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Michael Rapp

Year of Call: 2002

Practice Areas

- Civil Fraud
- Health & Safety
- Inquests
- Personal Injury
- Product Liability
- Professional Liability

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Awards



Experience

Covid 19 / Coronavirus Update

Michael has for many years worked successfully both remotely and electronically. In the present climate he is very comfortable receiving all papers electronically and has facilities to undertake conferences with clients, experts and insurers via e- conferencing, including video, Skype and WhatsApp. Despite the unusual and difficult present situation Michael can continue to provide a fully comprehensive service.

Michael Rapp specialises in Personal Injury, Professional/Clinical Negligence, Product Liability, Insurance litigation; particularly road traffic fraud, Cable Damage claims and Utility matters. He has an even split of work for both sides and prides himself in taking a forensic and highly collaborative team approach to cases, resulting in a loyal and strong client base. He prides himself on his repeat instructions over many years from top tier PI firms.

Personal Injury

Claimant

Michael specialises in higher value cases in the Multi Track. He believes that it is essential that the personal context of any individual's injury is brought to the fore from the outset. An injury occurs to a person within the context of their family, work and social life. Michael's firm view is that it is the responsibility of the claimant's legal team to set out and explain to the defendant insurer, and subsequently the court, the full context and consequences of any injury to a claimant as an individual as soon as possible.

He takes a modern approach to pleadings believing that they are integral to bringing the case to life and allowing the parties and the court to appreciate a deeper understanding of the individual claimant themselves at an early stage. Michael, and

the legal teams that he works with, have seen great success in the use of early, detailed and well-reasoned schedules resulting in settlement of high value claims within limitation, avoiding the need for any court involvement at all.

In line with this Michael strongly believes in the power of rehabilitation at an early stage and the absolute necessity of a collaborative approach between claimant and defendant legal teams in cases involving serious or catastrophic injuries.

His claimant practice involves regular instruction from some of the best known claimant solicitor firms. Michael prides himself on being able to add value to claims and to explore elements of the claim whose long term financial impact that may not have been fully considered. Equally he often deals with claims involving potential Ogden handicap on the open labour market claims. He promotes an integrated approach harnessing the combined expertise of the legal team with the necessary experts; be they medical, financial or employment.

Michael is well versed in the more complex claimant personal injury work including catastrophic or life threatening injuries, chronic or complex regional pain and somatoform type cases and industrial disease (asbestos, heavy metal etc.). He also has experience of cases involving complex injuries including those of a psychiatric nature to children and the subtleties and delicacies of injuries occurring to children with pre-existing conditions.

Defendant

Michael has a strong defendant personal injury practice often complimenting his insurance practice. Michael strongly believes that the legal team for the defendant cannot be passive in high value claims. Action to rehabilitate claimants both personally and back into the workplace is of benefit to both parties. Claimants who refuse to co-operate in this regard should expect that to be reflected in the final damages of their claim. Michael advises early and assertive response (when possible) by the defendant client/ insurer.

He is regularly instructed on behalf of some of the UK's largest construction/home building companies in relation to employee and public liability claims. Michael regularly advises on the merits and tactical value of the full range of resources open to a defendant insurer defending a personal injury claim. His motor fraud practice allows him to cast a highly critical and analytical eye upon all claims.

Michael is regularly instructed to draft robust counter-schedules serving as a reality check to schedules often served at well over 7 figures. Michael strongly believes that there is room for showing genuine compassion and understanding to the claimant but at the same time tenaciously ensuring that a settlement that is reasonable, but no more, is achieved for the defendant insurer.

Michael is happy to be instructed later on in the process recognising commercial realities within the insurance industry and regularly attends JSMs on behalf of insurers where he will achieve significant reductions. Michael will also explore wider ranging settlements beyond the injuries themselves where the client wishes to see finality. For example, recent consent orders have resolved outstanding employment issues that have existed, allowing both sides complete finality of both the injury and the employment.

Professional Negligence

Michael is instructed on both sides of the fence and his practice is generally focused upon solicitor's negligence particularly resulting from underlying personal injury claims. Recent cases have involved defending, and settling for £120,000, a case pleaded in excess of £500,000 for an ex-RAF officer whose case had originally been struck out.

Clinical Negligence

Michael's practice in this regard compliments that of his personal injury practice. It is predominantly for claimants and includes cases involving death in hospital and possible failure to identify cancer leading to amputation of the leg.

Insurance

Michael is known within Motor Insurance for his fraud and LVI practice. He works exclusively for defending insurers in this regard. Earlier this year he successfully persuaded a judge to strike out a claim at trial with an ensuing enforceable cost order where the court was satisfied the accident was a deliberate slam on and in which the judge was further satisfied that the claimant had also then deliberately damaged his vehicle after the accident.

Michael is well versed in detailed and highly analytical pleadings setting out the exact position in relation to fraud. Such defences have had a high strike rate in seeing would be

claimants electing to discontinue rather than running the risks of a finding of fraud/fundamental dishonesty.

Product Liability

Michael receives regular instructions in relation to defective products and claims under the Consumer Protection Act and the Sale of Goods Act. Recent cases have included exploding microwave ovens and fires arising from lithium-ion batteries.

Education

College of Law BVC

University of Bristol Joint Honours French and Italian

Memberships

PIBA

Cases

O'Hara v Altrad NSG Limited

09/12/2015

Barristers involved: Michael Rapp

Very recent case for the defendant in a claim involving a significant shoulder injury to a scaffolder. The claimant was seeking an Ogden 8 claim for handicap on the labour market and an inability to work more than 2 days a week. The schedule was accordingly pleaded at just over £536,000. Claim settled on the basis of an old style Smith v Manchester award and the claimant returning to full time work in a year. Settlement reached at £245,000

Thomas v Valero

October 2015

Barristers involved: Michael Rapp

The claimant suffered life threatening injuries within an industrial accident. Early involvement and a unified approach by the Defendant legal team pushed a JSM at the earliest opportunity on the claimant's evidence alone. A reasonable compromise at the lower end of the scale was achieved, allowing the claimant the benefit of finality and the defendant to see a very significant saving in legal costs and resolution of the claimant's employment. Claim pleaded at over £500,000, settlement reached at £230,000.

Trevatt v B S Eaton Limited

09/10/2015

Barristers involved: Michael Rapp

Michel acted for the Defendant in this claim for 2 manual handling accidents at work. Surveillance indicated that the claimant had exaggerated the effect of the accident, taking advantage of sick absence to attend a job interview. However there was no exaggeration with regard to the occurrence of the accidents or that injury had been sustained. At trial after just over an hour of cross examination as to the claimant's credibility and veracity in light of the exaggeration revealed on the surveillance the claimant sought an adjournment during which he discontinued his claim.

Philip Prosser v Scott-Moncrieff

August 2015

Barristers involved: Michael Rapp

A claim by an ex RAF serviceman was struck out due to failings by his original solicitors. Duty, causation and quantum were all very much in dispute. The claim was pleaded in the region of £500,000. An early realistic part 36 offer combined with a combative counter-schedule saw settlement reached at £120,000.

Virgin Media v Barratt

09/07/2015

Barristers involved: Michael Rapp

Michael defended this claim brought by Virgin for damage to a fibre optic cable crushed during the development of housing by one of Barratt sub-contractors.

It was common ground that the cable was damaged by a digger owned by one of the Defendant's sub-contractors, whilst they were in control of the site. However in the Defence and at interlocutory stage Michael took technical points as to the pleading of Virgin's claim. In line with these arguments the trial judge accepted that the claimant could only formally run a very restricted case. This ultimately failed and the claim was dismissed and costs recovered by the defendant.

Mark Scragg v Barratt Developments Plc

May 2015

Barristers involved: Michael Rapp

Michael acted for the defendant in a Multi Track personal injury claim where as a result of investigations into medical and DWP records the claimant's significant history of street and prescribed drug addiction was discovered

The trial was adjourned to allow matters to be properly pleaded and fully explored. In light of Michael's combative amended defence a highly onerous specific disclosure order was made, whose eventual non-compliance resulted in the claim being struck out and an application for appeal robustly dismissed by HHJ Main QC, the original trial judge.

K Green v Conoco Phillips v Hayes Recruitment

April 2015

Barristers involved: Michael Rapp

A workplace claim by a young woman who alleged she had suffered Thoracic Outlet Syndrome as a result of a manual handling accident at work. Her claim was initially pleaded on the basis that her ability to work had been permanently compromised. Michael represented the defendant employer where the choice of experts was key to the claim. Michael drafted the agendas for the joint statements which were ultimately devastating for the claimant. As a result of their impact the claimant eventually capitulated and agreed to withdraw her claim shortly before trial and pay the defendants' costs up to the value of her ATE insurance.

Kehyalar v Alagoz

02/04/2015

Barristers involved: Michael Rapp

A long running fraud case defended upon the basis of a deliberate slam on accident where the claimant had deliberately further

damaged his vehicle after the accident. The case involved numerous interlocutory skirmishes by the claimant. Ultimately having heard the claimant's evidence under cross examination at trial the court struck the claim out upon the basis that it was overwhelmingly tainted with fraud. Thus the claimant lost all QWOCs cost protection.

Eleanor Wright v C. McKissock

20/01/2015

Barristers involved: Michael Rapp

Acted for a young female graduate who suffered a significant foot injury. She faced an inevitable future of arthritis in the ankle and foot. The case centered upon whether she would be Ogden 7 disabled and given the nascent level of her career whether there would be an impact on her. A quirk was that she was also moving to the USA at the time of the accident and her career model was therefore somewhat unusual. Schedule pleaded at £470,500 and concluded at JSM. Settlement reached at £243,189

Paul Nicholas v Charles Hoskins

January 2015

Barristers involved: Michael Rapp

The claimant suffered a complex knee injury and the value of the claim centered on his handicap on the open labour market and his future loss; the claimant having worked almost exclusively for his working life as a Postman. The claimant was 53 at the time of settlement, with a Royal Mail pension commencing at the age of 60. The schedule was pleaded at just under £280,000 and settlement was achieved at £201,500 at JSM.

Gillian Towers v South West Ambulance Service

November 2014`

Barristers involved: Michael Rapp

Acted for the claimant in a case involving an ambulance worker run over by her own ambulance. Liability was disputed on this basis that no mechanical defect with the ambulance was ever identified. Eventually a few months before trial an admission of liability was made after concerted pressure in relation to specific disclosure regarding handbrake problems with sister ambulances within the fleet.

A non resolved soft tissue injury led to Complex Regional Pain Syndrome. Schedule pleaded at £236,321, case settled shortly before trial for £175,000.

Michelle Ismay, on behalf of Robert Ismay (deceased) v (1) Tomrods Ltd (2) Davers Steels Limited

November 2014

Barristers involved: Michael Rapp

A tragic case involving the death of an HGV driver with a young family. The case was pleaded at over £1million and the claimant was represented by Queen's Counsel. Michael represented one of 2 defendants and the claim settled at JSM for £415,000. The case explored various long term dependency issues, Cookson v Knowles and contribution issues between defendants.

News

£255k award following a 4 day remote trial for dental hygienist who suffered a whiplash injury to her neck

12/02/2021

Barristers involved: Michael Rapp

The claim arose out of a road traffic accident that occurred on 22nd February 2014. The Claimant suffered a whiplash injury to her neck. Her case was that she had never recovered and her neck problems (as well as less significant jaw and wrist problems) continued to impact on her abilities to work as a dental hygienist as well as on her personal and domestic life.

The Defendant admitted liability but disputed causation and quantum. D argued that C's accident related injuries lasted no more than 9 months and any symptoms thereafter were constitutional and attributable to pre-existing degenerative changes in the cervical spine.

In support of its assertions D relied upon several documents produced 9-10 months post accident including a physio discharge report indicating a purported 90% recovery, a request from C to her GP for a certificate that she was fit to live and work in Bermuda and the subsequent certificate itself.

C sought damages of £265,387. D made a p.36 offer early on of £25,000. C made a part 36 offer of £90,000 in December 2019.

HHJ Bloom awarded C £228,506, thus beating her part 36 offer, C recovered her 10% part 36 bonus as well as over a year of indemnity interest at 10% per annum. Her total award was £255,071, over a 1000% better than D's offer, and only £10,316 short of her full schedule sum.

Irwin Mitchell also recovered indemnity costs from January 2020 as well as ongoing indemnity interest at 10% per annum until final payment.

The case is useful in several regards:

- a) HHJ Bloom was satisfied that a permanent whiplash injury constituted a disability under the DDA and therefore an Ogden 8 calculation was appropriate. She rejected out of hand D's contentions for a Blamire style award.
- b) She also approved and agreed with the authors of Ogden 8 that no significant discount should be made from the disability RF tables just because the disability is less severe.
- c) She expressed clear views on the quality of the expert spinal evidence heard, Mr John O'Dowd for the claimant, Mr Robert Carew for the defendant.
- d) In her assessment Mr O'Dowd had greater expertise. He has an international presence and a particular understanding of chronic and complex spinal pain.
- e) She highlighted the impressive nature of the evidence of Mr O'Dowd and her complete rejection of Mr Carew's evidence with which she 'had a number of problems' including his response in cross examination which she found 'were not always straightforward and clear' and that at times 'he did not appear to want to answer questions in a simple and straightforward manner'. Moreover she found some of his views 'not at all probable.'

Irwin Mitchell have confirmed that they will be looking to have the case reported. In the meantime Michael can be contacted for copies of the judgment.

Resounding victory for Claimant in complex brachial plexus injury arising from RTA

06/12/2019

Barristers involved: Michael Rapp

The defendant did not accept that the claimant suffered any significant nerve injury and could return to her previous employment. The defendant deployed extensive surveillance evidence and made a part 36 of £50,000 pre trial.

The judge found that the claimant had suffered a peripheral nerve injury. He accepted that it was appropriate to apply a Herring type approach and consider a reasonable future career model. He found that but for the accident she would have returned to her pre-accident job and by 2021 would be earning £70,000 per annum until retirement. He gave judgment on this basis awarding

£596,492 of future lost earnings.

The claimant beat her part 36 offer and was awarded her consequent 10% bonus on her damages, indemnity interest at 5.75% and her solicitors were awarded indemnity costs with again interest on the indemnity period at 5.75%. The claimant received total damages of £829,122.

Michael Rapp successfully concludes settlement in horrific industrial accident

22/07/2019

Barristers involved: Michael Rapp

Michael acted for the Defendant who self insured and reached a settlement at £3.25 million in a claim pleaded at £7.3 million.
