

## ***EBS Self Administered Pension Plan Trustees Ltd & Ors v Gungor, Ch D, Newey J***

### **Colin McDevitt, Personal Injury Law Barrister**

Not a PI case, but a useful guide for PI practitioners nonetheless. This appeal decision of the High Court concerned an application to amend a statement of case (Defence) on the first day of a 2-day trial. The Recorder allowed the amendment but the High Court overturned that decision.

As always, applications such as these are fact specific, but we are given a few pointers:

- There is a heavy burden on a party seeking a late amendment, particularly if a trial date will be lost (no surprise there);
- A late application needs a pretty compelling explanation for the delay (this application to amend was made 3 years after the Defence had been served);
- A party's inability to speak good English is irrelevant when that party has been represented by solicitors throughout;
- A potential defence of lack of jurisdiction, even though it had a real prospect of success, did not of itself lead to a conclusion that the application should succeed;
- A further potential defence of estoppel simply went into the balance;
- The short length of the trial (2 days) did not increase the likelihood that an amendment and therefore an adjournment would be granted;
- The refusal to allow any amendment, unless it is hopeless, gives a windfall to the other side – by definition – but that does not make the application special; and
- Potential negligence of the legal advisor is not in itself a compelling reason to allow an amendment.

A useful case to have in the armoury if opposing a late amendment application!

**Colin McDevitt**

**14 November 2016**

**3 PB Barristers**