Neutral Citation Number: [2011] IEHC 88

THE HIGH COURT

2006 5372 P

BETWEEN

A. B.

PLAINTIFF

AND

B. C. AND C. D.

DEFENDANTS

Judgment of Ms. Justice M. H. Clark delivered on the 31st day of January, 2011

1. This matter came before the Court as an assessment of damages only.

At the outset of the hearing Counsel for the Plaintiff sought an order under S27 of the Civil Law (Miscellaneous Provisions) Act, 2008 prohibiting the publication or broadcasting of any matter relating to these proceedings which would or could identify the Plaintiff as a person who had been exposed to a blood product donated by a person who had vCJD. The application was not opposed and in the circumstances of the request, the Court made the order. The title of these proceedings has been redacted and the Plaintiff has been rendered anonymous. The Plaintiff is referred to as AB or simply the Plaintiff.

2. Details of the plaintiff
The plaintiff is a 38 year old married man with two young children aged 6 and 10. His educational, family and vocational history depict a man with a strong work ethic with an eye for business opportunities. Through his own efforts he first trained for and then set up his own small specialist recycling/recovery business in a rural area. This business expanded from two employees until with the financial backing of a number of investors it employed 30 employees. The Plaintiff is a director and a minority share holder to his financial backers.

The accident and injuries

3. In May 2005 he was involved in an accident at work. Liability for the accident is not disputed. The Plaintiff suffered serious burns over 50% of his body. Half of those burns were of full thickness and of a life threatening nature. The burns extended to his face, hands, arms and legs and chest. He was resuscitated and then intubated and ventilated before being transferred to a specialist hospital for his care.

4. The Plaintiff has no real memory of the immediate aftermath of the accident when he was set alight or of his transfer to and stay in the Burns Unit in St. James's Hospital in Dublin. His recollection of the first two and a half weeks is blurred due perhaps to the seriousness of his condition and to the fact that his pain was managed with intravenous morphine.

His wife was at his side during every day of his hospitalisation leaving their very young children with a paid baby sitter. She also engaged a manager to operate her own quite independent business on a temporary basis.

5. The Plaintiff recalls that while in St. James Hospital he was in a sealed unit to minimise the risk of infection. He was aware of intense pain in his hands, arms, his legs and buttocks as well as his face and shoulders and of being in plaster from head to toe. His treatment required several operations to remove burned tissue and to release contractions in his arms. He had numerous skin grafts carried out by plastic surgeons. He found the skin grafts and daily changes of the plasters extremely painful. During one of the operations where his arms had to be surgically incised to release pressure on the veins secondary to his burn injuries, he suffered severe haemorrhage requiring massive blood transfusion as well as red cell concentrate and cryoprecipitate. This level of blood and blood product replacement indicates very severe and life threatening massive haemorrhage.

6. While in hospital he was visited by two of the senior management team from the Blood Transfusion Services. They informed him that one of the units of cryoprecipitate which he had received came from a donor who very shortly afterwards contracted vCJD. He learned that the donor was a young man who had lived all his life in Ireland and that the source of his illness was very probably eating meat from a contaminated animal. When the young man contracted vCJD there was a look back by the Blood Transfusion Service to see if he had been a blood donor and when it was established that he was, a tracking down of all recipients of the plasma products manufactured from his blood took place. The plaintiff was one of two recipients of that plasma. He was told that the disease caused degeneration of the brain and had no cure nor was there any test to establish whether a recipient of such blood product was incubating the virus. He was told that vCJD was a fatal disease and that while he was now categorised as being at risk, it was probable that he would not contract the disease. He found this information difficult to fully comprehend but he was so appalled and distressed at the prospect that he might be incubating the disease that it was necessary for his treating physicians to call in the hospitals psychiatric and psychological services to attend to him.

7. After almost two months in hospital he was discharged into the care of his wife and his GP. Dressings had to be removed and replaced every second day and his entire body was placed in tight and uncomfortable Jobst plasters. Again his wife was a stalwart supporter and employed a baby sitter to care for their baby while the toddler attended pre-school. The Plaintiff's wife took over his care and recovery and a temporary replacement was employed to take over her duties at her business. The Plaintiff did not suffer any loss of wages as the Company paid him his full wages for the entire period of his absence.

The recovery period

8. The plaintiff's recovery from his burn injuries was slow and painful but uneventful. He attended physiotherapy and occupational therapy on a regular and extensive basis to assist with regaining movement of his hands and limbs. Some four months later, he began

attending at his business on a part time basis. This was as he says to get himself out of the house and to make him feel that he was of some use as he was concerned for the viability of his business during his absence. During this time he consulted widely on the internet seeking out any available information on vCJD. He had been told that he could never be a blood donor and that he should inform all doctors treating him of his at risk status. He was told that any dental work would have to be carried out at the haematology unit at St. James's Hospital. This information and his own researches on the internet caused him to ruminate on his impending death from the vCJD virus. He was and is unable to disclose or discuss his contact with the disease or his risk from that exposure with any friends or work associates. He bought a burial plot and generally looked at his life as being one where death at a young age was inevitable. During the early part of his recovery he was very conscious of his facial appearance and therefore minimised social contact. He now avoids occasions where he may be questioned about the explosion or have to reveal his status to others.

9. His hands have healed with some limitation of movement due to contractions and webbing which developed between his fingers. He had significant skin sensitivity which prevented him from engaging in any manual work confining him to office duties. He has continued at this office work since his full time return at the beginning of 2006.

The current state of the Plaintiff's injuries

The burn injuries
10. His skin is significantly and extensively scarred especially along both his arms, hands and fingers from the bivalving decompression escharotomies carried out at the Burns Unit at St. James's. His skin continues to be sensitive to temperature changes and exposure to sunlight or to the cold. His plastic surgeon gave evidence that 75% of the Plaintiff's body is scarred and while the extensive areas of skin grafting have healed well, the grafted areas cannot sweat. The result of this is that he now sweats profusely through his scalp. The skin over the grafted areas is much more friable and is susceptible to break down with even minor trauma. Laser surgery to minimise his facial scarring was so painful that he has no plans to undergo any further treatments. He therefore has a permanent high colouring of his face. His scars, his inability to sweat through the skin and the sensitive nature of the grafted areas is permanent and will not improve further.

Neurological testing to determine risk of developing vCJD

11. From the time of his discharge from hospital the Plaintiff has conducted his own research on CJD. In April 2007 he travelled to London to consult with and seek the advice of Dr. Stephen J Wroe, a consultant neurologist in Ipswich with an interest in CJD. Dr. Wroe advised in his report that:

> *"In the United Kingdom three recipients of a blood transfusion are known to have developed Variant CJD and to have become symptomatic. Approximately 5,000 individuals are at risk through having received plasma products donated by individuals who were subsequently identified as being affected with vCJD. So far, to our knowledge, none of these individuals have gone on to develop vCJD. I went through these issues in detail with Mr. AB. He asked about diagnostic procedures including tonsil biopsy. At this stage I have not suggested invasive procedures of this sort but have arranged MR neuro-imaging and neuro psychometry as a base line. I have assured him that on clinical grounds at present he is well with no symptoms or signs suggestive of vCJD."*

12. The MRI established that no changes were present in the brain tissue and that his brain was entirely normal. These tests established a baseline picture against which further scans and tests could be compared. While Mr. AB was reassured that he had no signs or symptoms of the disease he seems to have taken little comfort from this news as it provided no assurance regarding his future risk. His plan was to re-attend Mr. Wroe on a regular basis to have further scans so that he could be alerted to any changes occurring in his brain tissue.

13. In the meanwhile, his solicitors contacted Professor Samuel J Machin a consultant haematologist in London for advice on the risk of contracting vCJD from the cryoprecipitate which he had received. Professor Machin was furnished with information relating to the manufacture of the cryoprecipitate infusion received by the Plaintiff which was obtained on a Freedom of Information request. This indicated that the plasma used to manufacture the cryoprecipitate had been extracted from the blood of five different donors and that one of those donors had since contracted variant Creutzfeldt - Jakob Disease (vCJD) which is the human form of Bovine Spongiform Encephalopathy (BSE). Professor Machin advised that in the UK there is a serious hazard of transfusion group known as SHOT who report their findings annually. In the annual report of 2006 concerning vCJD they reported as follows:

> *"In early 2007 the Health Protection Agency gave notification of the fourth case of vCJD infection associated with blood transfusions. In late 1997 a recipient received transfusion of a number of blood components. The donor of one of the units of non-leucodepleted red cells developed symptoms of vCJD about 17 months after this donation. The recipient developed symptoms of vCJD 8.5 years after receiving the transfusion. The donor is the same as that of case 3 reported in the SHOT case 2005 report. The recipient has since died. "*

14. Professor Machin advised that all four cases referred to in the report relate to the transfusion of red cell blood components prior to the introduction of leucodepletion in the UK in 1999. None of the cases have been related to any plasma products such as cryoprecipitate. He was of the opinion that what Mr. AB received was leucodepleted and was a plasma product (cryoprecipitate) and that the chances of Mr. AB developing clinical vCJD must be low. He could not quantify the risk and doubted that anybody else could but estimated that it would be probably less than 0.1% over the next 20 years or so.

15. None of this information has alleviated the Plaintiff's fears.

16. The practical effect of his at risk status is that the plaintiff cannot be a blood donor and all his dental treatment must be carried out in St James's under the supervision of the haematology unit. He has however to date received no advice on whether he must avoid sharing glasses, cups, tooth brushes or whether caressing and kissing his children will expose them to risk. He was unwilling to discuss his intimate life and his counsel was not instructed to develop this aspect of his life. No claim was made for loss of consortium.

His psychological health

17. The plaintiff appears to have coped remarkably well with the after effects of his severe burn injuries but his high anxiety levels and psychological health remain an ongoing problem. The main source of his anxiety was and is for his future because of his at risk status of contracting vCJD and of an early death. The Plaintiff's anxiety levels are well documented and confirmed by all of his treating doctors. His distress began immediately after he received the news that he had received a contaminated blood product and has continued unabated since. Dr. White the haematologist monitoring his health at St. James's Hospital called in a consultant

psychiatrist to review him while he was still an in-patient and then later referred him to Dr. Sarah Jamieson senior clinical psychologist at the hospital.

18. Dr. Jamieson saw the Plaintiff on at least three occasions and reported that he demonstrated significant symptoms of PTSD brought about by the news that he had received a contaminated plasma product. These symptoms were exacerbated by his worries for the viability of his business directly associated by his inability to obtain life insurance to secure financing for the business and from learning that the donor of the blood from which the cryoprecipitate was manufactured had died of vCJD in the Summer of 2006. Dr. Jamieson also conducted psychological testing and then set out a programme to treat his symptoms with psychological therapy to reduce his severe levels of autonomic hyper arousal, cognitive strategies aimed at reducing his chronic preoccupation with current difficulties and a cognitive behavioural intervention to reduce specific post-traumatic stress symptoms. However she advised that: *Mr. CB was reticent to engage in psychological therapy and reported that for the moment, he felt he needed to exhaust all possibilities of achieving practical solutions to his problems. This would entail finding a solution to his financial problems and obtaining more definitive information about his medical prognosis. The option of taking time to address the psychological concerns was not acceptable to him, largely because he perceives his distress as being resolvable through active problem solving. While the limitations and consequences of exclusively focusing on seeking definitive answers to his financial and medical problems were discussed, he was unwilling at present to explore alternative coping strategies.*

Given the ongoing distress Mr. AB is experiencing I have strongly recommended that he access the Psychological Medicine Service should his symptoms continue or worsen over the coming months. He agreed to contact the Service if he wished to receive a further appointment."

19. The Plaintiff did not contact the psychological services until mid- 2009 and then more than likely following the intervention and instigation of Dr. Joseph Fernando the second psychiatrist to whom he was referred by his GP. At that time, Dr. Jameson reported "*he described the distress caused by the ongoing daily preoccupation with the fear that he might develop the vCJD. At the initial assessment in 2006 Mr. AB described the practical problems that this resulted in for his business in terms of getting life assurance and he was feeling frustrated and helpless in his attempts to resolve these issues. Although the life assurance issue had since been resolved, Mr. AB reported a continuing preoccupation about the uncertainty surrounding the CJD. He stated that as the years go by he feels like "time is running out" and is acutely aware of any cognitive or motor symptoms that could herald the onset of the disease. Mr. AB reported that the absence of a test for vCJD has left him in a state of uncertainty about the threat posed to his life. His way of coping with this is to put all his energies into his business and to try to ensure that his family are well provided. While this has helped Mr. AB to keep a positive focus he clearly has difficulty relaxing and appreciating his achievements*".

20. Dr. Jamieson again recommended psychological intervention to address his inability to relax. While she accepted that there is currently no test for vCJD that might allay his concerns and give complete certainty, she believed that it was important that Mr. AB would find strategies to help him limit ongoing distressing preoccupation in relation to the disease. However Mr. AB was determined to direct his focus on establishing a secure future for his family to concentration on his business and was reticent to pursue alternative coping strategies at that time.

Referral to Psychiatrists

21. In all, the Plaintiff was seen by three psychiatrists since the accident and two psychologists. In 2007 his GP was concerned about his low mood and referred him to Dr. Thakore a consultant in Psychiatry. Dr. Thakore confirmed the PTSD status previously diagnosed by Dr. Jamieson and identified that the Plaintiff was also suffering from reactive depression and he prescribed Prosac. After a short time the Plaintiff ceased taking the tablets as he was in his own words "not sick" and "tablets are for sick people". Eventually his GP referred him to a second psychiatrist Dr. Joseph. Fernandez, at the Mater Clinic.

22. Dr. Fernandez gave evidence on the Plaintiff's behalf and impressed the Court as a caring and committed psychiatrist who was, notwithstanding rebuffs from the Plaintiff in the past, prepared to provide support and advice to the Plaintiff after this case is over.

23. Dr. Fernandez saw the plaintiff regularly over a six month period. He found that Mr. AB was suffering from PTSD from the two previously identified sources: the accident, the burning and scarring and the fear of CJD. He also found that he was clinically depressed and suffering from low self esteem. He viewed himself as disfigured and unattractive to his wife and family. He was anxious, stressed and preoccupied with whether he had already contracted vCJD. His coping mechanism was to bury himself in work and avoid social contact. As he had demonstrated a strong reluctance to take medication, Dr. Fernandez decided to take the psychological therapy route. He therefore consulted with Dr. Jamieson to carry out further neuropsychological assessment. He spoke to the Plaintiff's wife and learned from her that her husband was short tempered with his children and avoided close contact with them. Dr. Fernandez established that the Plaintiff was extremely concerned about whether "*infected blood was running through his body*" and whether contact or intimacy could spread the disease and his wife was fearful of the effect on a pregnancy. Dr. Fernandez realised that the couple had never actually been advised on whether there was any risk of spreading the disease by contact and he therefore arranged for the Plaintiff to consult a local neurologist in the Mater Hospital who could advise on the reality of his fears. Dr. Fernandez reported that the Plaintiff s obsessive fear of harbouring CJD resulted in the treatment of small health issues such as light headedness and failing eyesight as proof positive that his brain was already affected by vCJD. When advised that the more likely cause would he the need to wear corrected spectacles, the plaintiff was unable to attend for a simple eye test for fear that the eye test might reveal or confirm symptoms of the disease. Similarly, the Plaintiff did not consult the neurologist as he perceived that his expertise did not lie in the area of CJD.

The Plaintiff's evidence

24. The Plaintiff described his current condition. He has scars on every part of his body and on his face and hands. The scarring means that he cannot sweat in hot weather and instead he sweats profusely from his head so that droplets of sweat run from his head stinging his eyes. In winter his extremities go blue. He avoids going into the sun as his skin is much more fragile and damages very easily. He cannot physically do mechanical work because he is restricted by the fragile skin and injury to his fingers. He cannot strip down to light clothes in summer as he has to keep his arms and legs covered and similarly in cold weather his skin becomes itchy where the clothes are in contact with his skin. He will not go swimming with his children as he is self conscious of his upper and lower limb scarring He has to go to the coagulation centre in St. James's Hospital for any dentistry work which to him means that he poses a risk to others. He was very upset when in 2006 he read in the newspaper that the young man who donated his blood had died from variant CJD. The fact that the donor had died so young confirmed his belief that he too would die. He no longer enjoys social contact and he does not want any person to know that he has been exposed to a risk from vCJD.

25. He accepts that he does not have any CJD now but he does not know when it will actually develop. He does not see a good outcome for himself and he has received no reassurance that the passage of time reduces the risk. He remains at risk some five and a half years since receiving the blood products. Having heard the evidence given by Dr. White, he has even less confidence that his risk has diminished. He told the Court that he feels enormous guilt for the injuries suffered by other employees who were badly injured in

the same incident. The Plaintiff continues to harbour significant residual resentment of the second defendants who he views as responsible for all the ills which have fallen on him.

26. He worried and indeed continues to worry that his inability to borrow money in the past and his continuing permanent inability to engage in his pre-accident range of physical activity at his workplace could cause his business to fail thus putting many families on the dole. He remains concerned at his perceived inability to provide a future for his immediate and extended family. He is angry that when the business required borrowings in good times to expand that he was unable to raise additional funds as he had been refused life insurance cover. He was concerned for the investors in the business which he had started and generally he perceives that his neighbours view him as having been too ambitious; that he had bitten off more than he could chew by his business ventures and that he had brought misfortune upon himself. Most of all he worries that he is incubating the vCJD virus which he is convinced will strike at any time.

27. His evidence and that of his medical advisors indicate that he is as hard on himself as perhaps on others. The fact that in recent times he has been given health cover with no loading for CJD - but ironically with a loading for a high cholesterol - level has not alleviated his fears. He had not been inclined to accept the advice given by Dr. Jamieson to manage his stress levels or to accept the regime prescribed by her. He did not believe that talking about his fears would make them go away and similarly he could see no benefit in taking pills when the real fear was that he could be incubating vCJD. He gave evidence that the thinking now as he understands it is that one is more likely to get variant CJD from blood products rather than from eating meat. He said that even though he did not believe that the neurologist recommended by Dr. Joseph Fernandez was expert in CJD that he had tried to contact him but was not successful. He told the Court that having heard the testimony given by Dr. Fernandez, he is now prepared to follow up on seeking an assessment with Dr. Lynch and to see him at regular intervals. He also indicated a willingness to attend for psychiatric and behavioural therapies as outlined by Dr. Fernandez. He no longer intends having follow up assessment of his neurological condition in London or Ipswich.

28. It was unfortunate that the Plaintiff's evidence was interrupted by the need to insert medical witnesses before his own testimony was concluded. In particular the evidence of his haematologist Dr. Barry White took his counsel and the Court by surprise and added to the Plaintiff's fears for the future when he said for the first time that he did not accept the view previously furnished by Professor Machen that the plaintiff's risk of contracting the disease was less than 0.1% but that it was closer to 10%. Dr. White appeared to suggest that leucodepletion of the plasma product for the manufacture of cryoprecipitate may not play as important a role as was previously thought. This evidence which was not contained in any previous report appeared to contradict the views expressed by Professor Machen. It was Dr. White's opinion that the important risk factor for a recipient of contaminated blood products was the temporal connection between the donation of blood and the development of the vCJD in the donor. The donor in this case developed CJD within weeks of the donation. It was not clear whether this was considered to be an unduly short period but the fact remains that the Plaintiff has not manifested any signs of the disease.

The Court's assessment of the Plaintiffs fears arising from exposure to vCJD

29. The plaintiff presents as a rigid, tightly wound and extremely private person who sees the worst for himself in the future. It was not difficult to understand why such a personality would be rendered resistant to placing his trust in the medical profession in this State or engaging in regimes which might mask the truth as he sees it for his future. His personality is one which seems to cope better with the sword of Damocles hanging over him only if he accepts the full extent of its danger until provided with a foolproof scientific test that he does not harbour the disease. This all contributes to his inability to accept the need for medication to reduce anxiety or the need for counselling to help him to manage his obsessive fear of developing vCJD.

30. The Court is satisfied that the Plaintiffs fears are real and that their origin lies in the information received from his medical advisors of his at risk status from vCJD. His fears are neither contrived nor overstated. The fact that the donor contracted vCJD within weeks of his blood donation and that he died within 12 months is in the Court's view information which would raise serious concerns in the mind of any reasonably robust personality. There is therefore no question that the Plaintiff s fears are unfounded, irrational or unreasonable. The information before the Court is that there is a basis for the Plaintiff s serious concerns and distress as there is a total deficit of independent evidence based research on the actual risk to his future health. Two experts have estimated the risk as less than 0.1% and 10% - a difference 1:1000 and 1:10.

31. The Plaintiff s fears are real and they have seriously diminished every aspect of his enjoyment of life. They have caused him to suffer significant and continuing symptoms of PTSD including reliving the moment when the information of his exposure to the risk of contracting vCJD. He lives in a state of hyper-vigilance regarding infecting his family; he is morose and frequently depressed and he is obsessed with the hopelessness of his future health prospects. None of these conditions could have occurred had he not been seriously burned and required life saving operative procedures. Those procedures gave rise to massive haemorrhage which caused him to receive a large amount of blood replacement, red cell concentrate, platelets and cryoprecipitate. The cryoprecipitate came from plasma extracted from the blood of a donor with no known disease at the time of donation. It is therefore unreal to maintain that there is no connection between the initial negligence which caused the injury and the natural treatment of the injury.

Assessment of damages

32. The Court has no difficulty is assessing a sum in damages which will compensate the Plaintiff for the intense pain and suffering endured in the past arising from the Defendants' negligence. The Plaintiff has scarring over 75% of his body. 50% of his body was burned in the explosion and fire and a further 25% was scarred by the necessary skin transplants to badly burned sites. The Plaintiff who was only 32 when the accident occurred has been permanently and profoundly affected by the burn injuries. He is not as robust physically as he was; he cannot do the manual work he did prior to the fire. His skin is sensitive and fragile; he cannot sweat normally; he is self conscious of his scars; he lacks confidence, avoids socialising and sees himself as unattractive. He is uncomfortable in extremes of temperature. His fear of harbouring the CJD virus which he believes will inevitably lead to his early death has greatly affected his enjoyment of life and his capacity to love and cuddle his children. He was refused life insurance cover during the first four years after the accident because of his exposure to vCJD and he was unable to borrow money for his business and unable to provide life cover for his dependents. He developed a degree of reactive depression and low mood. He has severe PTSD and will require continuing psychological and psychiatric intervention and he will require periodic assessment by a neurologist and his own haematologist. He may never develop the disease but until a test is devised which can confirm that he is not infected there is no way for him to know what his risk factor is.

33. The problem arises on how to compensate for the risk of developing vCJD. It is well established that proof of damage is an essential component of recovery in negligence. This was reiterated in the relatively recent decision of the House of Lords in *Rothwell v. Chemical & Insulating Co Ltd.* [2008] A.C. 281 where it was decided that the development of pleural plaques from exposure to asbestos did not in itself found a cause of action and that no claim for damages could be brought until such time as the plaintiffs

actually contracted an asbestos related disease. The development of pleural plaques and the associated anxiety of contracting either asbestosis or mesothelioma, the very serious diseases associated with exposure to asbestos did not give rise to an award of provisional damages under UK law. The plaintiffs who had all developed pleural plaques and had no other symptoms could not commence an action for damages as they had not yet established any harm suffered.

34. Provisional damages awards are not yet part of our law. The problem therefore lies in how to compensate the plaintiff for the unquantified possibility, as opposed to the probability, that he will go on to develop a fatal disease. Thankfully he has not developed vCJD. He may never develop the condition but neither he nor the Court has any way of knowing with any degree of certainty that this will remain the situation.

35. Counsel addressed the Court on the now established trend in the Common Law world towards interim payments in cases where compensation for catastrophic injuries is being considered. The Court is very grateful for the carefully prepared submissions made by both parties on that subject. However the Plaintiff's case does not share the features of a party who has suffered catastrophic injuries where those injuries mean that employment opportunities are nil and full time care must be provided. The dilemma faced by plaintiffs and insurers in those type of cases is the realisation "*that the lump sum awarded on an actuarial basis will be either too great or too little because of the uncertainty of how the claimant's life will in fact develop and, secondly that amount awarded may be exhausted and not run the course of the injury by reason of over-spending or under-investing*" or indeed in the more likely case because of medical care inflation. [McGregor on damages at 35-003, 2009 edition]

36. The Plaintiff had not suffered the type of damage which gives rises either to continuing care or incapacity where either provisional damages or staged payments become appropriate. Interim staged payments would not really be relevant in this case. Clearly to compensate him as if he had contracted vCJD would be grossly unfair to the Defendants. To ignore the risk could be unfair to the Plaintiff.

37. In this case, unlike the situation of the plaintiffs in *Rothwell*, the Plaintiff does have a cause of action in negligence which stands apart from the possibility of contracting vCJD. He has suffered clearly established damage from his serious burn injuries due to the Defendants' negligence and where during the legitimate treatment of those injuries he was exposed to a further risk of disease. His mental distress and upset come from being informed of his exposure rather than from the disease itself. It was in those circumstances that the Court enquired whether the defendants might consider agreeing to a different type of provisional payment award that would protect the plaintiff from being under compensated or the defendants from being penalised in relation to the risk from vCJD.

38. The Court proposed an unusual form of compensation which would be fair to both parties. The proposal was that a sum of money could be held in a ring fenced interest bearing account or a Government guaranteed return bond in the joint names of the Defendants' insurers and the Plaintiff's Solicitor for the benefit of the Plaintiff should he develop CJD. If the Plaintiff remained free of the disease for 15 years, then the money and interest would revert to the Defendants' insurers and they would suffer no loss. There would be no question of the Plaintiff being compensated for an event which did not occur but if, the Plaintiff was unfortunate enough to develop the disease then the invested sum would represent a form of life insurance which would compensate his family for his early loss.

39. The defendants were adamant that they would not consent to such a scheme and urged the Court to assess damages on the basis of current law which does not allow for the payment of provisional awards. The Court cannot therefore make a provisional award although this case is an appropriate one for permitting the opportunity to return to the Court in the event that the Plaintiff develops CJD in the future. The legislation which provided for the Hepatitis C Compensation Tribunal envisaged the making of such provisional awards but unfortunately the current system which applies to ordinary personal injury claims obliges the Court to make only one award and only to compensate a plaintiff for damages he has actually suffered. The Court cannot therefore compensate the plaintiff for the possibility as opposed to a probability that he will go on to develop a fatal disease.

40. This is not a case where the so called *Synnott v. Quinnsworth* cap on damages applies. The Plaintiff can continue to work and earn a living. He does not require ongoing medical or nursing care. His case is not one of catastrophic injuries where his every need has been quantified and provided for on the basis of actuarial life expectancy tables and where appropriate multiplicands have been applied. While his life has been changed in very major ways and he can never be put back into the position he was in before the fire and the events which followed occurred, he can be compensated fully for that blighted life. The award shall be:

1.	Pain and suffering to date to include mental distress and psychological trauma	€500,000
2.	Pain and suffering in the future	€200,000
3.	Specials in the past - agreed	€7,600
4.	Unvouched expenses for travelling to the UK for medical advice	€1050.00
5.	Losses incurred by the Plaintiff's wife	€7,000
6.	Extra staff employed during period when the Plaintiff's wife was unavailable for work	€19,828
7.	Specials into the future which include the cost of medication, the attending with psychiatrist/psychologist/neurologist and haematologist to cover travelling and subsistence and loss of earnings for 15 years	€40,000