

APPROVED JUDGMENT

I direct that pursuant to CPR PD 39A para. 6.1 no official tape recording shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Neutral Citation Number: [2008] EWHC 2909 (QB)

Case No: HQ08X01657

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15th December 2008

Before :

HIS HONOUR JUDGE OLIVER-JONES QC
SITTING AS A JUDGE OF THE HIGH COURT

Between :

KR and 11 OTHERS

Claimants

- and -

EAGLE STAR INSURANCE COMPANY
LIMITED

Defendant

APPROVED RESERVED JUDGMENT

PHILIP TURTON for the Claimants
(instructed by Uppal Taylor Solicitors of 10 Bridgford Road, Nottingham: Ref: BSU/BRY 3.9)

SUZANNE CHALMERS for the Defendant
(instructed by Barlow Lyde & Gilbert LLP, Beaufort House, 15 St. Botolph Street, London EC3A 7NJ : Ref: 101652-2/MJDW/MJDW/3.13)

Hearing dates: 20th and 21st November 2008

Before I review the history, I should state that the preliminary issue, which was to be tried on Tuesday 18th November 2008, was limited to determining the factual issue as to whether the Defendant provided public liability insurance to Bryn Alyn between 10th November 1972 and 22nd August 1976, this being the period during which eleven of the claimants and [redacted] deceased (the twelfth claim now being brought on behalf of his estate) sustained all or some of the relevant injuries arising from physical or sexual abuse while they resided at Bryn Alyn's children's home. That issue has now been resolved in the Claimants' favour following the Defendant's acceptance that there was a relevant insurance policy in force at material times. It is the Defendant's case that this acceptance was made following disclosure by the Claimant's solicitors of a letter dated 14th November 1973 (hereinafter 'the 1973 letter') which identified the existence of relevant insurance policies; that disclosure first came to the Defendant's solicitor's attention on 21st October 2008 after they and their client had expended very considerable effort and costs in seeking to discover whether the insurance cover which the Claimants had claimed existed, had in fact ever been in place. In short, the Defendant argues that because of the Claimants' failure to give proper disclosure, and in particular of the sole material document, it incurred significant costs which would otherwise have been avoided. The Defendant thus seeks an order that the Claimants should pay those costs incurred unnecessarily by the Defendant and bear their own costs of the preliminary issue. That is resisted by the Claimants who argue that they are entitled to the costs of the preliminary issue in which they have succeeded in obtaining the relief they sought.