

DAC Beachcroft's Claims Solutions' Costs Team Wins Again in the Court of Appeal

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Our Claims Solutions' Costs Team has secured another significant win in the Court of Appeal, the second in almost as many months.

In its ruling in *W Portsmouth and Company Limited v Christine Linda Lowin*, the Court of Appeal set out, in the first decision of its kind, how much successful parties can recover in provisional assessments. In limiting what they can recover, savings of hundreds of thousands of pounds are expected for defendants' insurers immediately and for years to come.

The case concerned the relationship between indemnity costs under Civil Procedure Rule (CPR) 36 and capped costs of provisional assessment under CPR 47.15(5). The question for the Court of Appeal was whether the cap on the amount of assessment costs applied, even when the receiving party was awarded costs on the indemnity basis after beating her own Part 36 offer.

Having settled the damages part of her mesothelioma claim, the claimant served a bill of costs to the defendant's insurer, together with a Part 36 costs offer, of £32,000. As the parties could not agree, the bill was provisionally assessed by Master Whalan at £32,255.35 and additionally he assessed her assessment costs, capped at £2,805. The claimant successfully appealed the assessment costs decision to the High Court but, just before Christmas, the Court of Appeal overturned the decision, concluding that "Master Whalan's approach to the matter was entirely correct".

Jonathan Bingham, Partner and Head of Costs said: "The judgment provides certainty on the costs recoverable in paper assessments and will stop parties receiving costs more than the cap. It confirms the intention of provisional assessment to keep costs low and will result in significant savings for insurers. My thanks to Ken O'Neill for his excellent work on this."

Authors