execute a U-turn into collision with a Ford Sierra. intending to drive in an easterly direction. Admitted that as he did so he failed to check whether any vehicles were proceeding along the road in a westerly direction. Admitted that he failed to use his indicators to warn other road users of his intention to pull out and across the westbound carriageway. Admitted that he thereby drove into the path of a Ford Sierra. Admitted that the second defender's car collided with the car being driven by the first defender. Quoad ultra denied. Explained and averred that the pursuer was not wearing a seatbelt when the collision occurred. The pursuer knew that the pursuer was not authorized to drive the car. Had he been wearing a seatbelt the pursuer would not have sustained the injury that he did. Separatim, on the day of the accident the pursuer had accepted a lift from the first defender. They had gone to the Hillcroft Hotel and had spent the evening there drinking. Afterwards the first defender offered the pursuer a lift home. The accident took place on the journey home. The pursuer knew that the first defender had passed his driving test shortly before the day of the accident. He knew that the car was~~

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~~not owned by the first defender. The pursuer knew that the first defender's mother was on holiday in Spain and had been away prior to the first defender passing his test. After he had entered the car earlier in the evening with the first defender he crouched in the rear of the car so that his mother did not see him as the car drove past his parents' house. After the accident and on his admission to hospital he smelled of alcohol.~~

COND. 3 The said accident was caused through the fault and negligence of the first defender *who failed in his common law duties of care to the pursuer*. ~~It was his duty to take reasonable care for the safety of those travelling with him as passengers in the vehicle which he was driving, such as the pursuer. It was his duty to take reasonable care to keep his vehicle under proper control and to ensure that he did not drive it into the path of vehicles travelling on the said A705 road. It was his duty to take reasonable care to check his rear view mirrors before attempting to execute a "U" turn manoeuvre in order to ascertain whether traffic was travelling in a westerly direction on the said road. It was his duty to take reasonable care to display his lights in order to warn other road users of his presence on the road. It was his duty to take reasonable care to use his indicators in order to warn other road users of his intention to pull out into the west bound carriageway. It was his duty to take reasonable care not to pull out into said carriageway until it was safe for him to do so. It was his duty to take reasonable care not to pull out suddenly into the path of vehicles which were being driven in a westerly direction on the A705 road, such as the motor car being driven by the second defender. It was his duty to take reasonable care to ensure that he allowed vehicles travelling west on the said road, such as the Sierra motor car being driven by the second defender, to pass before pulling out into the west bound carriageway. In each and all of said duties the first defender failed and so caused the accident. But for the said failures in duty the accident would not have occurred. The defenders' averments in answer are denied except insofar as coinciding herewith.~~

ANS. 3 FOR 1ST. AND 2ND. DEFS. Admitted that the first and second defenders are liable to make reparation to the pursuer under explanation that the pursuer also contributed to his loss,

injury and damage through his failure to wear a seatbelt. Quoad ultra denied. The pursuer was under a duty to take reasonable care for his own safety. In particular he was under a duty to wear a seatbelt while riding in a motor vehicle such as that being driven by the first defender. Had he fulfilled this duty he would not have suffered any head injuries. Reference is made to section 14 of the Road Traffic Act 1988 and Regulations made thereunder. Separatim, He was under a duty not to drive with someone whom he knew or ought to have known was not authorised to drive the car. Had he fulfilled this duty he would not have suffered injury. The pursuer accordingly contributed to his loss, injury and damage through his own fault and negligence.

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COND. 4 Separatim the accident was caused through the fault of the second defender *who also failed in his common law duties of care to the pursuer*. It was his duty to take reasonable care for the safety of persons travelling as passengers in other vehicles on the said road such as the pursuer. It was his duty to take reasonable care to keep his vehicle under proper control. It was his duty to take reasonable care to keep a proper lookout for other vehicles on the said road, such as the vehicle being driven by the first defender. It was his duty to take reasonable care not to drive at an excessive speed. It was his duty to take reasonable care to drive at speed which was within the speed limit applicable to the road and which would have allowed him to stop safely and to avert a collision in the event of a vehicle, such as that driven by the first defender, emerging into his path. In the exercise of each and all of the said duties the second defender failed and by his said failures so caused the accident. But for the said failures the accident would not have occurred. The defenders' averments in answer are denied except insofar as coinciding herewith.

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ANS. 4 FOR 1ST. AND 2ND. DEFS. Admitted that the second defender is liable to make reparation to the pursuer. Reference is made to Answer 3.

COND. 5 As a result of the said accident the pursuer suffered loss, injury and damage. He was taken to Edinburgh Royal Infirmary where he

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was found to be unconscious. He was given a CT scan and immediately transferred to the ITU Unit of the Western General Hospital. He remained in a coma for 10 days. He was transferred from the Intensive Care Unit to the Neurosurgical ward of the said hospital on 23 June 1996. On 10 July 1996 he was discharged into the care of his parents. As a result of the accident the pursuer sustained a severe head injury, with axonal brain injury and bifrontal contusions. As a consequence thereof he has suffered significant impairment of his cognitive and behavioural functions. He had post traumatic amnesia for a period of 3—4 weeks after the accident. His motivation, concentration and memory are impaired. He is excessively tired after activity. He has undergone a personality change and has become irritable, aggressive and domineering, particularly towards his mother and younger brother. Family relationships have deteriorated as a result of his behaviour. Due to his ongoing difficulties the pursuer was referred by His General Practitioner is Dr. V Ritchie, Fauldhouse Health Centre, Fauldhouse, West Lothian. *He has received treatment at Edinburgh Royal Infirmary, the Astley Ainslie Hospital, Edinburgh* He has required to attend a Psychologist at St. John's Hospital, Livingston and to attend at the Western General Hospital, Edinburgh. for out-patient review. He requires to take regular medication, including Tegretol Retard, in order to assist with the control of his temper. Following the accident the pursuer became depressed. In January 1998 he attempted suicide. The deficits sustained by the pursuer as a result of the accident will be permanent. The pursuer is likely to suffer from premature mental ageing as a result of his injuries. Following upon the accident the pursuer was absent from his employment as an Injection Moulder with Galtronics (UK) Limited, Livingston, until 19 November 1996. On his return to work the pursuer was initially only fit to work part-time. He was *He has been* unable to return to full-time employment. until February 1997. Since his return to full-time employment he has had several periods of absence as a result of his injuries. Upon returning to work he was prone to outbursts of temper and displays of aggression caused by frustration at his awareness of the cognitive deficits sustained as a result of the accident. Although his employers were sympathetic towards his problems the pursuer's employment was terminated in March 1999 as a result of ongoing inappropriate and aggressive behaviour. Following an appeal against the decision to dismiss him by

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~~the pursuer and his family his employment was reinstated, with a programme of support for both him and his work colleagues being introduced. Initially his return to work was part time. After the initial period of part time work the pursuer attempted to return to full time work. He found himself unable to cope with full time work as a result of his disabilities and, on 5 May 2000, he permanently reduced his hours to part time work. The nature and extent of the pursuer's cognitive deficits are such that he will never again be fit to cope with the demands of full time employment. Since his return to work the pursuer has been unable to undertake the overtime duties which he previously performed. He has accordingly lost and continues to lose wages, details of which will be produced. The pursuer is currently employed by a sympathetic employer. Both his superiors and his workmates are tolerant of the frustration and outbursts of temper which he occasionally displays at work as a result of his awareness of the cognitive deficits hereinbefore condescended upon. If the pursuer were to lose his current employment he would, as an individual with a severe head injury and significant cognitive deficits, find great difficulty in securing and keeping alternative employment. If the pursuer were to lose his present job he would be unlikely to obtain anything other than supported or sheltered employment. His earning potential would be severely restricted in such employment. He would be likely to experience difficulty in obtaining even sheltered or supported employment as there are few such opportunities available. There is no guarantee that another employer would display a tolerant attitude towards his behaviour at work. The security of any alternative employment which the pursuer may obtain in the future could be compromised as a result of the said deficits and his reaction thereto. Even if the pursuer has the opportunity to continue working into later life he may have to retire early as a result of the effects of premature mental ageing. It is likely that the pursuer will lose his job or be made redundant shortly after the proof in the current proceedings. His employers are involved in the assembly of mobile phones. They are experiencing financial difficulties due to a worldwide slump in the demand for mobile phones. In mid-March 2001 the pursuer, together with the rest of the workforce at the defenders' Livingston premises, was put on short time working. At the beginning of April the pursuer was laid off, initially for a month. The period of lay-off was extended indefinitely at the beginning of May 2001. The~~

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~~pursuer remains off work. The pursuer's employers have now instituted a programme of voluntary redundancies. It is likely that the pursuer will be offered voluntary redundancy in the near future. As hereinbefore condescended upon he is unlikely to secure alternative employment. He will lose wages in the future. The pursuer has accordingly been placed at a material disadvantage on the open labour market as a result of the injuries hereinbefore condescended upon. Whilst he was in hospital the pursuer's parents visited him every day in order to render him emotional support and to attend to the non-medical aspects of his care. Upon his return home from hospital the pursuer was rendered services by his parents who nursed him. Upon his discharge from hospital in July 1996 the pursuer's cognitive functioning was severely impaired. He was unable to recognise anyone other than members of his immediate family. He was unable to take decisions relating to basic self-care tasks such as dressing and washing. He required the constant supervision of one or other of his parents. He was initially incontinent of urine. The pursuer's parents required to assist in teaching him to recognise letters and numbers again. As his cognitive functioning improved the pursuer's awareness of his condition increased leading to frustration and outbursts of temper during which he became verbally and physically aggressive. The pursuer's father took two months leave from work in order to assist with his care following his discharge from hospital. The pursuer required constant supervision during his first few months at home following the accident. His parents *and his girlfriend with whom he lives have rendered and* continue to render him necessary services. At the beginning of September, 2000 the pursuer moved into a flat with his girlfriend, Lorraine Watson. He has lived with his girlfriend on an intermittent basis since September 2000. Lorraine Watson now renders him services in addition to the services rendered to him by his parents as hereinafter condescended upon. He requires prompting to get out of bed in the mornings and to prepare his breakfast. He requires to be driven to work and to be collected. Due to his difficulties with problem solving and planning he requires to have items such as the materials he uses to prepare his breakfast set out uniformly by his girlfriend every day. Until the recent lay off the pursuer commenced work at 8am. He was collected from work every day by his mother at 12 o'clock. The pursuer walks from his flat to his parents' home, which is a short distance away, every morning at 7.35am. His~~

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mother then drives him to work. — Until he moved to his own flat in September 2000 the pursuer would, upon his return home prepare his lunch with the assistance of his mother. — In the afternoon his mother would take him shopping or to use local amenities. — He returned home at approximately 4pm and spent the remainder of the afternoon watching television or playing computer games. — At or around 6pm he would assist in making the evening meal, always under the supervision of his mother. The pursuer's father was required to change his shift pattern in order to ensure that he was at home to assist with his care in the evenings. He has lost wages and overtime payments as a result of the change in his working pattern. — Until September 2000 the pursuer spent the evening with his parents and family before retiring to bed at approximately 11pm. — Since September 2000 during the periods when he has been living outwith the family home, the pursuer's mother has picked him up from work and takes him to her own house where she has prepared lunch for him. She then returns him to his own flat where he waits for his girlfriend to return from work at 2.30pm. — In the afternoons the pursuer goes out to the local facilities with either his girlfriend or his mother. — He returns home at approximately 4pm and spends the rest of the afternoon watching television or exercising. — His girlfriend makes his evening meal and, thereafter, he either spends the evening with her or with his family. — On one evening a week the pursuer's girlfriend requires to work a late shift until 9pm. — On these evenings the pursuer either goes to his parents' home and waits there until 9pm or one of his brothers will come to his flat once he returns from work and wait there with him until his girlfriend returns. — The pursuer's girlfriend attends to all household tasks and cleaning. — Once the pursuer returns from work he is not left alone for more than two hours at a time. — He requires to be supervised when making a meal to ensure that he does not burn himself or accidentally start a fire. — He requires to be supervised when shopping. — He is unable to manage his finances properly and incurs debt he cannot afford. — He will only use public transport when accompanied by someone else and he will only visit places he is familiar with. — He will require to undergo a course of Occupational Therapy in order to increase his independence and functional abilities. — His parents would also benefit from a course of occupational therapy in order to assist them with the administration of the care they render to him. — He relies largely upon his family and

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girlfriend for companionship and support as he now has few friends. The pursuer would benefit from the services of a Case Manager and a befriender/companion. The pursuer will never be able to drive as a result of the severity of the head injury he sustained. The pursuer's relationship with his girlfriend is turbulent and inconsistent. He is irritable and temperamental towards her. She experiences difficulty in managing his behaviour. Since September 2000 their relationship has broken down on several occasions and she has moved out of the couple's flat. In the period between September and November 2000 the pursuer's girlfriend provided approximately one third of his care needs and his parents provided the remainder. In the period between December 2000 and mid-March 2001 the pursuer's girlfriend provided approximately one quarter of his care needs and his family provided the remainder. In mid-March 2001 the pursuer moved into a new flat, which he had purchased in December 2000. Between mid-March and mid-April 2001 he spent four nights a week in his parent's home and three nights a week in his own flat under the supervision of his brother. In mid-April 2001 the pursuer's girlfriend moved into the new flat with him. She continued to provide approximately one third of his care needs with his family providing the remainder. Since the pursuer was laid off from work in April 2001 his parents have required to render him an additional 5 hours of care during the day. The pursuer's parents have continued to render him significant services since the accident, including providing him with companionship, emotional support and structure and discipline to his day. In the short term the pursuer's care needs will be provided by his parents and his girlfriend. In the event that the pursuer's relationship with his girlfriend was to break down, or his parents were unable to provide care for him, he would require a full time care package. He will require a carer to be present in the house overnight with him. He will require a carer to be present during the day when he is not at work in order to prompt him and to provide assistance in maintaining his daily routines. Any elements of such care which the pursuer's parents are unable to provide, such as overnight care, will require to be purchased on the open market at commercial rates. Accordingly, the pursuer seeks a sum representing reasonable remuneration in respect of the said services. Reference is made to Section 8 of the Administration of Justice Act 1982. As a result of the increased amount of time which he has spent and continues to spend at

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~~home extra costs have been incurred in respect of increased electricity, telephone and heating bills. Following his discharge from hospital the pursuer was initially incontinent. Extra costs were accordingly *have been and will be* incurred. for laundry, clothing and bedding. Details of such costs will be produced in process to follow hereon. Extra transport costs have been incurred in taking the pursuer to his medical appointments and visiting him in hospital. In due course the pursuer will wish to take holidays without his family. He will require to be accompanied by a carer when he does so. Details of the costs which will be incurred on such a holiday will be produced in process to follow hereon. The pursuer will incur the costs of employing tradesmen to attend to DIY and home maintenance tasks, which he is unable to perform himself. Details of said costs will be produced. As a result of his disability and consequent limited social life, extra costs have been incurred in purchasing a television, a computer and games, a computer table, a games machine, a rowing machine and weights gym for the pursuer's use. A mobile telephone has been purchased in order to allow the pursuer to contact his parents in an emergency. Costs of approximately £5,000 have been incurred in purchasing said items. Vouching in respect thereof will be produced in process to follow hereon. Bedding, furniture, soft furnishings and decorating materials required to be purchased for the extension built at the pursuer's parents' home at a cost of approximately £830. In the event of the pursuer receiving a substantial capital sum in the present proceedings he will incur costs of approximately £1,000 in setting up a trust. Thereafter annual costs will be incurred in administering the trust and its investments. Although the pursuer was living independently at the time of the accident he required to live at home until moving to his own accommodation as hereinbefore condescended upon. Initially upon his return home the pursuer shared a room with his brother. As a result of the behavioural difficulties which the pursuer exhibited upon his return home it became apparent to his parents that he could not share a room at home with any of his brothers. The pursuer's parents were advised by doctors at the Astley Ainslie Hospital that the problems being experienced by the family at home would be helped if more space could be created within the house. Consequently they converted the attic area of their property in order to provide *inter alia* a separate bedroom for the pursuer. The costs of the said works would not have been incurred~~

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~~if it had not been for the accident. Details of the said costs will be produced in process to follow hereon. In the circumstances the sum sued for represents a reasonable estimate of the pursuer's loss, injury and damage. The defenders' averments in answer are denied except insofar as coinciding herewith.~~

ANS. 5 FOR 1ST. AND 2ND DEFS. Admitted that as a result of the accident the pursuer suffered loss, injury and damage. Admitted that he was taken to Edinburgh Royal Infirmary where he was found to be unconscious. Admitted that he was given a CT scan and transferred to the ITU unit of the Western General Hospital. Admitted that after regaining consciousness he was discharged into the care of his parents. Admitted that as a result of the accident he sustained a severe head injury with axonal brain injury and bifrontal contusions. Quoad ultra denied. The pursuer's present symptoms were present before the accident. Hospital to Dr. Ritchie. He suffered from psychiatric difficulties prior to the accident. He suffered from memory impairment prior to the accident. In 1992 he received treatment designed to Reference is made to the letter dated 14 May 1999 from Dr James Hendry of Bangour improve his behaviour and in particular the control of his temper. He had perpetrated acts of fire raising and had been referred to a Children's Hearing which made a Supervision Order. In 1994 he attempted suicide. Esto his present symptoms are causally connected to the accident (which is denied) they are also attributable to his pre accident psychiatric difficulties. Since the accident which is the subject of this action he has been assaulted and kicked around the head. This incident occurred on or about 16 August 1996. In or about 23 May 1997 *and* he was involved in another road traffic accident after the accident and again suffered a head injury. He has recently left his parents' care and is now residing with his girlfriend in a flat. He is at present capable of living without the care of his parents or professional carers and was capable of an independent life prior to leaving his parents' home. The pursuer is not at risk of premature mental ageing and his care needs will not alter. He has received treatment at Bangour Village Hospital, Broxburn, West Lothian. His girlfriend is not a relative within the

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meaning of the Administration of Justice Act 1982 and is not entitled to claim for services. Should the pursuer lose his employment his employment prospects will not be materially different from his prospects had he not been injured. His present employers suspended the pursuer for an incident involving the loss of his temper. He was prone to injudicious loss of temper prior to the accident. Prior to his suspension he worked full time and was coping well. His wage loss as a consequence of his reinstatement on a part time basis is not attributable to the injuries he suffered in the said accident. Any loss of wages consequent upon the termination of his present employment is not attributable to the fault of the defenders. Quoad ultra denied. Explained and averred that in any event the sum sued for is excessive.

A

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COND. 6 The defenders have been called upon to make reparation to the pursuer but they refuse or at least delay to do so.

ANS. 6 FOR 1ST. AND 2ND DEFS. Denied that the action is necessary.

C

!!!. PLEAS IN LAW FOR PURSUER

1. The defenders' averments anent the alleged duty upon the pursuer not to drive in a car with a person whom he knew or ought to have known was not authorised to drive the vehicle being irrelevant, should not be admitted to probation.
2. The pursuer having sustained loss, injury and damage as a result of the fault and negligence of the defenders is entitled to reparation from them therefor.
3. The sum sued for being a reasonable estimate of the pursuer's loss, injury and damage, decree therefor should be pronounced therefor.

D

E

IN RESPECT WHEREOF

_____ "Alfred J Tyler"
 _____ Solicitor
 _____ Balfour & Manson
 _____ 54-66 Frederick Street
 _____ Edinburgh EH2 1LS
 _____ Solicitor for Pursuer

A

_____ IV. PLEAS IN LAW FOR DEFENDERS

- 1— ~~The pursuer's averments being irrelevant et separatim lacking in specification, the action should be dismissed.~~
- 2— ~~The pursuer having contributed to his loss, injury and damage through his own fault and negligence any damages awarded should be reduced under reference to the terms of the Law Reform (Contributory Negligence) Act 1945.~~
- 3— ~~The sum sued for being excessive, decree should not be pronounced therefore.~~
- 4— ~~The averments anent the services of the pursuer's girlfriend being irrelevant should not be admitted to probation.~~

B

_____ IN RESPECT WHEREOF

_____ HBM Sayers
 _____ Solicitors, Glasgow
 _____ Solicitors for the First and Second Defenders

C

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VII. - INTERLOCUTORS

23 December 1997

Lord Dawson

The Vacation Judge on the unopposed motion of the pursuer dated 17 December sists the cause to enable the pursuer to apply for Legal Aid.

"Ian Martin" DCS

20 March 1998

Lord Abernethy

E

The Lord Ordinary on the unopposed motion of the second defender; allows Defences for the second defender No. 10 of process to be received late.

A

"Roy Sinclair" DCS

25 March 1998

Lord Kingarth

The Lord Ordinary on the unopposed motion of the Minuter in respect of the Minute No. 11 of process allows the Minuter to be sisted to the cause as Party Minuter and thereafter allows the Defences No. 12 of process to be received.

Sgd.

B

1 May 1998

Lord Abernethy

The Lord Ordinary on the unopposed Motion of the pursuer and on cause shown allows the Open Record to be received late and marked No. 13 of process.

"Gillian Prentice" DCS

1 September 1998

Lord Cameron of Lochbroom

The Lord Ordinary on the unopposed Motion of the pursuers restores the cause to the Adjustment Roll and continues the cause therein until 27 October 1998 when the Record will close' grants diligence against havens for recovery of the documents called for in the Specification No. 14 of process and commissions to Advocate, Edinburgh to take the oaths and examination of havens and to receive their exhibits and productions to be reported quam primum.

C

"Gordon Ellis" DCS

15 January 1999

Lord Kingarth

The Lord Ordinary having heard Counsel on the pursuer's Motion dated 7 January allows the Closed Record to be opened up and further continues adjustment of Record until 24 February 1999 when the Record will close.

"D R A Emslie" DCS

D

13 April 1999

Lord Abernethy

The Lord Ordinary on the unopposed Motion of the pursuer allows the Closed Record to be received late and marked No. 13 of process; appoints the cause to the By Order (Adjustment) Roll of 5 May 1999 at 10 o'clock

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5 May 1999

Lady Cosgrove

A

The Lord Ordinary on the Motion of the Minuters, and of consent, dispenses with the provisions of Rule of Court 23.3 and continues the cause on the By Order (Adjustment) Roll on Wednesday 2 June 1999.

"James Lynn" DCS

14 May 1999

Lord McFadyen

The Lord Ordinary on the unopposed Motion of the pursuer and in respect that it is stated in the letter dated 30 April 1999 that the first defenders agents no longer act for him ordains the first defender to intimate to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh within fourteen days of the date of service whether or not he is insisting in his defence to the action under certification that if he fails to do so the action will proceed as undefended against him; appoints the pursuer's solicitors to serve a notice in terms of Form 30.2 as the appendix to the rules of court on the said defender and to lodge a Certificate of Execution of such service in process.

B

2 June 1999

Lord Kingarth

C

Act: 1 defender - Absent
2 defender - Stuart
Minuters - Dunlop

The Lord Ordinary having heard Counsel on the By Order (Adjustment) Roll, on Motion of Counsel for the Minuter, allows parties a preliminary proof of their respective averments on Record in respect of the matters referred to in the Condescendence and Answers 6 in the Closed Record; appoints said Proof to proceed on the 19th day of June 2001 at 10 am; grants diligence for citing witnesses and havers.

D

5 October 1999

Lord McFadyen

The Lord Ordinary on the unopposed Motion of the minuters and on cause shown allows additional List of Witnesses No. 22 of process and Invenotry of Productions No 7 (3) of process to be received late.

"Neil Sinclair" DCS

E

5 October 1999

Lord Abernethy

Act Dunlop, QC

Alt Duncan for

A

Minuter

The Lord ordinary having heard Counsel, allows Minute of Amendment for the Minuters to be received and to be marked No. 23 of process; appoints the pursuer and defenders to lodge answers thereto, if so advised, within a period of 7 days of this date; on the unopposed Motion of the Minuters allows an additional List of Witnesses for the Minuters to be received late and marked No. 22 of process and allows Inventory of Productions for the Minuters to be received late and marked no. 8(3) of process.

"J A Cameron"

B

13 October 1999

Lord MacFadyen

The Lord Ordinary on the unopposed Motion of the pursuer prorogates the time for lodging Answers to the Minute of Amendment No. 23 of process until 14 October 1999; dispenses with intimation in terms of Rule of Court 23.3

"J Clark" DCS

C

14 October 1999

Lord Dawson

Act Dunlop, QC

The Lord Ordinary on the Motion of the Minuter made at the Bar, opens up the Closed record; allows the same to be amended in terms of the Minute of Amendment for the Minuter and Answers thereto for the pursuer, respectively Nos 23 and 24 of process; and this having been done, of new closes the Record; finds the Minuters liable to the pursuer I the expenses occasioned by the Amendment procedure and remits the account thereof, when lodged to the Auditor of Court to tax.

"Thomas C Dawson"

D

14 October 1999

Lord Dawson

The Lord Ordinary decerns against the Minuter for payment to the pursuer of the expenses referred to in the preceding Interlocutor of even date as the same shall be taxed by the Auditor of Court.

"Thomas C

Dawson"

E

15 October 1999

Lord Dawson

A

Act Dunlop, QC

The Lord Ordinary having taken the Proof adduced and heard Counsel thereon, repels the Minuter's Pleas in law in toto; finds the Minuter liable to the pursuer and second defender in the expenses occasioned by the preliminary proof and remits the account thereof, when lodged to the Auditor of Court to tax.

"Thomas C Dawson"

15 October 1999

Lord Dawson

B

The Lord Ordinary decerns against the Minuter for payment to the pursuer and second defender of the expenses referred to in the preceding Interlocutor of even date as the same shall be taxed by the Auditor of Court.

"Thomas C

Dawson"

23 November 1999

Lord Johnston

C

The Lord ordinary on the unopposed Motion of the second defenders, grants diligence against havers for recovery of the documents called for in his Specification No. 29 of process and commission to.....Advocate, Edinburgh to take the oaths and examination of havers and to receive their exhibits and productions to be reported quam primum.

14 September 2000

Lord Hardie

The Lord Ordinary on the unopposed Motion of the pursuer grants commission to Malcolm McGregor whom failing Peter Milligan, Advocates, Edinburgh to take the evidence at a time and place to be appointed by the commissioner of MR DAVID A JOHNSON, Consultant Neurologist, 24 Hermitage Gardens, Edinburgh, a necessary witness for the pursuer; appoints due notice of the diet for the taking of the evidence to be made to the defenders' agents and dispenses with interrogatories; appoints the oath and examination of said witness together with any exhibits and productions made by him to be sealed up by the commissioner and transmitted together with a report of the commission to the Deputy Principal Clerk of Session, 11 Parliament Square, Edinburgh.

D

"K Carter" DCS

E

15 September 2000

Lord Eassie

A

The Lord Ordinary on the unopposed Motion of the pursuer allows the Minute of Amendment No. 32 of process to be received and appoints the defenders to lodge Answers thereto, if so advised, within 14 days from this date.

"F Petrie" DCS

21 September 2000

Lord Hamilton

The Lord Ordinary, on the unopposed Motion of the Minuter, allows the Minute No. 11 of process to be withdrawn from process.

B

22 September 2000

Lord Hamilton

The Lord Ordinary, on the unopposed Motion of the pursuer, allows the Closed Record to be opened and amended in terms of the pursuers' Minute of amendment no. 34 of process, and said amendment having been done, of new closes the Record.

David Fraser, DCS

3 October 2000

Lord Hardie

C

the Lord Ordinary on the unopposed Motion of the defenders dispenses with the full intimation requirements of Rule of Court 23.3; allows their List of Witnesses to be received late and marked No. 37 of process; grants diligence against havers for recovery of the documents called for in the Specification of Documents for the defenders No. 35 of process and grants commission toAdvocate, Edinburgh to take the oaths and examination of havers and to receive any exhibits and productions made by them to be reported quam primum.

Pam McFarlane DCS

D

6 October 2000

Lord MacFadyen

The Lord Ordinary, having heard Counsel on the Motion of the defenders discharged the Diet of Proof fixed for 17 October 2000; finds the pursuer liable as an Assisted Person to the defender in the expenses occasioned by today's hearing and remits an account of expenses when lodged to the Auditor of Court to tax and report.

11 May 2001

Lord Clarke

E

The Lord Ordinary, on the unopposed Motion of the Defenders grants diligence against havers for the recovery of the documents called for in the Specification of Documents for the Defenders No. 39 of process and Commission to Advocate, Edinburgh, to take the oaths and examination of havers and to receive any exhibits and productions made by them to be reported quam primum.

"W G Coombs"

13 June 2001

Lord Abernethy

The Lord Ordinary, on the unopposed Motion of the Pursuer, on cause shown, dispenses with the requirements of Rule of Court 23.3(3); grants Commission to U. Doherty, Advocate, whom failing G. Primrose, Advocate, Edinburgh, to take the evidence at a time and place to be appointed by the Commissioner of Mrs. Linda Roberts, 10 Burnbank, Livingston, a necessary witness for the Pursuer; appoints due notice of the diet for the taking of the evidence to be made to the Defender's agents and dispenses with interrogatories; appoints the oath and examination of the witness together with any exhibits and productions made by her, to be sealed up by the Commissioner and transmitted together with a report of the Commission, to the Deputy Principal Clerk of Session, Parliament Square, Edinburgh.

"Roy Sinclair" DCS

IN THE COURT OF SESSION

27 December, 2000

C L O S E D R E C O R D
(AS AMENDED)

in the cause

KEVIN MCGOWAN

against

VOLVO TRUCK AND BUS LIMITED

Thompsons,
Solicitors for Pursuer

Morison Bishop,
Solicitors for Defenders

C L O S E D R E C O R D
(AS AMENDED)

in the action at the instance of

KEVIN MCGOWAN, residing at 17 Kilkerran Square, Kilwinning,
Ayrshire, KA13 6LN,

PURSUER

against

VOLVO TRUCK AND BUS LIMITED, Kilwinning Road, Irvine, Ayrshire

DEFENDERS

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IN THE COURT OF SESSION

A No. 1 of Pro.

I. S U M M O N S

in the cause AKEVIN MCGOWAN, residing at 17 Kilkerran Square, Kilwinning,
Ayrshire, KA13 6LN,PURSUER

against

B VOLVO TRUCK AND BUS LIMITED, Kilwinning Road, Irvine, Ayrshire B

DEFENDERS

C ELIZABETH II by the Grace of God of the United Kingdom of Great
C Britain and Northern Ireland and of Her other Realms and
Territories Queen, Head of the Commonwealth, Defender of the
Faith to VOLVO TRUCK AND BUS LIMITED. By this Summons the
pursuer craves the Lords of our Council and Session to
pronounce a decree against you in terms of the conclusions
D appended to this summons. If you have any good reason why D
such decree should not be pronounced, you must enter appearance
at the Office of the Court, Court of Session, 2 Parliament
Square, Edinburgh, EH1 1RQ within three days after the date of
the calling of the Summons in Court. The summons shall not
E call in court earlier than 21 days after the date of service on E
you of this Summons. Be warned that, if appearance is not so
entered on your behalf, the pursuer may obtain decree against
you in your absence.

Given under our Signet at Edinburgh on the Nineteenth Day of
July, Two Thousand.

WENDY HAY
SOLICITOR
285 BATH STREET
GLASGOW
SOLICITOR FOR PURSUER

CONCLUSIONS

1. For payment by the defenders to the pursuer of the sum of
FIVE HUNDRED THOUSAND POUNDS (£500,000) STERLING with
interest thereon at the rate of Eight per cent a year from
the date of decree to follow hereon until payment.

2. For the expenses of the action.

II. - CONDESCENDENCE for PURSUER

and

ANSWERS thereto for DEFENDERS

COND. 1. The pursuer is Kevin McGowan and he resides at 17
Kilkerran Square, Kilwinning, Ayrshire. His date of birth is
30th January 1967. The defenders are Volvo Truck and Bus
Limited, a Company incorporated under the Companies Acts and
having a place of business at Kilwinning Road, Irvine,
Ayrshire. They are domiciled in Scotland. In any event the
pursuer in the present action seeks reparation for the loss,

A injury and damage sustained by him through the fault and
negligence of the defenders. The harmful event in consequence
of which the present action is necessary occurred in Scotland. A
This Court has jurisdiction. There are no proceedings pending
before any other Court involving the present cause of action
and between the parties hereto. There is no agreement
prorogating jurisdiction over the subject matter of the
B present action to any other Court. B

ANS. 1. The averments anent the defenders are
admitted. Admitted that this Court has
jurisdiction. The averments anent the pursuers
are not known and not admitted. Quoad ultra
C denied. Explained and averred that there are
no such proceedings nor is there any such
agreement. C

D COND. 2. On or about 3rd June 1998, the pursuer was acting in
the course of his employment with the defenders as a bus
assembler at their said premises. He was working on the
Olympian Line fitting a panhard rod, which is an anti roll
bar, to a bus. Said rod was made of metal and was about 5cm
E (2 inches) in diameter and about 304 cm (about ten feet) in
length. It was of solid metal construction, and was heavy. It
was to be fitted across the width of the said bus at a height
of about 91 cm (about three feet) from the ground. The pursuer
was taking over from the usual person who did that job, Thomas
Ferguson, who had been off for about a week. He was doing the
job in the way in which he had seen Mr Ferguson do it. He had
E

had no other training or instruction. The pursuer balanced the rod lengthways across his right shoulder and held it with his right hand. The pursuer had to exert force in order to fit the rod into position. He crouched down on to one knee. He placed the end of said rod to his front into the chassis of the bus where it was to be bolted. The place where it was to be bolted consisted of two flanges with two threaded holes. The end of the said rod was curved. The pursuer used a pinch bar which he held with his left hand to wedge the end of said rod in the proper place for connection to the said chassis. There was no mechanical device to centre the rod, or to guide it in to where it was to be fitted. The said operation was awkward. As the pursuer was locating the said rod the pinch bar he was using became jammed. It suddenly released and released the said rod. The said pinch bar fell hitting the pursuer on his right shin and the said rod fell, hitting him on the right knee and knocking him to the side. As a result of said accident the pursuer has sustained the loss, injury and damage hereinafter condended upon. There was no harness provided to support the said rod whilst it was being so located. Following the pursuer's accident the defenders provided an alternative type of pinch bar. They also made operators aware of the correct method of construction and clarified their instructions relating thereto. In terms of Regulations 3 and 4 of the Management of Health and Safety at Work Regulations 1992 the defenders were obliged to make a suitable and sufficient assessment of the risks to health and safety to which their employees, such as the pursuer, were

exposed whilst at work and to make, and record, appropriate arrangement for the effective planning, organisation, control, monitoring and review of preventative and protective measures in respect of risks identified by the assessment made under Regulation 3. Said Regulations do not confer civil liability but the information obtained thereby provides the basis upon which a responsible employer will be able to identify the risks from the activity, and take such steps as are necessary and appropriate to fulfil his duties under the executive Regulations associated therewith, such as those hereinafter referred to. Such an assessment would have disclosed a risk of injury to the pursuer carrying out said task and the requirement for a further more detailed assessment in terms of Regulation 4 of the Manual Handling Regulations 1992 as hereinafter condescended upon. The averments in answer are denied insofar as not coinciding herewith.

ANS. 2. Admitted that on or about 4th June, 1998 the pursuer was acting in the course of his employment with the defenders as a bus assembler at their said premises. Admitted that he was working on the Olympian Line fitting a panhard rod to a bus. Admitted that the pursuer suffered an accident under explanation that the nature, extent and circumstances thereof are not known and not admitted. Regulations 3 and 4 of the Management of Health and Safety at Work Regulations 1992 and Regulation 4 of the Manual

Handling Regulations 1992 are referred to for their whole terms beyond which no admission is made. Quoad ultra denied.

COND. 3. The said accident was caused by the fault and negligence of the defenders. It was their duty to take reasonable care for the safety of their employees, including the pursuer, and to avoid exposing them to unnecessary risk of injury. It was their duty to take reasonable care to devise, institute, maintain and enforce a safe system of work. It was their duty to take reasonable care to provide safe and adequate plant and equipment. It was their duty to take reasonable care to devise, institute, maintain and enforce a system whereby employees were instructed and trained in a safe method of carrying out said task, and whereby the task could be carried out in safety. It was their duty to take reasonable care so to arrange the procedure of fitting the rod that it did not require substantial force and the use of the pinch bar to get it into position. In the event that it was not reasonably practicable so to arrange the procedure, (which is denied), it was their duty to take reasonable care to take suitable and sufficient precautions to obviate or minimise the risk that the heavy rod would fall, for instance by supporting it by a harness or sling or other such device, or by having a slot in which it could sit while being positioned which was of sufficient dimensions as to obviate or minimise the risk of such a fall, or to have a mechanical device to centre the

rod as it was being positioned. It was their duty to take reasonable care not to cause or permit the pursuer to require to balance a long and heavy rod on his shoulder while kneeling and trying to force it in to a restricted location with a pinch bar. In each and all of these duties the defenders failed and thus caused the pursuer's accident. Had the defenders fulfilled said duties incumbent upon them said accident would not have occurred. The averments in answer are denied insofar as not coinciding herewith.

ANS. 3. Admitted that the defenders owed the pursuer certain duties of reasonable care under explanation that they fulfilled all such duties. Quoad ultra denied.

COND. 4. Further and in any event the said accident was caused by the defenders' breach of statutory duty. They were under a duty to comply with the provisions of the Workplace (Health, Safety & Welfare) Regulations 1992. Regulation 13 thereof provide inter alia:

".....suitable and effective measures shall be taken to prevent an event specified in paragraph (3)...."

(3) The events specified in this paragraph are:- ...

(b) any person being struck by a falling object likely to cause personal injury."

The pursuer was struck by said rod and said bar. They were falling objects likely to cause personal injury. The defenders took no measures to prevent the pursuer being struck by them. The defenders were in breach of said

statutory duty and so caused said accident. Had they fulfilled said statutory duty incumbent upon them said accident would not have occurred. The averments in answer are denied insofar as not coinciding herewith.

ANS. 4. Regulation 13 of the Workplace (Health, Safety & Welfare) Regulations 1992 is referred to for its whole terms beyond which no admission is made. Quoad ultra denied.

COND. 5. Further and in any event said accident was caused by the defenders' breach of statutory duty. The defenders were in breach of the duties incumbent on them in terms of the Provision and Use of Work Equipment Regulations 1992. Regulations 5 and 20 thereof provide inter alia:-

"5(1) Every employer shall ensure that work equipment is so constructed or adapted as to be suitable for the purpose for which it is used or provided.

(2) In selecting work equipment, every employer shall have regard to the working conditions and to the risks to the health and safety of persons which exist in the premises or undertaking in which that work equipment is to be used and any additional risk posed by the use of that work equipment.

(3) Every employer shall ensure that work equipment is used only for operations for which, and under conditions for which, it is suitable.

(4) In this Regulation "suitable" means suitable in any respect which it is reasonably foreseeable will affect

the health or safety of any person."

Regulation 20 provides:

"Every employer shall ensure that work equipment or any part of work equipment is stabilised by clamping or otherwise, where necessary for purposes of health or safety."

Said rod and pinch bar were work equipment for the purposes of said Regulations. In the circumstances hereinbefore condiscended upon, said rod and pinch bar were not suitable. The said rod was not stabilised by clamping or otherwise. Such stabilising was necessary for the purpose of health or safety. Such stabilising would have prevented the said accident to the pursuer. In said statutory duties the defenders failed and by their failures caused the said accident. But for said failures in said duties the said accident would not have occurred. The averments in answer are denied insofar as not coinciding herewith.

ANS. 5. Regulations 5 and 20 of the Provision and Use of Work Equipment Regulations 1992 is referred to for its whole terms beyond which no admission is made. Quoad ultra denied.

COND. 6. Further and in any event said accident was caused by the defenders' breach of statutory duty. The defenders were in breach of Regulation 4 of The Manual Handling Operations Regulations 1992 which provides inter alia:-

"(1) Each employer shall -

(a) avoid the need for his employees to undertake any

manual handling operations at work which involve a risk of their being injured..."

The pursuer was undertaking a manual handling operation.

In the circumstances there was a risk of injury. There was an obvious risk that said rod would fall and cause the pursuer to be injured as in fact happened.

The defenders failed to comply with said Regulation and by their failure caused said accident. Had they fulfilled said statutory duty incumbent upon them said accident would not have occurred. The averments in answer are denied insofar as not coinciding herewith.

ANS. 6. Regulation 4 of the Manual Handling Operations Regulations 1992 is referred to for its whole terms beyond which no admission is made. Quoad ultra denied.

COND. 7. As a result of said accident the pursuer has suffered loss, injury and damage. His right knee became swollen. He went to the defenders' First Aid room. He attempted to work on. During the night his knee worsened. He treated it with ice. He attended at the Accident and Emergency Department of Crosshouse Hospital, Kilmarnock. His right knee was X-rayed and a crepe bandage applied. He attended at his GP, Dr McCreadie, Almswell Road, Kilwinning, Ayrshire. He was referred to the Fracture Clinic of said hospital. He continued to feel pain, stiffness and a feeling of instability in his said knee. His knee was fixed in a degree of flexion and he was walking with a limp. He was re-

referred to said hospital. He was admitted on 8th October 1998 for an Arthroscopy. He was advised that he had damage to the anterior cruciate ligament and a displaced bucket handle tear of the cartilage on the inner aspect of his said knee. Said fragment of cartilage was removed. He was referred for physiotherapy and follow up at said hospital. His knee was still held in flexion and his knee remained unstable and very painful. A further Arthroscopy was carried out on 7th December 1998. He was diagnosed as suffering from reflex sympathetic dystrophy and was referred to the Pain Control Clinic. He was referred to Ayr Hospital, Ayr for a second opinion in September 1999. He has suffered and continues to suffer. He has pain when he weight bears on his right leg and if he fully straightens or bends his knee. His knee aches after resting for about 10 minutes. It wakens him at night every two hours or so when he turns over in bed. He has pain when he is walking. He walks with a limp, taking the weight on the toes of his right foot. He has wasting of the right quadriceps muscle. He has been prescribed Ibuprofen and Co-proximal. He has had acupuncture treatment. He feels anxious and depressed by his disabilities. He has developed an Adjustment disorder with Mixed Anxiety and Depressed Mood (DSM IV 309.28). He requires and is receiving further medical treatment. He attempted to return to work on 30th April 1999 but lasted two weeks and was unable to continue. He is unfit to return to his pre-accident employment. He is unfit for any physical job requiring him to be on his feet for any length of time. But for the

accident, he would have worked on with them until the closure of the factory in June 2000. In the last few months prior thereto, there were very considerable opportunities for overtime, of which the pursuer would have availed himself. He has lost and continues to lose earnings. His colleague, Brian Leigh, earned approximately what the pursuer would have earned, but for the accident, until the factory closure. After the closure the pursuer would readily have obtained employment at a wage similar to, or higher than, his earnings would have been with the defenders. He had worked for some years with his Team Leader at the defenders, John McReynolds, and Mr McReynolds would have been able to get him a job with British Aerospace at Prestwick, to which Mr McReynolds moved. He had another friend and former colleague, Jim Brannigan, who would also have been able to do so. He had, prior to joining the defenders, passed the examinations to work with Hysters Limited in Irvine, and it was likely that they would have been prepared to employ him. The pursuer was also an experienced Heating and Ventilation Engineer, having worked for some years as such with Crown House Engineering, Galloway Mechanical Services, and W Spiers in Irvine. In the event, he is unfit for any work involving more than minimal exertion of his leg, and the said jobs are precluded for him. He is very seriously prejudiced in the labour market. He is likely to have to retrain for clerical work, at which he has neither experience nor expertise. Such jobs are likely to pay less than he would have earned in his pre-accident capacities. Prior to the accident the pursuer enjoyed many

outdoor and active pastimes such as football, hill walking,
 camping, golf and other sports. He is no longer able to do
 so. He has incurred travelling expenses in attending for
 medical treatment and prescription costs. Until about October
 1998 he was immobile. He was unable to look after his mother
 and father, with whom he lived, both of whom had suffered
 strokes, and who were each much in need of his care. They
 each died in early 2000. who have both suffered strokes.
 He was and remains unable to attend home decoration,
 gardening, car maintenance. He requires to pay for said
 services. Reference is made to Section 9 of the
 Administration of Justice Act 1982. In the circumstances the
 sum sued for is a reasonably estimate of the pursuer's loss,
 injury and damage. With reference to the averments in
 answer, admitted that the pursuer sought treatment from the
 defenders' doctor. Admitted that the pursuer's parents both
 died in 2000. Quoad ultra denied insofar as not coinciding
 herewith. Explained and averred that but for the accident the
 pursuer would have been able to adequately cope the health
 and death of his parents.

ANS. 7. The nature, extent and consequences
 of any loss, injury and damage suffered by the
 pursuer are not known and not admitted. Quoad
ultra denied. Explained and averred that, in
 any event, the sum sued for is excessive. The
 pursuer is called upon to specify the name of
 the establishment where he has received
 acupuncture treatment. Their failure to

answer the said call will be founded upon. Explained and averred that the pursuer has also attended the defenders' own doctor in connection with the said accident. The injury sustained by the pursuer on 4 June 1998 was relatively minor. On attendance at hospital the next day it was thought simply to be a soft tissue injury. An arthroscopy on 8 October 1998 revealed a tear of the medial meniscus. The torn part was removed. It was also noted that there was a possible tear of the anterior cruciate ligament. A further arthroscopy on 2 December 1998 revealed an intact medial meniscus and an intact interior cruciate ligament. Such minor injury would not be expected to produce symptoms of the severity complained of by the pursuer. Further explained and averred that the pursuer suffered symptoms of anxiety relating to family problems which caused him to seek medical advice prior to the accident. From about January 1998 the pursuer had problems with the health of his father and mother. The pursuers father and mother both died in about 2000. Stress and anxiety from these family problems and his parents' ill health were a substantial cause of any depression suffered by the pursuer. The pursuer's condition is

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A

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E

likely to improve. There are drugs available to treat any pain the pursuer feels in his right knee. The pursuer is likely to be able to carry out many forms of work in the future.

He has already applied for jobs. He has stated that he is looking, for engineering or inspection work of a relatively light nature.

As his condition improves he is likely to be able to obtain employment. Further explained and averred that the factory at which the pursuer was working with the defenders closed in June 2000. The pursuer was and would in any event have been made redundant at that stage. Even without having suffered an injury in June 1998 the pursuer would at that stage have had to cope with the problems of his parents' ill health and death and with being made redundant. In any event even if uninjured and able to cope with the problems of his parents' ill health and death on being made redundant in 2000 the pursuer is likely to have experienced a job search of up to a year. There is a relatively high level of male unemployment in North Ayrshire. There would also have been a substantial influx of former Volvo workers onto the labour market at that time. Further the pursuer does not possess craft qualifications. The rates of pay

A available to him would therefore have been at
operative rather than skilled level. He might
on obtaining employment have anticipated
earnings in the region of £9,950 to £11,950
net p.a.. Further the pursuer should be able
to find employment after a period of job
search. There are a number of Government
programmes for retraining which are available
to the pursuer. The pursuer has reasonably
good 0 grades in inter alia mathematics,
engineering drawing and art & design. Without
any retraining the pursuer would be likely to
achieve initial earnings in the region of
£8,150 to £8,320 p.a. net. That would rise
over a short period to a rate between £9,050
and £9,850. In the event that the pursuer
undertook retraining he might be able achieve
earnings of about £11,120 net p.a..

COND. 8. The defenders have been called upon to make
reparation to the pursuer in respect of his said loss, injury
and damage but they refuse or at least delay to do so. This
action is accordingly necessary.

ANS. 8. Denied that this action is necessary.

III. - PLEAS-IN-LAW for PURSUER

A

1. The pursuer having suffered loss, injury and damage through the fault and negligence et separatim breach of statutory duty of the defenders is entitled to reparation from them therefor.

A

B

2. The sum sued for being a reasonable estimate of the pursuer's loss, injury and damage decree should be pronounced as concluded for.

B

C

3. The averments in answer, save insofar as relating to quantum, being irrelevant et separatim, lacking in specification, the defences should to that extent be repelled and Proof restricted accordingly.

C

D

IN RESPECT WHEREOF

D

WENDY HAY
SOLICITOR
285 BATH STREET
GLASGOW
SOLICITOR FOR PURSUER

E

E

IV. - PLEAS-IN-LAW for DEFENDERS

A 1. The pursuer's averments being irrelevant et separatim lacking in specification, the action should be dismissed. A

2. The pursuer's averments, so far as material being unfounded in fact, the defenders should be assoilzied.

B 3. The pursuer not having suffered any loss, injury or damage through the fault or negligence et separatim breach of statutory duty of the defenders, decree of absolvitor should be pronounced. B

C 4. In any event, the sum sued for being excessive, decree therefor should not be pronounced. C

IN RESPECT WHEREOF

D D

V. - INTERLOCUTORS

E OPEN RECORD LODGED: 15 SEPTEMBER 2000 E
ADJUSTMENT COMMENCED: 20 SEPTEMBER 2000
RECORD CLOSED: 15 NOVEMBER 2000

20 September 2000

Lord Gill

A The Lord Ordinary On The Unopposed Motion Of The Pursuer
Allows Open Record No 9 Of Process To Be Received Late. A

R SINCLAIR D.C.S.

22 September 2000

Lord Hamilton

B The Lord Ordinary On The Unopposed Motion Of The Pursuer
Grants Diligence Against Havers For Recovery Of The Documents B
Called For By The Pursuer In The Specification No 10 Of
Process And Grants Commission To Advocate, Edinburgh To
Take The Oaths And Examinations Of Havers And To Receive Their
C Exhibits And Productions Made By Them To Be Reported Quam
Primum. C

A JOHNSTON D.C.S.

20 October 2000

Lord Philip

D The Lord Ordinary On The Unopposed Motion Of The Pursuer
Grants Diligence Against Havers For Recovery Of The Documents D
Called For By The Pursuer In The Specification No 11 Of
Process And Grants Commission To Advocate, Edinburgh To
Take The Oaths And Examinations Of Havers And To Receive Any
E Exhibits And Productions Made By Them To Be Reported Quam
Primum. E

D M MACLEOD D.C.S.

15 November 2000

Lord Wheatley

The Lord Ordinary On The Unopposed Motion Of The Defenders,
Dispenses With The Intimation Requirements Of Rule Of Court

23.3 On Cause Shown, Further Continues Adjustment Of The
 Record Until Wednesday 27 December 2000 On Which Date The
 Record Shall Close.

30 January 2001

Lord Mackay Of Drumadoon

The Lord Ordinary On The Unopposed Motion Of The Pursuer
 Allows The Closed Record To Be Received Late And Marked No. 12
 Of Process Appoints The Cause To The By Order Adjustment Roll
 On Wednesday 14 February 2001.

G Ellis, D.C.S.

14 February 2001

Lord Reed

The Lord Ordinary On The Unopposed Motion Of The Pursuer And
 Of Consent Withdraws The Cause From The By Order Adjustment
 Roll Of This Date Allows To Parties A Proof Before Answer Of
 Their Respective Averments On Record Appoints Said Proof To
 Proceed On The Day At 10am Forenoon Grants Diligence
 For Citing Witnesses And Havers Further Dispenses With The
 Provisions Of Rule 23.3.

E Dickson, D.C.S.

15 May 2001

Lord Nimmo Smith

The Lord Ordinary On The Unopposed Motion Of The Pursuer
 Allows The Minute Of Amendment For The Pursuer To Be Received
 Late And Marked No. 13 Of Process Allows The Defenders To
 Lodge Answers Thereto If So Advised Within 14 Days Of This
 Date.

John McLean, D.C.S.

A 22 June 2001 Lady Paton
The Lord Ordinary On The Unopposed Motion Of The Defender On Cause Shown Allows The Answers To The Pursuers Minute Of Amendment No 13 Of Process To Be Received Late And Marked No. 15 Of Process.

N McGinley, D.C.S.

B 6 July 2001 Lady Paton
The Lord Ordinary On The Unopposed Motion Of The Defenders Dispenses With The Requirements Of Rule Of Court 23.3(3) Allows The Defenders List Of Witnesses To Be Received Late And Marked No 17 Of Process.

W G Combe, D.C.S.

PRODUCED BY
THOMPSONS
16-18 CASTLE STREET
EDINBURGH
EH2 3AT
DX ED 101

S U M M O N S A N D D E F E N C E S
in the cause

KEVIN MCGOWAN, residing at 17 Kilkerran Square, Kilwinning,
Ayrshire, KA13 6LN,

PURSUER

against

VOLVO TRUCK AND BUS LIMITED, Kilwinning Road, Irvine, Ayrshire
DEFENDERS

SUM SUED FOR

1. For payment by the defenders to the pursuer of the sum of FIVE HUNDRED THOUSAND POUNDS (£500,000) STERLING.
2. For the expenses of the action.

STATEMENT OF CLAIM

1A. The pursuer was born on 30th January 1967.

ANS. 1A. Admitted.

1B. The defenders are a company incorporated under the Companies Acts and have a place of business at the address in the instance.

ANS. 1B. Admitted.

2A. On 3rd June 1998 the pursuer was a bus assembler employed by the defender.

ANS. 2A. Admitted

2B. On said date working on the Olympian Line fitting an anti roll bar, to a bus consisted of a rod 5cm (2 inches) in diameter and about 304cm (ten feet) in length in a solid metal

construction.

2B. Admitted.

2C. A rod was fitted across the width of a bus around 91cm (three feet) from ground height.

ANS. 2C Admitted.

2D. This was not the pursuer's normal job as the employee who did the job, Thomas Ferguson was absent for a week.

ANS. 2D Admitted.

2E The pursuer was carrying out the job as he had seen Mr Ferguson doing it and had not been otherwise trained or instructed in the job.

ANS. 2E Not known and not admitted.

2F. To fit the rod the pursuer exerted force from a crouching position on one knee placing the end of the rod onto the front of the chassis where it was bolted.

ANS. 2F Admitted.

2G. The pursuer used a pinch bar held in his left hand to wedge the end of the rod in the proper place for connection to the chassis.

2G. Admitted.

2H. There was no mechanical device to send to the rod or to guide it to where it was fitted.

ANS. 2H Admitted.

2I. The pursuer was locating the rod, the pinch bar jammed and suddenly released and released the rod with the pinch bar hitting the pursuer on his right shin and the rod on his right knee.

ANS. 2I. Not known and not admitted.

2J. There was no harness provided to support the rod while being located.

ANS. 2J Not known and not admitted.

2K. Following the accident the defenders provided no alternative type of pinch wear and instructed operators as the correct method of construction.

2K. Admitted.

3. COMMON LAW BREACH OF DUTY:

A. The defenders failed to take reasonable care for the safety of the pursuer and failed to exposing him to risk of injury by devising a safe system of work.

ANS. A Denied.

B. Breach of duty to take reasonable care to provide a safe and adequate plant and equipment.

ANS. B Denied.

4. BREACH OF STATUTORY DUTY:

A. Regulation 13 of the Work place (Health, Safety and Welfare) Regulations 1992.

ANS. A Denied.

B. Regulation 5 Provisions and Use of Work Equipment Regulations 1992.

ANS. B Denied.

C. Regulation 20 Provisions and Use of Work Equipment Regulations 1992.

ANS. C Denied.

5A. The pursuer's injury:

(i) damaged anterior cruciate ligament bucket handle tear of the cartilage of the right knee.

(ii) Adjustment disorder with mixed anxiety and depressed mood.

ANS. A Not known and not admitted.

B. Treated by:

(i) Dr McCreddie, Almswell Road, Kilwinning, Ayrshire.

(ii) Crosshouse Hospital, Kilmarnock.

ANS. B Admitted.

C. Heads of Claim.

(i) Solatium

(ii) Earnings lost till June 2000.

(iii) Earnings loss from employment he would have obtained.

(iv) Future earnings loss or failing which, loss of employability on the open labour market.

(v) Cost of travelling for medical treatment.

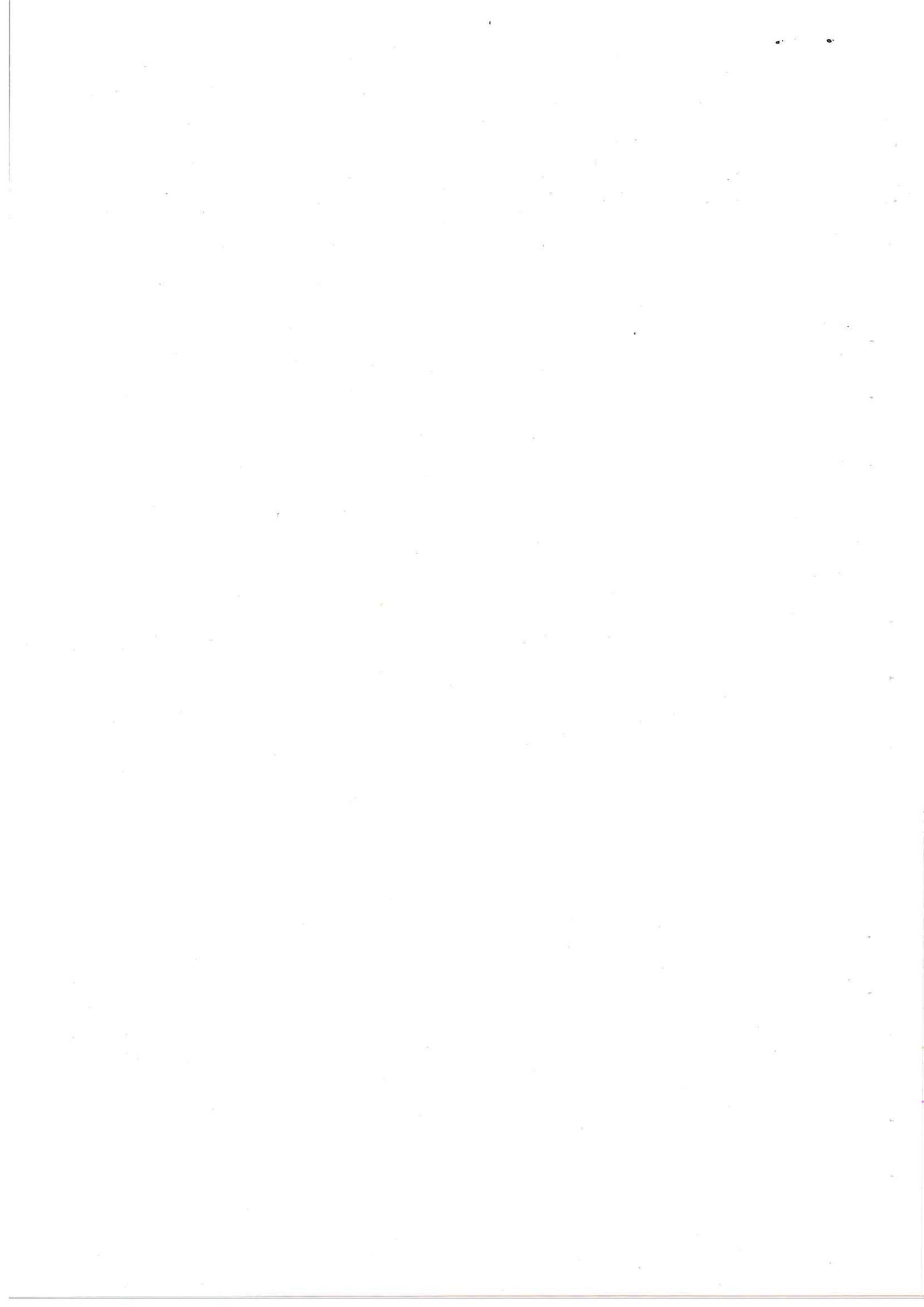
(vi) Prescription costs

(vii) Services provided by pursuer which he can no longer perform for his parents since the year 2000.

(viii) Services the pursuer is unable to carry out by way of home decoration gardening and car maintenance.

ANS. C Not known and not admitted

DBS/G99G00



S U M M O N S A N D D E F E N C E S
in the cause

(FIRST) MRS MARGARET ANGUS CORNWALLIS residing at 36 Mansfield Crescent, Clarkston, Glasgow, G76 7EB and an individual and Executor-nominate of the late Frederick Cornwallis; (SECOND) GRAEME CORNWALLIS, residing at Top Flat Right, 201 Busby Road, River Court, Busby; and (THIRD) GRANT CORNWALLIS residing at 36 Mansfield Crescent, Clarkston, Glasgow, G76 7EB,

PURSUER

against

(FIRST) UNIVERSITY COURT OF THE UNIVERSITY OF ST ANDREWS, incorporated under the Universities (Scotland) Act 1889 and having a place of business at College Gate, North Street, St Andrews, Fife, KY16 9AJ; and (SECOND) UNIVERSITY COURT OF UNIVERSITY OF GLASGOW, incorporated under the Universities (Scotland) Act 1889 and having a place of business at University Avenue, Glasgow, G12 8QQ.

DEFENDERS

SUMS SUED FOR

1. For payment by the Defenders jointly and severally or severally to the First Pursuer as Executor-nominate of the late Frederick Cornwallis of the sum of TWO HUNDRED THOUSAND POUNDS (£200,000) STERLING.
2. For payment by the Defenders jointly and severally or severally to the First Pursuer as an individual of the sum of TWO HUNDRED THOUSAND POUNDS (£200,000) STERLING.
3. For payment by the Defenders jointly and severally or severally to the Second Pursuer of the sum of FIFTY THOUSAND POUNDS (£50,000) STERLING
4. For payment by the Defenders jointly and severally or severally to the Third Pursuer of the sum of FIFTY THOUSAND POUNDS (£50,000) STERLING

5. For the expenses of the action.

CONDESCENDENCE

1A. The first pursuer is Executor-nominate of Frederick Cornwallis who died on 11 December 1998 ("deceased"), conform to the will of 16 October 1986 and confirmation of 1 March 1999. She is the widow of the deceased.

ANS. 1A. Admitted.

1B. The second pursuer is the son of the deceased and the first pursuer.

ANS. 1B Admitted.

1C. The third pursuer is the son of the deceased and the first pursuer.

ANS. 1C. Admitted.

1D. The first and second defenders administer to the Scottish Universities Research and Reactor Centre, Scottish Enterprise, Technology Park, Rankine Avenue, East Kilbride, G75 0QF.

ANS. 1D. Admitted.

1E. There may be one relative entitled to sue in respect of

the death namely Lesley Cornwallis, spouse of the third pursuer.

1E. Not known and not admitted.

2A. The deceased was employed as a Glass Blower with the first defenders from 31 August 1970 - 31 October 1976.

ANS. 2A Admitted.

2B. The deceased was employed by the Second Defenders from 31 August 1977 to 11 June 1998 as a Glass Blower.

ANS. 2B Admitted.

2C. The deceased used an asbestos based products namely Sindanjo, tape and string to assemble glass wear.

ANS. 2C. Admitted.

2D. The deceased required to cut, manipulate and shape said asbestos so releasing asbestos dust into the area.

ANS. 2D Not known and not admitted.

3A. No precautions by way of provision of masks, ventilation, exhausts were taken by the defenders.

ANS. 3A Denied.

3B. No warnings regarding the dangers of asbestos were given during the periods of the deceased's employment by either of the defenders.

ANS. 3B Not known and not admitted.

4. The defenders knew or ought to have known of the heavy exposure to asbestos dust carried a material risk of injury or disease to lungs over the deceased's period of employment with them.

ANS. 4 Admitted.

5. Common Law Breach of Duty:

A. Failure by the defenders to take reasonable care for the safety of the deceased's exposure to unnecessary risk of injury.

ANS. 5 Denied.

6. Statutory Breach of Duty:

A. Regulation 5 (1) (a) Asbestos Regulation 1969.

ANS. 6A Denied.

B. Regulation 5 (2) Asbestos Regulation 1969.

ANS. 6B Denied.

C. Regulation 9 Asbestos Regulation 1969.

ANS. 6C Denied.

D. Regulation 14 Asbestos Regulation 1969.

ANS. 6D Denied.

E. Regulation 18 Asbestos Regulation 1969.

ANS. 6E Denied.

F. Regulation 19 Asbestos Regulation 1969.

ANS. 6F Denied.

7. The deceased's injury: malignant mesothelioma.

ANS. 7 Admitted.

7A. The deceased was treated at Hairmyres Hospital, East Kilbride.

ANS 7A. Admitted.

8. Claims sought:

- A. Inherited Solatium.
- B. Care services during the life time of the deceased by each of the pursuers.
- C. Services to the first pursuer by way of help of home maintenance, gardening and driving.
- D. Loss of earnings of the deceased.
- E. Loss of financial support from the deceased's earnings and pension by first pursuer.
- F. Funeral account.
- G. Grief and loss of society in respect of each of the pursuers.

ANS. 8 Not known and not admitted.

IN THE COURT OF SESSION

22 November 2000

C L O S E D R E C O R D

in the cause

MRS MARGARET ANGUS CORNWALLIS
& OTHERS

against

UNIVERSITY COURT OF THE UNIVERSITY
OF ST ANDREWS & ANOTHER

Thompsons,
Solicitors for Pursuer

Balfour & Manson,
Solicitors for Defenders

OPEN RECORDS LODGED : SEPTEMBER 2000

ADJUSTMENT COMMENCED : 27 SEPTEMBER 2000

RECORD CLOSED : 22 NOVEMBER 2000

C L O S E D R E C O R D

in the action at the instance of

(FIRST) MRS MARGARET ANGUS CORNWALLIS residing at 36 Mansfield Crescent, Clarkston, Glasgow, G76 7EB and an individual and Executor-nominate of the late Frederick Cornwallis; (SECOND) GRAEME CORNWALLIS, residing at Top Flat Right, 201 Busby Road, River Court, Busby; and (THIRD) GRANT CORNWALLIS residing at 36 Mansfield Crescent, Clarkston, Glasgow, G76 7EB,

PURSUERS

against

(FIRST) UNIVERSITY COURT OF THE UNIVERSITY OF ST ANDREWS, incorporated under the Universities (Scotland) Act 1889 and having a place of business at College Gate, North Street, St Andrews, Fife, KY16 9AJ; and (SECOND) UNIVERSITY COURT OF UNIVERSITY OF GLASGOW, incorporated under the Universities (Scotland) Act 1889 and having a place of business at University Avenue, Glasgow, G12 8QQ.

DEFENDERS

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IN THE COURT OF SESSION

A No. 1 of Pro.

I. S U M M O N S
in the cause A

(FIRST) MRS MARGARET ANGUS CORNWALLIS residing at 36 Mansfield Crescent, Clarkston, Glasgow, G76 7EB and an individual and Executor-nominate of the late Frederick Cornwallis; (SECOND) GRAEME CORNWALLIS, residing at Top Flat Right, 201 Busby Road, River Court, Busby; and (THIRD) GRANT CORNWALLIS residing at 36 Mansfield Crescent, Clarkston, Glasgow, G76 7EB;

PURSUERS

B against B

(FIRST) UNIVERSITY COURT OF THE UNIVERSITY OF ST ANDREWS, incorporated under the Universities (Scotland) Act 1889 and having a place of business at College Gate, North Street, St Andrews, Fife, KY16 9AJ; and (SECOND) UNIVERSITY COURT OF UNIVERSITY OF GLASGOW, incorporated under the Universities(Scotland) Act 1889 and having a place of business at University Avenue, Glasgow, G12 8QQ.

DEFENDERS

C
ELIZABETH II by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith to (FIRST) UNIVERSITY COURT OF THE UNIVERSITY OF ST ANDREWS; (SECOND) UNIVERSITY COURT OF UNIVERSITY OF GLASGOW. By this Summons the pursuer craves D
the Lords of our Council and Session to pronounce a decree against you in terms of the conclusions appended to this summons. If you have any good reason why such decree should not be pronounced, you must enter appearance at the Office of the Court, Court of Session, 2 Parliament Square, Edinburgh, EH1 1RQ within three days after the E
date of the calling of the Summons in Court. The summons shall not call in court earlier than 21 days after the date of service on you of this Summons. Be warned that, if appearance is not so entered on your behalf, the pursuer may obtain decree against you in your absence.

Given under our Signet at Edinburgh on the

A

CHRISTOPHER GORDON
285 BATH STREET
GLASGOW
SOLICITOR FOR PURSUER

A

CONCLUSIONS

- B 1. For payment by the Defenders jointly and severally or B
severally to the First Pursuer as Executor-nominate of the late
Frederick Cornwallis of the same of TWO HUNDRED THOUSAND POUNDS
(£200,000) STERLING with interest thereon at the judicial rate
from the date of Decree to follow hereon until payment.
- C 2. For payment by the Defenders jointly and severally or C
severally to the First Pursuer as an individual of the sum of
TWO HUNDRED THOUSAND POUNDS (£200,000) STERLING with interest
thereon at the judicial rate from the date of Decree to follow
D hereon until payment. D
- E 3. For payment by the Defenders jointly and severally or E
severally to the Second Pursuer of the sum of FIFTY THOUSAND
POUNDS (£50,000) STERLING with interest thereon at the judicial
rate from the date of Decree to follow hereon until payment.
4. For payment by the Defenders jointly and severally or
severally to the Third Pursuer of the sum of FIFTY THOUSAND
POUNDS (£50,000) STERLING with interest thereon at the judicial
rate from the date of Decree to follow hereon until payment.

5. For the expenses of the action.

II - CONDESCENDENCE for PURSUER

and

ANSWERS thereto for DEFENDERS

COND. 1 The First Pursuer resides at 36 Mansfield Crescent, Clarkston, Glasgow, G76 7EB. She sues as Executor-nominate of Frederick Cornwallis late of 36 Mansfield Crescent, Clarkston, Glasgow, G76 7EB and who died on 11 June 1998 in the circumstances hereinafter condescended upon (hereinafter referred to as "the Deceased"). She is Executor-nominate conform to the Will of the Deceased dated 16 October 1986 and Confirmation by the Sheriff Principal of North Strathclyde at Paisley on 1 March 1999. She is the widow of the Deceased and sues as an individual. The Second Pursuer is the son of the Deceased and the First Pursuer and resides at Top Flat Right, 201 Busby Road, River Court, Busby. The Third Pursuer is the son of the Deceased and the First Pursuer and resides at 36 Mansfield Crescent, Clarkston, Glasgow, G76 7EB. The First Defenders are the University Court of University of St Andrews incorporated under the Universities (Scotland) 1889 and having a place of business at College Gate, North Street, St Andrews, Fife, KY16 9AJ. The Second Defenders are the University Court of University of Glasgow incorporated under the Universities (Scotland) 1889 and having a place of business at University Avenue, Glasgow, G12 8QQ. The First and Second Defenders administered the Scottish Universities of Research And Reactor

A Centre, Scottish Enterprise, Technology Park, Rankine Avenue,
A East Kilbride, G75 0QF. The Pursuers sue in respect of loss,
injury and damage arising out of the death of the Deceased who
died from an industrial disease. The harmful events which
caused the industrial disease occurred in Scotland. This Court
accordingly has jurisdiction. The Pursuers know of no other
B proceedings in relation to the subject matter hereof and
between the parties hereto. They know of no agreement
prorogating jurisdiction of the Court. There may be one other
relative who may be entitled to sue the Defenders in respect of
the death of the Deceased. She is Lesley Cornwallis, Spouse of
C the Third Pursuer. A warrant for intimation of the present
action is sought on the said Lesley Cornwallis, 36 Mansfield
Crescent, Glasgow, G76 7AB. There are no other relatives who
may be entitled to pursue the Defenders in respect of the death
of the Deceased or in any event who would have a claim in
D excess of £200.00.

ANS. 1 The designation of the defenders is
admitted. Admitted that this court has
jurisdiction. Admitted that the said Frederick
Cornwallis died on 11 June 1998. Quoad ultra
E not known and not admitted.

COND. 2 From on or about 31 August 1970 to 31 October 1976,
the Deceased was employed by the First Defenders in their
Physics Department at St. Andrews. From on or about 31 August
1977 to 11 June 1998 the Deceased was employed with the Second
Defenders and the Deceased was employed at the Scottish

University of Research And Reactor Centre. The Deceased was employed as a glass blower. The glass products were made, adapted and manufactured at the said centre. In the course of his work he required to use sindanjo an asbestos based product. He also required to use asbestos tape and asbestos string. The asbestos was required in the course of assembling the glass wear, the sealing of the joints together, including cone and socket joints. He also required to use string asbestos at the glass blowing lathe. Asbestos paper was also used in this process. The Deceased required to cut the sindanjo which was in board form, cut and manipulate the asbestos string and rope. He required to work in close proximity to the glass and asbestos materials. The asbestos dust and debris also fell onto the floor where it was further disturbed by persons walking over it or when it swept up. In the course of his work he was exposed to substantial quantities of asbestos dust from these operations continuously. He was thereby exposed to substantial quantities of asbestos dust which caused and materially contributed to the condition hereinafter condescended upon. The defenders' averments in answer are denied except insofar as coinciding herewith.

ANS. 2 Admitted that Frederick Cornwallis was employed by the first defenders from about 31 August 1970 to 31 October 1976. Admitted that the deceased was employed by the second defender's from about 31 August 1977 to 11 June 1998. Admitted that he was employed as a glass blower at the Scottish University of Research

and Reactor Centre. Quoad ultra denied.

A
COND. 3 Neither of the Defenders set up or enforced any A
system whereby the risk of such dust affecting the breathing
zone of the persons working there was obviated or minimised.
No warnings were given to the pursuer on the dangers associated
B with exposure to asbestos or their nature and extent. No B
exhaust or extraction appliances were provided. No masks or
respirators were provided. No adequate or efficient
ventilation of the workplace was provided or maintained. The
C only ventilation was by such fresh air as penetrated to C
wherever the pursuer was working, and, as aforesaid, he was
often working in confined areas. The processes in which
asbestos dust was generated were not separated from each other
or from the rest of the workplace in order to maximise control
of the dust and to minimise the risk of persons other than
D those creating the dust being exposed thereto. Floors, D
benches, ledges and other internal surfaces were not cleaned,
and were not damped down effectively to prevent dust arising
therefrom, whether from workmen walking across floors or prior
to cleaning. No suitable protective clothing was provided. No
E adequate accommodation for his contaminated working clothes was E
provided. No provision was made for the cleaning thereof. No
bathing or showering facilities were provided. There was no
advice to wash after work so as to get as much of the dust off
as practicable. It has been notorious for decades prior to the
pursuer's employment that inhalation of asbestos dust was
potentially harmful, particularly to the respiratory tract. In

his Annual Report for 1898, H.M. Chief Inspector of Factories drew attention to the "evil effects of asbestos dust in any quantities" being injurious to health. In many subsequent Annual Reports (for instance, those of 1910, 1934, 1938, 1947 and 1949) similar comments were made as to the hazard posed by exposure to asbestos dust and the need to control it. The International Labour office, in two documents issued in 1930 and 1938 ("Occupation and Health" and its supplement), gave substantial coverage to the risks of respiratory ailments being occasioned by such exposure. In 1930, a Report by Merewether and Price made clear the causative link between exposure to asbestos and respiratory ailments. The Report was widely circulated, and was required reading for responsible employers involved in the manufacture or use of asbestos. As well as confirming the causative link between inhalation and respiratory disease, the Report had specified four principal ways to combat the dangers, viz separation or isolation of the processes; the use of local exhaust ventilation; the substitution of wet for dry methods of cleaning; and the use of high efficiency respirators. Each and all of said methods were reasonably practicable from the 1930's. In 1931 the Home Office published a Report on Conferences between employers and (factory) inspectors concerning methods of suppressing dust in asbestos textile factories. In 1955 Doll published a paper in the British Journal of Industrial Medicine which established asbestos as the cause of lung cancer, mesothelioma respectively. In 1965 Newhouse & Thomson reported on 83 mesothelioma cases of which 8 were ladders, one was a boiler

A covered, 3 were makers of sectional pipe insulation, 9 were
exposed to asbestos at home through clothing or bodies of
relatives and 11 had no known exposure to asbestos but lived
within ½ mile of an asbestos factory. In the same year Sunday
Times in October 1965 publicly drew attention to "a Killer
Dust Disease" namely Asbestos. In 1969 the enforcing
B authorities in support of new Asbestos Regulations published
data to assist in the reduction of exposure of employed
persons to asbestos. These included "Asbestos Health
Precautions in Industry", Health & Safety at Work No. 42, No.
44. Health & Safety Executive 1969, Technical Data Note 24
C "Respiratory Protective Equipment", Health & Safety Executive
1969, and Technical Data Note 13 "Standards for Asbestos Dust
Concentrations for Use with Asbestos Regulations 1969" Health
& Safety Executive 1970. In addition the Asbestos Research
D Council published a series of guides "Toxic Substances in
Factory Atmospheres" booklet Ministry of Labour "Safety Health
& Welfare New Series No. 8 HMSO 1960. Very many publications
thereafter, from government, medical and occupational health
sources, gave further support to the causal link. There were
E none to the contrary effect. The risk of respiratory or pleural
cancer, from asbestos was also known by August 1945. Wedler in
1943 had summarised findings to that effect from both the U.K.
and the U.S.A., as did Doig in 1949. In 1945 Hubert Wyers
presented a thesis on exposure to asbestos in 1945 entitled "A
Thesis presented to the University of Glasgow for the Degree
of Doctor of Medicine" H. Wyers 1946. In 1949, the said
Hubert Wyers, now Dr. Wyers, then Chief Medical Officer of Cape

Asbestos Co. Ltd., published a survey of 115 men who had died after employment with the Company, of whom 17 had suffered from lung and/or pleural cancer. Dr. Wyers also published an article on asbestos in the Post Graduate Journal entitled "Asbestosis" Post Graduate Medical Journal - H. Wyers 1949. Dr. Knox, then the medical officer for the other major asbestos company in Britain, then called Turner Brothers Asbestos Company Limited, had reached similar conclusions. In 1952, Cartier was noting that mesothelioma could occur where there were no signs of asbestosis. The publications all to the same effect of confirming the risk of respiratory ailments including lung cancer, mesothelioma and 'endothelioma of the pleura' (which is comprehended as mesothelioma), continued. Reference is made inter alia to Smith (1952), Weiss (1953), Leiche (1954) published in the Bulletin of Hygiene, Kraussler and Seyss (1954), Benser, Faulds & Stewart (1955), Jacob and Bohlig (1955) and Doll(1955). The respective defenders were Centres of Higher Education with backgrounds in research backgrounds and technical expertise. The processes in which asbestos was involved were similar to the processes detailed in the documents hereinbefore condescended upon. They also advise industry and carried out research into industrial materials including asbestos. They used asbestos in the course of their research. As reasonable employers they knew or ought to have been well aware of the causal connection between the inhalation of asbestos dust and the development of respiratory ailments including cancers and the steps as hereinbefore and hereinafter condescended upon necessary to reduce said risk.

The defenders' averments in answer are denied except insofar as coinciding herewith.

ANS. 3 The publications averred in relation to the dangers of asbestos are not known and not admitted. Quoad ultra denied.

COND. 4 The Deceased's said condition was caused by the fault and negligence of the defenders. It was their duty respectively to take reasonable care for the safety of the Deceased and not to expose him unnecessarily to the risk of injury. It was their duty to take reasonable care to protect the Deceased against the risk of suffering injury or disease caused by the inhalation of dust containing asbestos. They knew or ought to have known that exposure to asbestos dust carried with it a material risk of injury or disease to the lungs. They knew or ought to have known that considerable quantities of asbestos dust were given off into the atmosphere by the work carried out by the Deceased and by others in close proximity to whom the Deceased required to work. They knew or ought to have known that in such circumstances damage as has happened to the Deceased was likely to result. It was their duty to take reasonable care to warn the Deceased of the nature and extent of the risk to his health caused from inhalation of asbestos dust. It was their duty to take reasonable care to provide and maintain and instruct and enforce the use of a sufficient number of suitable and efficient exhaust appliances to extract asbestos dust from the air at source, before it escaped into the atmosphere of the workplace. It was their

A duty to take reasonable care to separate off, so far as
reasonably practicable, workplaces from which asbestos dust was
created from each other and from places at which asbestos dust
was not created, in order the better to control the spread of
such dust in the workplace. It was their duty to take
reasonable care not to cause or permit the Deceased to work in
the vicinity of other workers so as to increase the risk and
extent of inhalation of asbestos. It was their duty to take
reasonable care to provide and maintain sufficient proper and
efficient ventilation of the Deceased's workplace in order to
supply him with fresh air and to remove asbestos dust from the
pursuer's breathing zone. It was their duty to take reasonable
care to provide and maintain and instruct and enforce the use
of efficient and suitable masks or respirators for use by the
pursuer when carrying out his work or when working in proximity
to others working with asbestos. It was their duty to take
reasonable care to instruct maintain and enforce a system
whereby floors, benches, ledges and other internal surfaces
were regularly damped down to prevent dust arising therefrom,
and were damped down before cleaning. It was their duty to
take reasonable care to provide the Deceased with suitable and
adequate protective clothing and to instruct and enforce its
use. It was their duty to take reasonable care to provide him
with adequate accommodation for his working clothes and for his
non-working clothes and to maintain a system for cleaning his
working clothes so as to avoid or minimise the risk of inhaling
asbestos dust from them. It was their duty to take reasonable
care to provide bathing or shower facilities and to advise the

A Deceased to wash after each shift. In each and all of these duties incumbent upon them the defenders failed and by their failure caused said condition. Had they fulfilled the duties incumbent upon them the Pursuers loss, injury and damage would not have occurred. A

B ANS. 4 Denied. Explained and averred that the defenders fulfilled all duties incumbent upon them in the circumstances. B

C COND. 5 Separatim and in any event, in so far as the Deceased's exposure to asbestos occurred after 14 May 1970 in factory premises, said exposure was caused by breach by the defenders as employers of the Deceased during said period, of their statutory duties under the Asbestos Regulations, 1969. Reference is made to Regulation 5(1)(a) thereof. In so far as it occurred during said period from building operations, it was also caused by breach by the defenders, as his employers, of said Regulations. Reference is made to Regulation 5(2) thereof. Said Regulations provide inter alia as follows: C

D "8(1) ... no process to which these Regulations apply shall be carried on ... unless equipment is provided, maintained and used which produces an exhaust draught which prevents the entry into the air of any workplace of asbestos dust." E

Furthermore Regulation 8 provides that if it is impracticable to comply with said Regulation 7 there shall be provided and maintained for the persons employed such as the pursuer approved respiratory protective equipment and protective

clothing and that such persons shall be fully instructed in the use of such equipment. Regulation 9 of said Regulations required inter alia that all machinery, apparatus, work benches and other plant and equipment used in said premises for the purposes of said work and all floors, inside walls, ceilings, ledges and other internal surfaces of any part of any building or of any ship to which the Regulations apply shall so far as practicable be kept in a clean state and free from asbestos waste and dust. Regulation 14 provides that where accommodation is provided for clothing not worn during working hours such accommodation shall be such or so situated that asbestos dust is not deposited on any such clothing in said accommodation. Regulation 18 provides that suitable accommodation in a conveniently accessible position shall be provided for the use of persons employed when putting on or taking off respiratory protective equipment and protective clothing. Regulation 19 provides that all protective clothing provided in pursuance of the Regulations shall at suitable intervals be cleaned. Said defenders failed to comply with said statutory duties. No exhaust mechanism preventing the entry into the air of the workplace of asbestos dust was provided, nor was approved respiratory protective equipment or clothing provided in its place nor instructions given thereanent. Surfaces in the workplace were not kept free of asbestos dust. No separate or dust-free accommodation for non-working clothing was provided. No suitable arrangements were made for putting on or taking off protective clothing, or for its cleaning. Said failures caused or materially

contributed to the pursuer's condition. But for them the Pursuers would not have suffered loss, injury and damage hereinafter condescended upon.

ANS. 5 Denied. The defenders fulfilled all statutory duties incumbent upon them in the circumstances.

COND. 6 In consequence of such exposure the deceased developed malignant mesothelioma. In 1996, the Deceased developed pains in his chest and attended Hairmyres Hospital and was advised that his lung had collapsed due to pneumonia. He required to undergo draining of his lung. He again felt unwell and attended at the hospital. He underwent tests, x-rays and biopsies. The biopsy results were available in November 1997 and the Deceased was informed that he had mesothelioma. He was advised that his condition was terminal. Surgical intervention was discussed but advised against. The deceased applied for Industrial Disablement Benefit and was awarded 100% disability from the Medical Boarding Centre. The Deceased's condition thereafter deteriorated. He had increasing pain and required painkillers 24 hours a day. He underwent night sweats, loss of weight and suffered from spasms. The Deceased continued to deteriorate and died in distressing circumstances on 11 June 1998. Prior to the onset of his condition the Deceased led a healthy life. He had never smoked and drank very little. He used to keep fit. He enjoyed hillwalking and had enjoyed hillwalking in Austria. He was looking forward to more years of employment and eventually

A retirement with the First Pursuer and his family. He was
A considerably distressed and disappointed at his loss of
expectancy of life. He required to be looked after by the
Pursuers. They assisted him in bathing, dressing and
undressing, fetched and carried for him. They dried him in
respect of night sweats and change of clothes, assisted him in
B matters of personal hygiene and administration of medication.
When in hospital they visited him taking him treats and change
of clothes, and sitting with him. They all provided the
Deceased with emotional and psychological support throughout
his illness. Prior to the onset of his condition the Deceased
C assisted with the household chores, shopping and Do It Yourself
tasks such as electrical and joinery work. He also did the
gardening and did the driving. He was no longer able to do so.

D Services are claimed in terms of Section 8 and 9, of the
Administration of Justices Act 1982. The Deceased was employed
by the Second Defenders and would have continued to be in
employment until aged 65. He had lost wages prior to his
death. Wage rates have increased since his death. He would
have also received a pension from said employment on retiral
and a State Pension. The first pursuer is in receipt of a
E pension from her former employment as a Secretary within the
Physio Department at Hairmyres Hospital and a State Pension in
her own right. The first pursuer and the deceased pooled
their income paying mortgage, building insurance, telephone
bills, car maintenance and other living expenses. The First
Pursuer has and will incur loss of support. Each of the
Pursuers were with the Deceased throughout his illness. The

A Second and Third Pursuers shared walking and climbing
activities together. The First Pursuer and the Deceased had a
long and happy marriage and she was looking forward to more
years of companionship and especially retirement. Each of the
Pursuers have suffered distress and anxiety in contemplation of
the suffering of the Deceased, loss and grief of his death,
B loss of future companionship. Funeral expenses were also
incurred which will be vouched. The sum sued for are
accordingly reasonable. B

ANS. 6 Admitted that Frederick Cornwallis
died on 11 June 1998. The nature and extent of
C any conditions that Frederick Cornwallis
suffered from are not known and not admitted. C
The nature and extent of any loss and damage
suffered by the pursuers as a result of the
death of Frederick Cornwallis are not known and
not admitted. Quoad ultra denied. Explained
D and averred that the sums sued for are
excessive. D

COND. 7 The Defenders have been called upon to make
E reasonable reparation to the Pursuer but have failed or delay
to do so. This action is necessary. E

ANS. 7 Denied that this action is necessary

III - PLEAS-IN-LAW for PURSUER

A 1. The Pursuers' said loss, injury and damage having been A
caused by fault et separatim breach of statutory duties for
which the Defenders or one or more of them responsible they are
entitled to reparation.

B 2. In any event the sums respectively sued for being B
reasonable decree therefor should be pronounced as concluded
for.

IN RESPECT WHEREOF

C CHRISTOPHER GORDON C
Solicitor
285 Bath Street
Glasgow
G2 4HQ

D IV - PLEAS-IN-LAW for DEFENDERS D

1. The pursuer's averments being irrelevant et separatim
lacking in specification, the action should be dismissed.

E 2. The pursuer's averments, so far as material being E
unfounded in fact, the defenders should be assoilzied.

3. The pursuer not having suffered loss, injury and damage
through any fault or breach of statutory duty on the part of
the defenders, decree of absolvitor should be pronounced.

A 4. In any event, the sum sued for being excessive, decree
therefor should not be pronounced as craved. A

IN RESPECT WHEREOF

B
B
V - INTERLOCUTORS

C OPEN RECORDS LODGED : SEPTEMBER 2000
ADJUSTMENT COMMENCED : 27 SEPTEMBER 2000
RECORD CLOSED : 22 NOVEMBER 2000 C

9 January 2001

Lord Philip

D The Lord Ordinary, On The Unopposed Motion Of The Pursuer,
Grants Diligence Against Havers For Recovery Of The Documents
Called For In The Specification, No. 11 Of Process, And
Commission To Advocate, Edinburgh To Take The Oaths And
Examination Of Havers And To Receive Their Exhibits And
E Productions To Be Reported Quam Primum. D

F Shannly, D.C.S. E

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