



Axelrod v University of Leicester NHS Trust

Just Costs Solicitors acted as solicitor agents on behalf of the Claimant.

Facts

- This case is a relatively straight forward clinical negligence claim in which, during detailed assessment proceedings, solicitors acting for the NHSLA challenged the recoverability of the premium for an ATE policy issued by ARAG plc, on several grounds.

“ highlights the profligacy of the NHSLA's policy of raising successive technical challenges to premium recoverability ”

Decision

A Deputy District Judge initially disallowed the ATE premium, on the grounds that it did not insure the claimant against liability to pay for an expert report into liability or causation.

At appeal however, the NHSLA had to accept that the policy did cover such risks. The costs solicitors acting for the Authority raised three further technical arguments about the wording and information in the ATE policy, but the court held that the premium was recoverable in full.

Comment

This decision highlights the profligacy of the NHSLA's apparent policy of raising successive technical challenges to premium recoverability.

It is the latest example of costs firm, acting for a clinical negligence defendant, raising an apparently spurious technical challenge to the recoverability of an ATE premium.

It is difficult not to question whether successive, ultimately futile, challenges are an appropriate use of public funds.