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quinn emanuel urquhart & sullivan, llp

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Supreme Court Abolishes Expert Witnesses' Immunity from Suit

In *Jones v Kaney* [2011] UKSC 13, the Supreme Court (by a majority) abolished immunity from suit that expert witnesses have enjoyed in relation to their participation in legal proceedings.

The first rule of law is that a wrong should have a remedy. Any derogation from this rule requires a compelling reason, and the Supreme Court could find no compelling reason to allow expert witnesses immunity from legal claims. As such, litigants who suffer loss as a result of negligence by an expert witness, now have the right to seek damages against that expert.

In making this decision, the supreme justices considered that removing immunity was unlikely to have a “chilling effect” in deterring expert witnesses from giving evidence and would not reduce the number of practitioners willing to give expert evidence. Their view was that all who provided professional services which involved a duty of care were at risk of being sued for that breach of duty. Professionals were accustomed to this and customarily insured against that risk.

The supreme justices also held that there was a minimal risk that the abolition of immunity would result in claims by vexatious litigants. Strong, additional expert evidence would be required to make good the suggestion that the previous expert had been negligent. It would not be easy to obtain expert evidence to support a vexatious claim.

This will not seem a surprising decision to many—where a client has paid substantial fees to an expert, why should he not have a remedy if the expert is negligent? Prior to this decision, the answer was to ensure that the expert felt he/she could give their expert evidence to the Court without fear of redress if the client considered that the evidence was not sufficiently supportive of their case. The Court no longer accepted this as a justifiable reason.

In light of this decision, experts will no doubt seek to obtain appropriate professional indemnity insurance and may also seek to exclude or limit their liability by contractual terms.