IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
[2017] EWHC 174 (QB)

No. HQ16A03097

Royal Courts of Justice
Strand, London WC2A 2LL

Friday 13th January 2017

Before:

HER HONOUR JUDGE WALDEN-SMITH

(sitting as a Judge of the High Court)

B E T W E E N :

STELIOS ANDREOU — Claimant

- and -

S. BOOTH HORROCKS & SONS LTD. — Defendant

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MR. PATRICK KERR (instructed by Harminder Bains of Leigh Day) appeared on behalf of the Claimant.

MR. JAMIE CLARKE (instructed by Rajel Ladwa of BLM) appeared on behalf of the Defendant.

J U D G M E N T

(As approved by the Judge)

JUDGE WALDEN-SMITH:

Introduction

1 This is the quantum only trial of the claim brought by Stelios Andreou against his employers S. Booth Horrocks & Sons Limited. By order of Master Gidden, made on 27th October 2016 and sealed on 31st October, judgment was entered against the defendants on their admission. The case was listed for this quantum only hearing for a day, an order was also made for an interim payment of £50,000.

2 In summary, Mr. Andreou had been exposed to asbestos when he worked for the defendant as an apprentice heating and plumbing engineer.

3 In his statement made on 16th August 2016, Mr Andreou sets out that, as part of his duties as the apprentice engineer, he would mix asbestos cement in a bucket with water and then paste that cement over internal and external boilers, brick walls, and that asbestos cement as he was mixing it would rise up into the air around him.

4 He further described pasting asbestos on to pipes which were connected to boilers and radiators, using and cutting asbestos rope and asbestos flue pipes, and removing old asbestos covering pipes to install new pipes and then covering those new pipes with asbestos. As he was the apprentice it was also his job to sweep the asbestos dust, again making asbestos dust rise up into the air around him. That was work that he carried out in his early 20s, his date of birth being 24th May 1940, and his employment with S. Booth Horrocks & Sons Limited, the defendant, being between the years of 1960 and 1965.

5 The work he carried out with the asbestos was not uncommon at that time. In 2010 he was diagnosed with emphysema and in 2016 he was diagnosed with mesothelioma.

6 In a further statement made by Mr. Andreou, dated 8th November 2016, he sets out his current sources of income. Briefly, he and his wife own a hotel known as the Centennial Hotel in Cambridge. That hotel has some 39 bedrooms together with a restaurant and guest bar. Mr Andreou says that he carried out work there in order to ensure that the property remains in good condition, and is secure overnight. He was, he says, on call in order to ensure that anything that needed fixing overnight could immediately be dealt with. The profits from that hotel are shared equally with his wife and his son.

7 In addition to the hotel, he jointly owns three properties in Cambridge: a commercial shop and flat at 50 Mill Road; a commercial shop and flat at 210 and 210A Cherry Hinton Road; and a commercial shop and flat at 26 Milton Road. He says that until the onset of this disease he took responsibility for the upkeep and maintenance of the properties, spending approximately two hours a week on them.

8 Mr. Andreou and his wife live in a substantial property in Great Addington in Cambridge. This was a property that he constructed himself. It has three floors with four bedrooms and, significantly, is surrounded by ten acres of land on which he grows fruit trees – some 600 of them – and various other crops. I have had the benefit of seeing video evidence and photographs with respect to that property.

9 I will deal in due course with the evidence that has been presented before me.

10 The defendant has severely criticised the manner in which this case has been put by the claimant. Due to a recent diagnosis of the spread of the disease to his abdomen, Mr. Andreou is in considerable shock and both his physical and emotional and mental well-being has deteriorated. While he had hoped to be able to attend court in order to give oral evidence he has not done so due to his own ill health. The defendants say that it could not have come as any surprise to the claimant's legal team that he did not feel well enough to come to court as it was always a distinct possibility that he would not be in a fit state to give oral evidence. The recent diagnosis on 4th January, whereby further assessment has been undertaken based on the CT scan undertaken on 28th December 2016, provides that while Mr Andreou's general condition had improved slightly over the last few months, there was now peritoneal metastasis. That diagnosis, according to Dr. Rudd (who is the expert medic consultant oncologist and respiratory physician called on behalf of the claimant) is not of any great surprise. Whilst obviously deeply disturbing to Mr. Andreou himself, Dr Rudd had already come to the conclusion that the disease was likely to spread. While Mr. Andreou had undergone extensive surgery in June of last year, that surgery had not been entirely successful and there were residual elements of the growth that remained. In Dr Rudd's expert opinion, it is quite common that that leads to a spread of the disease to the abdomen.

11 What the defendant says is that, as it was of no surprise to Dr. Rudd that the disease spread and that Mr. Andreou was not in a fit state to attend the trial, it should not have been of any surprise to the solicitors acting on behalf of Mr. Andreou (Leigh Day, who are highly experienced solicitors in this area of litigation) and that they ought properly to have made plans to deal with the evidence in a way that would enable the defendant to properly cross-examine and thereby challenge, explore and test the evidence of the claimant.

12 I take those criticisms on board. It is of course for the claimant and his lawyers to ensure that his case is properly put forward before the court and there are, of course, no exceptions to the evidential rules brought about simply because of the very sad and unfortunate nature of this claim. However, I do have some evidence before me – both in the form of the witness statements that are signed with a statement of truth from Mr. Andreou – and I give those statements the weight that is appropriate, taking into account that counsel for the defendant has not been able to challenge or explore that evidence in the ways that he has set out to the court he would otherwise have wished to.

13 I also have the benefit of hearing the evidence of Dr. Rudd, who was called to give oral evidence on the short point with regard to the recent diagnosis and the impact that that would have. I also have the evidence of Ms. Wells, the expert in nursing care, in the form of her report.

14 So far as the videos are concerned, it is right that there has been no evidence with respect to the maker of those videos. I have seen them, having watched them *de bene esse* and I indicated to the court that from those videos I had been able to obtain a much better view of the extent of the property and was able to see the orchard and the various greenhouses. I was able to see the stairwell and the lift that was in operation. It seemed to me that whilst helpful in giving proper context and flavour with respect to what was being dealt with in this case, the videos were not of great significance. I am willing taking them into account for the limited benefit of giving me a better picture of the property that Mr. Andreou lives in.

The Dispute on Quantum

15 Mr. Andreou was born on 24th May 1940 and he is therefore now aged 76. He was diagnosed with mesothelioma in March 2016 and his estimated date of death is 2nd May 2017. It is therefore thought, sadly, that he only has a few months left to live. His estimated date of death without the mesothelioma is 9th November 2022. He had been a heavy smoker.

16 The estimated date of death is necessarily imprecise. It may be that Mr. Andreou does not live until May 2017, it may be – and all hope that this will be the case – that he lives for longer. I appreciate that Mr. Andreou's granddaughter, who is very close to her grandfather, has attended this trial and it is harsh, I fully appreciate, to hear about someone you love dearly being talked about in very clinical terms. No lack of sympathy is meant by that, it is of course the duty of this court to look at the matters in a dispassionate way in order to calculate, as best as can be done, and in accordance with the law, what is an appropriate figure for damages for Mr. Andreou.

17 The claimant has set out a full schedule of loss and the defendant has responded in detail by way of a counter schedule in which the defendant sets out in some detail the basis for the rejection of various heads of claim and, if not complete rejection of the head of claim, as to the reduction of the amount claimed.

18 Before commencement of the hearing yesterday I gave counsel some time to discuss various matters in order to see whether the disagreement between them could be narrowed. They very helpfully were able to have sensible and productive discussions and were able to reach an agreement on seven of the 12 items that were in dispute.

19 As a result of those discussions the figure of £90,000 was agreed as the correct assessment for pain, suffering and loss of amenity. Loss of income was agreed to be put as nil. All the care costs, which included future care, was calculated and agreed to be £20,000. Travel was agreed to be £3,161.00. A sundry figure for past costs was agreed at £2000. Interest of course on that will need to be calculated in due course when the two matters that have not been agreed, namely expenses and upkeep and already expended monies for equipment, are calculated.

20 The dispute is that the claimant seeks £6,603.84; the defendant, for the purpose of settlement, had offered £4,500. So far as equipment is concerned the amount claimed is £86,743, whereas the defendant offered for the purpose of settlement £7,000.

21 So far as future loss is concerned, as I have already indicated the future care has been agreed as being part of all the care; and travel was agreed at £200.

22 That then leaves lost income, where the claimant seeks £5,946.86. There is a dispute with regards to future costs of equipment, the claimant seeks £3,786.44, whereas the defendant accepts that there may be costs on some items that allows for £1000.

23 The major dispute between the parties is the proper calculation for lost years. The claimant seeks £203,673, the defendant said, for the purposes of settlement, it should be no more than £125,000, and in submissions before me said it should be no more than £100,000.

Expenses and Upkeep

24 So far as expenses and upkeep are concerned, which is the first item about which there remains a dispute between the parties, those expenses are for the upkeep of the rental properties and for the upkeep of the farm.

25 The Claimant's evidence in his statement is that he has been responsible for the upkeep and maintenance of the three rental properties I have referred to and for the upkeep and maintenance of the ten acres around his home.

26 He sets out that so far as the property is concerned he would undertake all year round regular upkeep of the gardens, which would include cutting the grass with a tractor; servicing farm machinery, including a tractor, cherry pickers, woodcutting machines, hedge trimmers and other like equipment; the pruning, feeding and spraying of the cherry trees, apple trees, fig trees and berry bushes; and the upkeep and care for various crops, including strawberries, artichokes, courgettes, squash and various herbs.

27 He also sets out the work in the greenhouses for the upkeep of tomatoes, cucumbers and other crops; that he would maintain and install irrigation systems and he would chop wood both for their own fire and for his grandson's needs – his grandson being a pub landlord.

28 He says that they supplied their produce to the hotel but also sell some of the fruit in order to provide an income which would be put back towards up-keeping the trees and paying for things such as fertilizers and maintenance equipment.

29 He estimated spending five to six hours per day, seven days a week in the spring and summertime; and during the winter reduced hours of three to five hours per day for three to four days per week.

30 He says that as a result of the mesothelioma he has had to rely heavily on gardeners, including two individuals called Martin and Crassy, and also his granddaughter. He refers to the cost of that being £3,800 and £2,160. Some documents which he says are receipts, but appear to be invoices, are attached to his statement as evidence of work being carried out by others.

31 As far as the house itself is concerned, Mr. Andreou gives evidence of carrying out various basic DIY and plumbing duties on an *ad hoc* basis.

32 The defendant has quite plainly been hampered in presenting its case with regard to challenging the evidence that has been provided by way of a witness statement. That, as I have already indicated, is as a result of Mr. Andreou himself not feeling sufficiently well to attend court. Had he attended the defendant would quite properly have been able to challenge him with respect to that work.

33 It is accepted on behalf Mr. Andreou that the work that he says that he undertakes also benefits his wife, particularly with respect to the three properties that they maintain. However, the claimant contends that while a

reduction should be allowed for his wife's benefit with respect to the properties, there should be no similar reduction with respect to the cost of employing another for doing the work on the garden and the work around the house.

34 I have seen the photographs and I have seen the videos. This is plainly more than just a garden. It is a relatively substantial piece of land which is fully cultivated with orchards and with large greenhouses. I accept that the produce from the garden will be used to supply the hotel and also that some produce is sold in order to defray the costs of looking after the garden. However, it is not sufficient, in my judgment, for the claimant to simply point at what are said to be invoices and to say "That is what is being paid out and is the work that Mr. Andreou would have been doing had it not been for this disease."

35 In my judgment, and doing the very best I can – not by speculating but by drawing inferences from the evidence that is before me – without the benefit of Mr. Andreou to give further explanation, I have come to the conclusion that these gardens do have a partial business purpose and that this is part business and part expensive hobby, not simply a garden which requires maintenance.

36 Consequently, while I am going to allow monies for the expenses of the upkeep of the gardens and the properties I am going to reduce that sum to the sum that the defendant had originally proposed as an appropriate settlement sum, accepting, as I do, that the defendant now says given the lack of evidence the claimant is not entitled to anything. Doing the best I can, drawing appropriate inferences from the evidence available, in my judgment an appropriate figure under this heading is the sum of £4,500.

Equipment

37 The next item that has been in dispute between the parties is with respect to the equipment that has already been purchased. The major dispute here is with respect to the installation of a lift.

38 The evidence clearly establishes that this property has two flights of stairs. Those stairs have a turn in them and between the stairs there is a short part of the passage which has to be travelled across in order to go up the second flight.

39 In his most recent witness statement Mr. Andreou explains the difficulties that he has in getting up the stairs. He says that he had to be accompanied by his wife whenever he wanted to go up or downstairs and that that was a very time consuming process. He says that going up from the basement living area to his bedroom took around an hour and that he would need to lie down when he reached the ground floor before he could tackle the next flight. Then once he was in the bedroom he would have to lie down again in order to catch his

breath. He also says that he would need to have chairs placed in strategic positions in order that he could sit down to rest and that it was a genuinely demeaning and exhausting experience for him.

40 He contends in his evidence that a chairlift would be completely impractical. He says that the staircases are narrow; that the hallway on the ground floor is also narrow, and that by installing chairlifts everyone else would have to walk on the stairs down the narrow part of the tread of the spiral staircase.

41 He says that by installing a lift rather than stair lifts his independence and freedom is regained at least to an extent, and that was very important to him as he wanted to live his life as normally as possible. He says he uses the lift that he has already installed at least six times a day, as if he ever forgot something and needed to get it he is able to do so by using the lift. That, he says, could not be something that would be dealt with properly by the installation of a stair lift, for the difficulties he has said.

42 I have, as I have indicated, seen the video and I have seen the photographs. As far as the stairs are concerned I appreciate they are not particularly wide and that there is a turn in both sets of stairs. It is not, in my view, something that can properly be described as a spiral staircase. Plainly the installation of a stair lift would involve some encroachment on the stairs. What I have not had the benefit of is any sort of plan showing exactly what encroachment that would be; plainly it would not be the stair lift itself, which would either be at the top or the bottom and folded, and is more likely to be the mechanism or the runner that goes along the stair which would take some centimetres out of the width of the tread.

43 Mr. Andreou has already had the lift installed. There is no invoice for the amount and no receipt for the sum in fact paid. Mr. Andreou has given evidence that he did not go to a number of different builders and obtain different competitive quotes; he wanted the matter dealt with swiftly and so he went to builders who he had previously used and who he trusts to do a good job. The evidence that is available is that there is an email which sets out the budget for the cost of the new lift installation and associated building work would be £70,000 excluding VAT; so a total price of £84,000. There is further email evidence that the difficulties with obtaining an invoice or receipt for those monies lies with the builders and is not the fault of the claimant.

44 The defendant contends that the lack of a receipt or invoice for the sum means that the claim is fatally flawed. I do not accept that. It is quite plain that the lift has in fact been installed and nobody seeks to deny that. The emails themselves, whilst not perfect evidence, give a clear indication of what the cost was to install the lift.

45 The issue with respect to the lift, it seems to me, is a more fundamental one. The issue is with respect to whether or not the claimant was acting reasonably in having that lift installed when there was an alternative means of him being transported upstairs. I will come to those issues of reasonableness in a moment because the next area of dispute is the reclining chair.

46 It is the evidence of Ms. Wells that Mr. Andreou would benefit from a recliner chair as that will give him the support and comfort that he is likely to need. The defendant does not dispute that, and it is not disputed that this was a reasonable item for the claimant to have. What is said to be unreasonable is the recliner chair that he did in fact purchase was one that cost him something in excess of £2,700 from DFS, whereas Ms. Wells' evidence is that the price of such a chair from a specialist nursing aid supplier is £1000. The issue between the parties is therefore whether the type of chair that Mr. Andreou did in fact buy was a reasonable one.

47 It is not disputed, of course, that if Mr. Andreou wishes to purchase a more expensive chair because it is more aesthetically pleasing to him then he can do so. What the defendant says is, that in compensating him, the defendant should not be left to pay that increased figure.

48 The final area of dispute with respect to this issue is the purchase of two air purifiers. Those air purifiers do not form part of the schedule of loss and it is not something that has been dealt with in the counter schedule, nor in the defendant's skeleton argument. The defendant was not aware of this claim until, as I understand it, some time last week and the defendant says that it is prejudiced if it has to answer that part of the claim. The defendant further says that the claimant is not acting reasonably in the purchase of these air purifiers.

49 The general object of any award of damages in tort is to compensate the claimant for his losses. Consequently, a claimant is entitled to recover those expenses which are incurred as a result of the injury suffered. The defendant of course has to take the claimant as he finds him.

50 The test, as is set out in McGregor on Damages, is whether the loss is a real one and whether the amount claimed is reasonable. In determining whether a cost should be allowed there needs to be a medical or therapeutic value and this was a matter that was dealt with by Mrs. Justice Swift in *Whiton v St. George's Healthcare NHS Trust* [2011] EWHC 2066, in which Mrs. Justice Swift held that while a claimant no doubt enjoyed aquatic physiotherapy sessions and that exercising in water was "generally beneficial to him" the judge was not satisfied that he had a medical need that could not be adequately met by other means.

51 The court is entitled to consider whether the cost of something is wholly disproportionate to any perceived benefit, and in this case the defendant has undertaken what might be considered to be a somewhat brutal, if not callous calculation, of the cost of the lift on a day-by-day or journey by journey basis, given the claimant's relatively short life expectancy. While, in my judgment, that may well be too severe and clinical a way of considering the cost of installing the lift, it is plainly part of the court's duty in determining the reasonableness of the incurring of a cost as to what the cost benefit is.

52 In this case the claimant has installed a lift at some £84,000 and he has done so at his own expense, thereby, it is said by the claimant, showing a real need for this lift months before it is estimated that he will sadly die.

53 In *A v University Hospitals of Morecambe Bay NHS Foundation Trust* [2015] EWHC 366 Mr. Justice Warby considered the decision of Mrs. Justice Swift and addressed the issue of what the claimant was obliged to establish. What he said was – starting at paragraph 13 of his judgment:

> "Counsel for the defendant also relied on a proposition in the same paragraph of Swift J's judgment, that the relevant circumstances include 'the requirement for proportionality as between the cost to the defendant of any individual item and the extent of the benefit which would be derived by the claimant from that item'. I accept, and I did not understand it to be disputed, that proportionality is a relevant factor to this extent: in determining whether a claimant's reasonable needs require that a given item of expenditure should be incurred, the court must consider whether the same or a substantially similar result could be achieved by other, less expensive, means. That, I strongly suspect, is what Swift J had in mind in the passage relied upon."

54 In paragraph 14:

> "The defendant's submissions went beyond this, however. They included the more general proposition that a claimant should not recover compensation for the cost of a particular item which would achieve a result that other methods could not, if the cost of that item was disproportionately large by comparison with the benefit achieved. I do not regard *Whiton* as support for any such general principle, and counsel for the defendant did not suggest that Swift J had applied any such principle to the facts of that case. She did suggest that her submission found some support in paragraph [27] of *Heil v Rankin,* where Lord Woolf, Master of the Rolls, observed that the level of compensation

'must also not result in injustice to the defendant, and it must not be out of accord with what society would perceive as being reasonable'."

And at paragraph 15:

"Those observations do not in my judgment embody a proportionality principle of the kind for which the defendant contends..."

55 I am also assisted by the decision of Mr. Justice MacDuff in the case of *James Pankhurst v White & Motor Insurance Bureau* [2009] EWHC 1117. In that case he was looking at various matters of damage and he referred to the decision in *Sowden v Lodge* [2005] 1WLR, 2129, that the claimant is entitled to damages to meet his reasonable requirements or reasonable needs arising from his injuries; and that where there is a range of reasonable options it is not a requirement that the claimant should take the cheapest.

56 In *Rialas v Mitchell* [1984] *Times* 17 July 1984, Lord Justice Stephenson said:

"For if it is a reasonably foreseeable consequence of the wrong done the defendant cannot complain that it requires payment of a very large sum of money. The court must not react to dreadful injuries by considering that nothing is too good for the boy which will ameliorate his condition and increase pathetically little enjoyment of life which is all that is left to him; that would lead to making the defendant pay more than a fair and reasonable compensation. But the court must not put the standard of reasonableness too high when considering what is being done to improve a plaintiff's condition or increase his enjoyment of life."

57 Then he went on:

"I think the right question is: what is it reasonable to do for this injured boy? The defendant is answerable for what is reasonable human conduct and if (the Claimant's) choice is reasonable he is no less answerable for it if he is able to point to cheaper treatment which is also reasonable."

58 In paragraph 10.3 of *Pankhurst* Mr. Justice MacDuff says:

"There are two sides to the coin. A claimant is not entitled to the world. But what is fair and reasonable must be liberally judged; the standard for judging the Claimant's actions is not high."

He referred to the 17th edition of McGregor on Damages, paragraph 7-064:

> "In mitigating his loss the claimant victim of a wrong is only required to act reasonably and the standard of reasonableness is not high in view of the fact that the defendant is an admitted wrongdoer."

59 In paragraph 10.4 he refers to Lord Justice Sachs in *Melia v Key Terrain Ltd* [1969] where he said:

> "The standard of reasonable conduct required must take into account that a claimant in such circumstances is not to be unduly pressed at the instance of the tortfeasor. To adopt the words of Lord Macmillan in the well known *Waterlow* case, the claimant's conduct ought not to be weighed in nice scales at the instance of the party which has occasioned the difficulty."

60 Consequently it seems to me that there is a balance to be struck. The claimant in making its claim is obliged to act reasonably. There is no requirement where there is a range of reasonable options for the claimant to take the cheapest of those options, but the claimant is not entitled to the world. While in judging the standard of reasonableness the claimant is only required to act reasonably – that standard of reasonableness not being high – none the less it does not allow for the claimant to make a claim for something which falls outside that band of reasonableness.

61 In this case the defendant cannot simply say that a chairlift would have been sufficient as an alternative, and that in itself makes the decision of installing a lift an unreasonable one and an unreasonable claim. What I have to consider is whether, with that relatively low standard, it was in fact reasonable in all the circumstances of this matter for the claimant to install a lift rather than a chairlift.

62 I have to say that I have not considered this to be a particularly easy issue to determine but on full consideration I have come to the conclusion that this was not a reasonable step for the claimant to take. The nature of the claimant's injury caused by this dreadful disease is one that involves him in having difficulties in moving and certainly in going upstairs. It does not, however, prohibit him from using a chairlift and I do not consider that the installing of chairlifts on these two stairs was something that would have created any real difficulties, either to him or to others that were using the house with him.

63 I do not accept that the lift itself would give him any real additional benefit that would not have been given by the installation of the chairlifts. I appreciate that the installation of the lift itself may well have created additional difficulties for Mr. Andreou and his family in the loss of space, particularly in the kitchen area, but that of course is a calculated decision that Mr. Andreou and his family made. The chairlift, as Ms. Wells, the nursing expert, has said, was a viable

option. That does not mean that it had to be taken, simply because it was viable, because, as I have already made clear, where there is a range of options the claimant is not obliged to take the cheapest. But I do not consider the installation of the lift would give Mr. Andreou any real and significant benefit, and it is in my view something that was wholly disproportionate to any perceived benefit that he would obtain from a lift rather than from a stair lift or chairlift. Consequently, I am not going to allow for the installation of the lift. I will of course allow for the cost that would have been incurred with the installation of chairlifts, which I understand is agreed on the basis of Ms. Wells' evidence to be £6000.

64 So far as the recliner chair is concerned, again there is no obligation to go for the cheapest available but it seems to me that it is somewhat unusual for a supplier to the general market, and certainly a supplier who purports to hold themselves out as good value, to be providing something which is costing nearly three times the amount as the cost indicated by a specialised provider of medical equipment. It seems to me that the appropriate cost for the recliner chair is the £1000 which Ms. Wells refers to in her report.

65 So far as the air purifiers are concerned, I appreciate that this is not part of the original claim. I appreciate in some sense the defendant can say that they are in difficulties with dealing with this matter. But Mr. Andreou has set out in his statement the reasons for the air purifiers. They were purchased by his son and they are placed one in the sitting room and one in the bedroom, which are the two places in which Mr. Andreou spends his time. By purifying the air it assists Mr. Andreou in that it lessens the chances of further infection, and given the weakened state in which this disease places Mr. Andreou it seems to me it is an entirely reasonable and appropriate expense which could assist in preventing him from getting further infection. In those circumstances, while these are late claimed matters they are important and assist Mr. Andreou and in my judgment are reasonable expenses.

66 Consequently, so far as this heading is concerned, with regard to past equipment I will allow £6000 for the stair lift, £1000 for the recliner and the £1,708.10 with respect to the air purifiers.

Lost Income – future loss

67 The next items in dispute are the future losses, the first one being the lost income. The claim there is for £5,946.86. This claim is for the cost incurred by reason of Mr. Andreou not being able to carry out the work he had previously been carrying out. Again, while I accept the defendants' concerns that their position has been hampered by reason of the inability to cross-examine Mr. Andreou, I am satisfied on the evidence that I have seen that he has had an active role in the maintenance of the properties and of the hotel, and

that given the reduction that has already been made to take into account all of that work is not simply for his own benefit, I am satisfied that the claimant is entitled to recover for that future lost income. There is nothing inappropriate about the claimant having calculated that amount based upon the guidance provided in facts and figures. The figure claimed falls within normative figures.

Aids and equipment – future loss

68 As far as future aids and equipment are concerned, those are detailed in schedule 7 of Ms. Wells' report. The total sum there is £3,786.44. The strongest argument that the defendant puts against these figures is that these items have not yet been purchased by Mr. Andreou. Plainly he is a man who is in a financial position that if he needed any such items he could pay for them out of his own pocket, as indeed he did with the lift, and then await the outcome of the compensation claim. The defendant contends that the fact that he is not bought these items is a clear indication that the claimant does not in fact need or want these items.

69 We are of course looking forward to the future and Mr. Andreou is likely to become progressively and significantly weaker as the weeks and months pass.

70 So far as the individual items are concerned, I am satisfied that he will in fact need these items going forward save for the bed. It seems to me that the purchase of a new bed are extremely personal and had he felt the need for an adjustable double bed then that is something that he would already have purchased.

71 So far as the other smaller items are concerned, such as the lightweight bath lift, those are items that are going to be needed. In my judgment, having seen the extent of the land around his property and Mr. Andreou's earlier interest in that property and the work that he carried out on it, he will need a mobility scooter in order to travel around. Consequently, I will allow for the sums that are set out, together with the mobility scooter and, and giving a rounded figure I will allow for the sum of £1,800 under this heading.

Lost years

72 That leads me finally to the dispute on the lost years. This is a major area of dispute. The Claimant seeks £203,673.49. As I have already indicated, the defendant accepted for the purposes of negotiation the sum of £125,000 but has now in submissions said it should be no more than £100,000. What the defendant says is that, save for the state pensions which are an amount that are ascertainable, there is nothing in the evidence before the court that establishes

the level of the income, and therefore the sum that should be relied upon for the purpose of calculating this area of loss.

73 The defendant says that the evidence is simply not available either with respect to income from the hotel and the three properties or with respect to the private pensions.

74 Again, and in addition to the paucity of documentary evidence, the defendant says that they have been severely hampered in their submissions, given the inability to cross-examine Mr. Andreou and test his evidence.

75 There is in addition to the overall dispute with regard to the lost years a discrete point with respect to sums that will be claimed in the future, with respect to the sum that Mr. Andreou's wife can claim.

76 So far as that is concerned it is accepted by the claimant that these are matters that properly will need to be dealt with post mortem if there is not agreement between the parties. There has not been agreement between the parties and while it is said by the defendant that the claimant has made an election to bring a claim now and that therefore this matter should be dealt with now and, as it is not something that can be recovered now, the claim should be dismissed. I do not agree with that stance. This is a proper claim that will be made in due course. In the circumstances, while it is clear from the authorities that this is not something that this court can order, given that it has not been agreed between the parties, I will adjourn this part of the claim in order that it can be dealt with post mortem. It would not be right in my judgment for the claimant or the claimant's estate or his widow in due course not to be able to make a claim for something to which he is entitled simply by reason of it having been brought into these proceedings. This discrete matter will therefore be adjourned.

77 With respect to the main part of the claim the defendant's position is that not only is there an insufficiency of evidence but the claimant's evidence shows that his income is not certain or static. In my judgment that is too harsh a criticism to make of the claimant. It has to be accepted that the very nature of these claims are expedited because of the ferocious nature of the disease itself, and it seems to me that the evidence that the claimant has provided with respect to his income is sufficient to give a clear indication of the annual net income of the claimant even though it is a fluctuating income.

78 If consideration is given to the accounts that have been provided by way of the tax computation report for the years 2011/12, 2012/13, 2013/14 and 2014/15 then the net income ranges between a figure slightly under £69,500 and, at its height, a figure slightly under £85,000. If, as I have done, those figures are added together and averaged out over the four years then there is a calculated

figure which is slightly under £76,000. It seems to me that doing the best one can on the figures available it is appropriate, not as the claimant has sought to do by taking the last year's figure and working forward from there, to average over the last four years and use that figure – a sum, as I calculate it, of some £75,924 per annum. That is the annual figure that ought to be used.

79 Dr. Rudd in his response to the requests and questions raised sets out that had it not been for the mesothelioma the claimant would have been able to work at his previous level of commitment until 15 September 2019. That would then have reduced to a lesser level for a period for the next two years up until 15 September 2012, and then he would have fully retired.

80 I am satisfied by the figures set out in detail in the schedule of loss with regard to the periods of time over which calculations ought to be made. The alteration that I would make is with respect to the amount lost each year which should be the sum of £75,924.

81 I am satisfied that in the first period that should be multiplied by 2.37 years and then, in accordance with the facts and figures, reduced by being multiplied by 0.96. I have not calculated the end figure.

82 So far as the second period is concerned, the claimant has suggested that income would drop during that period and in accordance with Dr. Rudd's evidence the claimant's involvement in the maintenance and work at the properties and hotel would diminish and handymen would need to be employed. It is suggested by the claimant that that would only give rise to a reduction of some £5000.

83 In my judgment that is too small a reduction. What that does not seem to take into account is the fact that there will be expenditure that has to be made in order to cover the claimant's reduction in work, and in my judgment a more realistic figure for that would be a reduction of some £10,000 which would reduce period 2 income figure to be £65,924 per annum. The multiplier to that should remain as two. Then the reduction factor for early receipt and contingencies I am satisfied should be 0.91. Again, I have not calculated what that end figure is but the net income should be £65,924.

84 For the final period, which is period 3, the multiplier there being 1.15, the income will again reduce. So far as that is concerned I do not consider that the reduction should be so great as it would be in period 2. This is a further standing down and it seems to me that a fair estimate of a further reduction would be a further drop of £5000. That would result in a third period figure for net income as £60,924 per annum. Again, I am satisfied that the reduction factor for early receipt and other contingencies should be 0.88. Again, that figure would need to be calculated again.

85 Subject to those final calculations of those figures that I have given, I think that deals with all the points that are in dispute or remain in dispute between the parties.

86 In my judgment there is no reason to move away from the conventional reduction of 50 per cent in this case and that is what I would order. So subject to those final calculations being made that is the sum that I would award with regard to the lost years' calculation.

LATER

86 I am asked to make a costs order and to make an interim award with respect to those costs. The defendant has indicated that there was a Part 36 offer but that has been bettered by the claimant, so that the costs should be that the defendant pays the claimant's costs subject to a detailed assessment if not agreed.

87 As far as an interim award is concerned the court is obliged to make such an order. I do not have a schedule of costs in front of me. I am told by the claimant that the very least that would be awarded would be £80,000; that there is a CFA and that has a 100 per cent uplift. I am mindful of the fact that Master Gidden in October gave an interim award on costs of £15,000 at that point. I appreciate that experts have been instructed and of course counsel has always been instructed and those disbursements will need to be paid.

88 It seems to me that given the interim award of costs of £15,000 and given the very limited information I have at this stage to be able to estimate what would be an appropriate award of costs, I am going to start with a starting point of £65,000 and then the £15,000 against that; so that the additional interim award of costs will be £50,000 at this point. That, I would estimate, would more than cover any immediate disbursements that would need to be made, and other arguments can be made in due course on a detailed assessment. That obviously will form part of the order.

89 Thank you both very much indeed for all of your assistance in this. Of course so far as Mr. Andreou is concerned I hope that whilst he obviously has these great difficulties that the rest of his life is as comfortable as it possibly can be.
