ATE INSURANCE PREMIUM DEDUCTIBLE FROM CHILD'S DAMAGES

I am grateful to Express Solicitors Ltd for the article which appears below, arising out of their case

X v H&M Hennes Central London County Court 21 April 2022

Former Regional Costs Judge confirms on appeal that County Court decision was wrong to refuse Litigation Friend expenses for an ATE Premium

On 21st April 2022, before HHJ Lethem, helpful guidance was provided to assist County Courts commonly falling into error in refusing expenses to Litigation Friends who seek reimbursement of their liability to pay success fees and ATE premiums.

X, an 11-year old on 9th February 2019 was at an H&M store in Bromley and caught his right eye on a clothing pole-edge. His mother instructed Express Solicitors to bring a claim for compensation. She did so pursuant to a CFA with a success fee of 100% and an ATE policy that provided indemnity for disbursement expenses and adverse legal costs.

Liability was admitted after the claim was brought in the Personal injury Claims Portal. Damages were subsequently agreed, subject to Court approval in the sum of £1,750. At the approval hearing the mother sought reimbursement of her expenses from damages of; (i) the success fee in the sum of £437.50 (being 25% of prescribed damages, pursuant to LASPO), and (ii) the ATE premium in the sum of £336.00 (a further 19%), thus amounting to 44% of the damages in total. The District Judge at first instance allowed expenses of25% of damages (the success fee), but refused the ATE premium. The District Judge found that premium was unnecessary because there was no liability risk and the cover protecting from Part 36 liabilities was very unlikely to be used, thus limiting the amount from damages to 25%.

HHJ Lethem found that the District Judge was wrong. He said that *"the Judge started from the premise that the expense was unreasonable, rather than that it was reasonable"* and he should have done the latter on correct interpretation of the law.

HHJ Lethem said:

(i) It was appropriate for Litigation Friends to be joined to as a party for appeals in such instances, so they can make submissions,
23.
(ii) That the logic in *Rogers* should be followed in that the insurance market depends on insuring the less risky cases, to pay for the more risky ones,

(iii) That Courts should not arbiter the premium sum, being a matter of insurance underwriting and
24.
(iv) ATE premium figures were not possible to challenge on a solicitor-own client basis (following the decision in the case of *Herbert v H H Law Ltd [2019]*.)

The effect of this decision re-affirms that there is no artificial threshold to overcome in seeking a direction that expenses may be more than 25%, so long as less than 50% of damages.

Mr Slade, Senior Partner of Express Solicitors said; *"we have found that Courts up and down the country have adopted an inconsistent approach to litigation expenses claims involving infants. This decision will serve as useful guidance to those Courts- namely, (i) starting with the presumption the expense is reasonable, (ii) appreciating the need for even less risky cases to be insured and (iii) that there is no test that Litigation Friends need to satisfy in seeking a direction for reimbursement of expenses where they are more than 25%, but not more than 50% of damages"*.