

**Model Skeleton Argument**

**BVC: Advocacy Assessment**

Below is a model example skeleton argument for a BVC advocacy student. The advocate is opposing an application for an interim payment as part of a negligence claim by an employee against his employer. Parts of the original skeleton have been modified.

IN THE MIDDLESEX COUNTY COURT

Claim No ABCD1234

BETWEEN

MR XX XX

Claimant

and

XX LIMITED

Defendant

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SKELETON ARGUMENT  
OF THE DEFENDANT

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**Introduction**

1. The Claimant has applied, under **Civil Procedure Rules 25.7**, for an interim payment of £20,000 or such sum as the court thinks just. The Defendant opposes the application.

### **Evidence**

2. In defending this application I will refer to:

- i) Witness Statement of DAVID EXAMPLE ("**WS/XX**")
- ii) **Exhibit SPD1**: EXAMPLE CMU Certificate
- iii) Defence, dated 13<sup>th</sup> AUGUST 2009 ("**Defence**")
- iv) Witness Statement of XXX XXX ("**WS/XX**")

### **Background**

3. The claim is for damages arising out of an accidental fall at work on the 3<sup>rd</sup> November 2008, which allegedly caused the Claimant to suffer a fracture of his left hip. The Claimant was employed as a postal officer and claims that he slipped over as a result of the Defendant's failure to adequately clean a spillage of water at the Defendant's postal room.

### **The Circumstances in which an Interim payment can be ordered**

4. The Court may only make an order for an interim payment where one of the conditions set out in **CPR r.25.7(1)** has been established. In this application the Claimant relies on **r.25.7(1)(c)** as having been satisfied. **CPR r.25.7(1)(c)** provides that the Court must be satisfied that, "if the claim went to trial the claimant would obtain judgement for a substantial amount of money against the defendant".

5. Further, the Court must not, "order an interim payment of more than a reasonable proportion of the likely amount of the final judgement" **CPR r.25.7(4)** and must take into account contributory negligence and any relevant set off or counterclaim **r.25.7(5)**

## **THE DEFENDANT'S SUBMISSIONS OPPOSING AN INTERIM PAYMENT**

6. The Defendant submits that the application for interim payment should be refused on four grounds:

- (i) **Liability:** The Defendant is not liable in negligence and consequently the Claimant will not obtain judgement against the Defendant at trial
- (ii) **Recovery of a substantial sum:** In the alternative, if the Defendant is found liable the claimant will not recover a substantial sum in damages from the Defendant
- (iii) **Reasonable Proportion:** In the alternative, even if the Claimant is likely to recover a substantial sum, the amount sought (£20,000) is not a reasonable proportion of that sum
- (iv) **Purpose for which Payment is to be used:** In the alternative, the interim payment is to be used for non-urgent work seemingly unrelated to the Claimant's injury and there is no need for pre-trial payment.

### **Liability**

7. It is for the claimant to show, on the balance of probabilities, that he would obtain judgement.

8. While it is accepted that the Defendant owed the Claimant a duty of care, it is submitted that the Claimant will not be able to establish breach as:

- (i) The Defendant adequately cleaned the floor:  
**WS/XX, para 4**

- (ii) The Defendant was not notified of the spillage as under company guidelines: **WS/XXX, para 4**
- (iii) The spillage was in a corner of the room: **Defence, para 4**
- (iv) The presence of the spillage and the danger it presented were obvious and there was therefore no need to warn the claimant of the manifest danger: **Defence, para 4**

### **Recovery of a Substantial Sum**

9. The Claimant has provided, in **Exhibit XXX**, a schedule of past and future expense totaling £XXX.XX. From this total it is necessary to deduct the statutory sick pay which the claimant has received, valued at £XXXX: **WS/XXX, para 4**

10. In addition the Claimant seeks to recover for pain, suffering and loss of amenity as a result of the injuries he sustained. It is submitted that the JSB Guidelines tariff to be applied is that for *Simple Fracture of a Hip with No Damage to Articular Surfaces*, which is between £XXX - £XXX. The most generous estimation of the damages the Claimant may stand to receive from my client is therefore in the region of £15,000, which I submit is not a substantial amount.

11. In addition the value of the claim is likely to be greatly reduced in recognition of the Claimant's contributory negligence: **s.1(1) Law Reform (Contributory Negligence) Act 1945**

12. Evidence supporting a finding of contributory negligence by the Claimant:

- (i) Claimant's failure to switch on the lights in the room

(ii) Claimant's failure to effectively use his torch

(iii) Claimant's failure to keep a proper look out

Cf Defence, para 5 & WS/XXX, para 4

13. By comparing the relative blameworthiness of the parties, I would estimate that this reduction should be in the order of 80 or 90 %

14. Given this, it is likely that the most the Claimant would be awarded if he were to obtain judgment would be in the region of £1,000 - £2,000. It is therefore submitted that this application should be refused on the grounds that the Claimant has failed to demonstrate that in the event of their obtaining against my client that they would recover a substantial amount in damages.

#### **Reasonable Proportion**

14. In the alternative it is submitted that the amount sought as an interim payment (£20,000) is not a reasonable proportion of the sum likely to be obtained on judgment.

#### **Purpose for which payment is to be used**

15. The traditional rule is that it is irrelevant for what purpose the Claimant seeks to use the interim payment. Stringman v. McArdle [1994] 1 WLR 1653

16. However it is submitted that this rule is not absolute and it can be relevant for the court to consider the purpose for which an interim payment is to be put;

- Tinsley v. Sarkar (2004) LTL 23/7/2004
- PD 25B, para 2.1(2)

17. In the present case, the interim payment is to be used for refurbishing the Claimant's bathroom. This would seem to be a non-essential matter, and given that the sum sought would not be applied to expenditure incurred as a result of any of the Claimant's injuries it is therefore submitted that it is more appropriate that such a sum should be awarded only on final judgement, thereby avoiding any prejudice to the Defendant

### **Conclusion**

19. Defendant requests that the Claimant's application for an interim payment be refused on the grounds detailed above.

Mr Example Exampleton

Example Oxbridge Chambers