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The Impact of SA v Autoliv on Joint Expert Evidence in Civil Claims

The recent Court of Appeal decision in *PSA Automobiles SA & Ors v Autoliv & Ors* [2024] EWCA Civ 609 has brought about a significant evolution in the approach to expert evidence in civil litigation, particularly concerning the use of joint experts. This judgement not only underscores the importance of judicial efficiency and proportionality but also marks a departure from established precedents that have traditionally governed the use of expert testimony in complex civil claims.

Background of the Case

The case originated from a cartel damages claim that was brought before the Competition Appeal Tribunal (CAT). The claim involved multiple defendants, including Autoliv AB, and centred around allegations of anti-competitive practices that purportedly resulted in inflated prices for consumers. The complexity of the case necessitated expert economic analysis to assess the extent of the alleged overcharges, the potential for pass-on of costs, and the calculation of financing losses.

In the initial proceedings, the court ordered the defendants to instruct a single joint economic expert to provide evidence on these critical issues. This directive was met with resistance from some of the defendants, who argued that the existence of conflicts of interest precluded the use of a joint expert. They contended that differing perspectives and interests among the defendants would compromise the integrity and independence of the expert's testimony.

The Court's Rationale

The Court of Appeal, led by Lord Justice Birss, ultimately upheld the lower court's decision to utilise a single joint expert. In delivering the lead judgment, Birss LJ articulated two primary considerations that underpin the court's authority to direct expert evidence: the need for just and proportionate case management and the necessity to restrict expert evidence to what is reasonably required for the resolution of the case.

Birss LJ's judgment highlighted a crucial point: the mere existence of a conflict of interest between parties does not automatically preclude the appointment of a joint expert. This perspective represents a notable shift from earlier case law, such as *UK Trucks Claim Limited v Stellantis NV*, where the courts placed greater emphasis on potential conflicts when determining the appropriateness of joint expert evidence. In *SA v Autoliv*, the Court of Appeal clarified that theoretical conflicts should not overshadow the overarching goals of judicial efficiency and proportionality.

Departure from Previous Precedents

The decision in *PSA Automobiles SA & Ors v Autoliv & Ors* marks a significant departure from previous judicial attitudes towards expert evidence in civil claims. Historically, the courts have been cautious about appointing joint experts in cases involving multiple parties with competing interests. This cautious approach often resulted in the appointment of separate experts for each party, leading to increased costs and prolonged litigation timelines.

By contrast, the Court of Appeal's ruling encourages a more streamlined approach to expert evidence. The court's willingness to endorse the use of a single joint expert, even in complex and high-stakes cases, signals a shift towards prioritising efficiency and cost-effectiveness in civil litigation. This change is particularly relevant in the context of the Civil Procedure Rules (CPR), specifically CPR 35, which governs expert evidence, including the provisions for joint expert testimony.

Implications for Civil Litigation

The implications of the *PSA Automobiles SA & Ors v Autoliv & Ors* decision is substantial for civil litigation in England. Firstly, the ruling places the onus on parties to justify the necessity of appointing separate experts, even in cases characterised by complexity. This development may lead to earlier discussions and negotiations between parties regarding the selection of a joint expert, fostering a collaborative approach to expert evidence.

Secondly, the judgment underscores the importance of proportionality in the context of expert evidence. While the court acknowledged that proportionality is a critical consideration, it also made it clear that it is not the sole factor guiding decisions on expert testimony. This nuanced approach may encourage courts to adopt a more flexible stance when assessing the appropriateness of joint experts in a variety of contexts.

Impact on Lawyers and Insurance Companies

For legal practitioners and insurance companies, the implications of this ruling necessitate a strategic reassessment of how expert evidence is approached in civil claims. Lawyers will need to be more proactive in considering the potential benefits of joint expert evidence, particularly in cases where multiple parties are involved. This may involve early discussions with opposing counsel to explore the feasibility of appointing a joint expert, thereby potentially reducing litigation costs and expediting the resolution of claims.

Insurance companies, too, will need to adapt to this evolving landscape. The use of joint experts may lead to more efficient claims handling, as the reliance on a single expert can streamline the process of gathering and presenting evidence. However, insurers will be mindful of the potential challenges that may arise when managing conflicting interests within a joint expert framework.

Conclusion

In conclusion, the Court of Appeal's decision in *PSA Automobiles SA & Ors v Autoliv & Ors* represents a pivotal shift in the use of expert evidence in civil litigation, particularly regarding the appointment of joint experts. By prioritising judicial efficiency and proportionality, the ruling aligns with broader trends in case management within the English legal system. As practitioners navigate this new terrain, the emphasis on joint expert evidence may lead to more streamlined proceedings and a reduction in costs, ultimately benefiting all parties involved in civil claims. The case serves as a reminder of the evolving nature of legal practice and the importance of adapting to new judicial interpretations in the pursuit of justice.

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