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*Delivered:* **11/03/09**

*(subject to editorial corrections)**

**2006 No. 85016**

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**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION**

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**BETWEEN:**

**HARRY CAUSBY**

**Plaintiff;**

**-and-**

**SEAGOE TECHNOLOGIES LIMITED**

**Defendant.**

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**McCLOSKEY J**

## INTRODUCTION

**[1]** This is an employer's liability case, in which the Plaintiff claims damages for personal injuries, loss and damage alleged to have been sustained by him arising out of two separate accidents which allegedly befell him on separate dates, 15th November 2005 and 27th November 2005, in the course of his employment with the Defendant. His case is neatly encapsulated in the following brief narrative contained in the Statement of Claim:

> "*On or about 15th November 2005 and on 27th November 2005 the Plaintiff was required to perform arduous physical work which included pulling a heavily laden trolley which thereby caused him such personal injuries, loss and damage as hereinafter appear*".

While the Plaintiff's case, as pleaded, is founded on various alleged breaches of statutory duty and certain particulars of negligence, the centrepiece of his case, ultimately, rested on the contention that the Defendant was guilty of a breach of

Regulation 4 of the Manual Handling Regulations (Northern Ireland) 1992 ("*the 1992 Regulations*").

**[2]** Having regard to the run of the trial, the main focus of attention was at all times on the first of the Plaintiff's alleged accidents. This was reflected in the evidence adduced on behalf of both the parties, the cross-examination of the witnesses called on behalf of the parties and the arguments addressed to the court by the parties' respective counsel. In the events which occurred, the second of the Plaintiff's alleged accidents was somewhat eclipsed and did not give rise to any unusual or complex issues of causation, foreseeability or otherwise to be determined by the court.

**[3]** It is undisputed that the Plaintiff was employed by the Defendant as a so-called "re-worker" at the Defendant's factory plant, where the main production activity seems to have been the manufacture of radiators and associated parts and fittings. The Plaintiff's employment began in April 1999, some six-and-a-half years before the month during which each of the alleged accidents occurred. The Plaintiff is not a qualified tradesman. At the outset of the trial, Mr. O'Donoghue QC (appearing with Mr. Park) summarised the Plaintiff's case in the following way. It was outlined to the court that the Plaintiff's duties had a certain manual handling dimension, which involved the movement of "cages", containing radiators or radiator parts or radiator covers, from pallets, using a hand-held truck ("*the truck*"). The pallets were arranged in a storage area as a result of deliveries by forklift drivers. It was suggested that the pallets could become entangled together, thereby necessitating the use of some physical force on the part of the truck operator in extracting and moving them. "Brute force" could be required. The Defendant, it was said, was liable to compensate the Plaintiff for his injuries by virtue of a failure to conduct a risk assessment, in clear breach of Regulation 4 of the 1992 Regulations. Consistent with the observation made in paragraph [2] above, very little was said about the second of the Plaintiff's alleged accidents.

**[4]** It is appropriate to observe that the outline provided to the court at the commencement of the trial by Mr. O'Donoghue QC was couched in suitably brief terms which, in conjunction with the Plaintiff's pleadings, provided the court with a sufficient insight into the circumstances of each of the alleged accidents and the case made by the Plaintiff. Moreover, this was a non-jury trial, conducted in an era in which one judicial school of thought holds that opening statements by counsel could be dispensed with completely in most cases. Bearing in mind certain aspects of the cross-examination of the Plaintiff, I find that the Plaintiff's case is in no way undermined or diminished by the terms in which Mr. O'Donoghue QC addressed the court at this stage of the trial.

**<u>The Plaintiff's Testimony</u>**

**[5]** The Plaintiff testified that, on the date of the first of his alleged accidents, he initially moved a "cage" out of the way, a distance of some few feet, using the truck.

He then confronted the cage which he wished to remove to facilitate the performance of his duties. He inserted the truck under this cage and then pumped it up. Next, he pulled the truck backwards, but the cage jammed. Then he pulled the truck again "forcibly" and the cage jammed a second time. He thereupon felt a sharp pain in his back and upper right leg. He walked away, encountered a fellow employee, Mr. Girvan, and described to the latter how he had hurt himself as a result of the cage jamming.

**[6]** In cross-examination, the Plaintiff reiterated that he had to pull the truck twice, in an attempt to free the cage. He stated that his attempt to do so was unsuccessful. The clear import of his evidence was that the cage in question remained more or less *in situ*, having moved only "*a bit*". The impression created unequivocally by his evidence was that everything – that is to say the initial pull, the discovery of the blockage, the second pull and the sharp pain signalling his injury – occurred during a single, continuous transaction at a single location viz. the point of storage. Indeed, the Plaintiff was quite adamant about this, when pressed in cross-examination. When re-examined, he steadfastly maintained the same stance, in all essential respects. In particular, he repeated that he was "*still at the scene of the accident*" i.e. the point of storage. There was a strong consistency in the Plaintiff's evidence, in this respect. Further, the Plaintiff reiterated that his words to Mr. Girvan were along the following lines:

"*Flipping pulling that out – I pulled the back out of myself …*".

**<u>Mr. Girvan's Evidence</u>**

**[7]** Mr. Girvan, who testified on the Plaintiff's behalf, purported to corroborate the Plaintiff's account of the accident, in examination-in-chief. In short, he claimed to have seen everything – the Plaintiff pumping up the truck, attempting to work it backwards, jerking, exclaiming and putting his hand on his back. He claimed that he was walking towards the Plaintiff at the material time and was positioned at a distance of some 4 or 5 metres when the accident occurred.

**[8]** The account provided by Mr. Girvan in examination-in-chief was strongly challenged. The frontal challenge was that it was manifestly irreconcilable with the version, information and indications given by him during an event of some significance, which unfolded on 5th July 2006. The impetus for this event was the notification of a claim for damages on behalf of the Plaintiff, in a letter dated 30th March 2006, written by his solicitors. This event had two inter-related phases. Initially, the Plaintiff was interviewed in the office of Mr. Russell who, at that time, occupied the post of Training and Special Projects Manager. This was followed by a visit to the scene of the accident on the factory floor and a reconstruction of the circumstances in which the Plaintiff's injury occurred. It is clear that this was an elaborate and carefully conducted exercise, involving the taking of a series of material measurements, a consideration of the various angles, distances and

locations involved and the making of appropriate photographs. At this stage, less than six months had elapsed from the date of the first accident.

**[9]** Mr. Girvan experienced significant difficulty in attempting to account for the version, information and indications allegedly provided by him during the aforementioned exercise. Moreover, the inevitable questions about the reliability of his evidence-in-chief were compounded by two factors in particular. The first is that he initialled all of the material paragraphs constituting a reasonably detailed record of the interview and reconstruction conducted on 5th July 2006. He also signed this document. The second is that when questioned by the court, he testified that the terminal position of the offending cage was some 15 feet from its storage point. He explained, in some detail, that the cage was positioned at the intersection of two passageways, at a corner, where it constituted an obstruction which would have to be remedied. Notably, on this account, no steps to tackle this obstruction were taken by anyone - the Plaintiff, Mr. Girvan or any other person. The removal of the obstruction would have been simplicity itself, given that, on this account, the cage had been freed and could be manoeuvred without the slightest difficulty.

**[10]** I am driven to conclude that I cannot attribute any weight to the evidence of Mr. Girvan about the circumstances in which the Plaintiff sustained injury. By the same token, I can place no weight either on the account documented in the "interview" record dated 5th July 2006. I find that Mr. Girvan was flustered and confused when testifying under oath about the circumstances in which the Plaintiff sustained injury. On two separate occasions, Mr. Girvan has purported to describe in some detail the circumstances in which the Plaintiff sustained injury viz. during the interview and reconstruction conducted on 5th July 2006 and when testifying under oath to the court. Having assessed Mr. Girvan, I find that neither of his accounts is reliable. I find that his evidence relating to the circumstances in which the Plaintiff sustained injury assists neither party and, in consequence, it will form no part of the court's findings and conclusions. I should add that I find no deliberate fabrication, exaggeration or prevarication on his part.

**<u>The Plaintiff's Injury: Findings</u>**

**[11]** The first question which I must confront is whether the Plaintiff injured himself, in the manner which he alleges, on the occasion of the first of the alleged accidents, 15th November 2005. The veracity of the Plaintiff's evidence was attacked predominantly on the basis of the accident reports and the hospital records, the formulation of his pleadings and the Plaintiff's denials, during separate medical examinations, of any pre-accident problems with his back. Reliance was also placed on the comment of Mr. Yeates, FRCS, in his second report, that the Plaintiff "*exaggerated considerably*" during examination. This comment was made in a report constituting a commentary on medical records. It is not contained in the report of the examination in question. Further, in his third and final report, Mr. Yeates employed the notably diluted terminology of "*a degree of over-reaction on clinical examination*".

**[12]** There are other considerations which I must balance. These include the Plaintiff's apparent social and educational background. He is not, it would appear, an educated person. Moreover, he does not possess the gift of eloquence. I take into account also the circumstances in which the accident reports were completed. It seems to me that this would have been an exercise unfamiliar to the Plaintiff. I must also have regard to the alien and uncomfortable ambience of the courtroom and the difficulties which can naturally be generated by a forceful cross-examination. In a case of this kind, the most important factor is, not infrequently, the assessment which the court makes of the witness. There were undoubtedly certain imperfections in the Plaintiff's evidence – in particular, his attempts to account for his failure to disclose to the medical consultants his previous back symptoms, documented in certain records. However, it seems to me that these were minor ailments. Moreover, having had the opportunity to observe the Plaintiff at close hand during two relatively lengthy sessions, I am satisfied that he was basically a truthful witness, who did not indulge in invention, prevarication or exaggeration. In particular, the Plaintiff readily volunteered the relief which he obtained from taking a morphine based medication and he made no attempt to conceal the walking distances which he can achieve. Furthermore, I found no exaggeration of any kind in the Plaintiff's description of the impact of his injury on his daily life. In addition, he provided a plausible explanation for his presentation during the examination conducted by Mr. Yeates FRCS. He also described the background to and circumstances of his accident in moderate, balanced terms. I accept the essential core of his evidence. I find, therefore, that the first accident occurred essentially in the manner alleged by him.

**[13]** As already highlighted, there was limited concentration during the trial on the second of the Plaintiff's alleged accidents. In the particular circumstances of this case, the significance of this further accident is at best modest. I consider the essence of the Plaintiff's account of this further accident, which was not strongly challenged, to be credible and I find accordingly.

**<u>Liability</u>**

**[14]** The Plaintiff's case was supported by the evidence of Mr. Cosgrove, a consulting engineer. Ultimately, Mr. Cosgrove promoted a single, central criticism of the system of work. He suggested that, given the propensity of the cages to obstruct each other, the Defendant should have specifically warned operatives such as the Plaintiff to refrain from attempting to exert excessive physical force when endeavouring to extract a cage from the storage area, particularly when resistance was experienced. Malalignment of cages and resulting obstructions could foreseeably occur and there was clear potential for injury, in consequence, given the possibility of a very significant increase in the force required having to be deployed. In this respect, Mr. Cosgrove testified that the degree of physical force required of the operative in question could increase dramatically, from 12 to 120 kilos.

**[15]** Mr. Wright BSc, a consulting engineer, testifying on behalf of the Defendant, highlighted several factors in particular. These were the following:

(a) In all normal circumstances, the degree of force required in order to initially move a cage would be very significantly less than the "threshold" of 25 kilos specified in the relevant guidelines.

(b) The trucks are easily manoeuvrable.

(c) There is no suggestion that the truck used by the Plaintiff had any defect.

(d) Any obstruction would be visually obvious.

(e) Entanglement of cages and resulting obstructions would not occur easily.

(f) Operatives had been trained in manual handling.

(g) There was no history of injury, complaint or any associated problem.

Mr. Wright agreed with Mr. Cosgrove's assessment of the increased physical force necessitated by overlapping cages.

**[16]** It was common case that the Plaintiff had undergone manual handling training. I find that the Plaintiff attended an in-factory training session, conducted on 14th May 2002. This addressed, albeit to a limited extent, the activity of manoeuvring loads on hand trucks. Related to this is the matter of risk assessments. The evidence establishes that at the time of the Plaintiff's alleged accident, there was one material risk assessment in existence, dating from 10th January 2002. This assessment did not address at all either the activity of storing cages or the associated activity of removing and transporting them from the storage area. In contrast, a post-accident risk assessment, bearing the date 19th May 2006, did so. This identified specifically the activity "*transporting of material from storage area to re-work area*" – the very activity upon which the Plaintiff was engaged at the time of his first accident. One of the hazards noted was that of "*possible damage due to pulling load*". The persons at risk were identified as "*person pulling the load*". The current controls were identified as the use of safety footwear and "*training on handling and lifting goods*". The "further action required" did not, interestingly, address the manner in which the cages and pallets were either stored or removed from storage. Nor did it incorporate the measure advocated by Mr. Cosgrove, viz. the specific warning detailed in paragraph [14] above.

**[17]** The Manual Handling Regulations (Northern Ireland) 1992 provide, in material part:

*"Citation and commencement*

*1. These Regulations may be cited as the Manual Handling Operations Regulations (Northern Ireland) 1992 and shall come into operation on 8th January 1993.*

*Interpretation*

*2. - (1) In these Regulations…*

*'injury' does not include injury caused by any toxic or corrosive substance which-*

*(a) has leaked or spilled from a load;*

*(b) is present on the surface of a load but has not leaked or spilled from it; or*

*(c) is a constituent part of a load;*

*'load' includes any person and any animal;*

*'manual handling operations' means any transporting or supporting of a load (including the lifting, putting down, pushing, pulling, carrying or moving thereof) by hand or by bodily force.*

*(2) Any duty imposed by these Regulations on an employer in respect of his employees shall also be imposed on a self-employed person in respect of himself.*

*Duties of employers*

*4. - (1) Each employer shall-*

*(a) so far as is reasonably practicable, avoid the need for his employees to undertake any manual handling operations at work which involve a risk of their being injured; or*

*(b) where it is not reasonably practicable to avoid the need for his employees to undertake any manual handling operations at work which involve a risk of their being injured-*

*(i) make a suitable and sufficient assessment of all such manual handling operations to be undertaken by them, having regard to the factors which are specified in column 1 of Schedule 1 and considering the questions which are specified opposite thereto in column 2 of that Schedule,*

*(ii) take appropriate steps to reduce the risk of injury to those employees arising out of their undertaking any such manual handling operations to the lowest level reasonably practicable, and*

*(iii) take appropriate steps to provide any of those employees who are undertaking any such manual handling operations with general indications and. where it is*

*reasonably practicable to do so, precise information on-*

*(aa) the weight of each load, and*

*(bb) the heaviest side of any load whose centre of gravity is not positioned centrally.*

*(2) Any assessment such as is referred to in paragraph (1)(b)(i) shall be reviewed by the employer who made it if-*

*(a) there is reason to suspect that it is no longer valid; or*

*(b) there has been a significant change in the manual handling operations to which it relates;*

*and where as a result of any such review changes to an assessment are required, the relevant employer shall make them.*

*(3) [added SR 2003/423 on 3 Nov 2003] In determining for the purposes of this regulation whether manual handling operations at work involve a risk of injury and in determining the appropriate steps to reduce that risk regard shall be had in particular to -*

*(a) the physical suitability of the employee to carry out the operations;*

*(b) the clothing, footwear or other personal effects he is wearing;*

*(c) his knowledge and training;*

*(d) the results of any relevant risk assessment carried out pursuant to regulation 3 of the Management of Health and Safety at Work Regulations (Northern Ireland) SR 2000/388;*

*(e) whether the employee is within a group of employees identified by that assessment as being especially at risk; and*

*(f) the results of any health surveillance provided pursuant to regulation 6 of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000.*

*Duty of employees*

*5. Each employee while at work shall make full and proper use of any system of work provided for his use by his employer in compliance with regulation 4(1)(b)(ii).*"

The text of Schedule 1, Columns 1 and 2 is couched in the following terms:

*"SCHEDULE 1*
*Regulation 4(1)(b)(i)*

*FACTORS TO WHICH THE EMPLOYER MUST HAVE REGARD AND QUESTIONS HE MUST CONSIDER WHEN MAKING AN ASSESSMENT OF MANUAL HANDLING OPERATIONS*

| *Column 1*<br>*Factors* | *Column 2*<br>*Questions* |
|---|---|
| *1. The tasks* | *Do they involve:*<br>*- holding or manipulating loads at distance from trunk?*<br>*- unsatisfactory bodily movement or posture, especially:*<br>*--- twisting the trunk?*<br>*--- stooping?*<br>*--- reaching upwards?*<br>*- excessive movement of loads, especially:*<br>*--- excessive lifting or lowering distances?*<br>*--- excessive carrying distances?*<br>*- excessive pushing or pulling of loads?*<br>*- risk of sudden movement of loads?*<br>*- frequent or prolonged physical effort?*<br>*- insufficient rest or recovery periods?*<br>*- a rate of work imposed by a process?* |
| *2. The loads* | *Are they:*<br>*- heavy?*<br>*- bulky or unwieldy?*<br>*- difficult to grasp?*<br>*- unstable, or with contents likely to shift?*<br>*- sharp, hot or otherwise potentially damaging* |
| *3. The working environment* | *Are there:*<br>*- space constraints preventing good posture?*<br>*- uneven, slippery or unstable floors?*<br>*- variations in level of floors or work surfaces?*<br>*- extremes of temperature or humidity?*<br>*- conditions causing ventilation problems or gusts of wind?*<br>*- poor lighting conditions?* |
| *4.Individual capability* | *Does the job:*<br>*- require unusual strength, height, etc?*<br>*- create a hazard to those who might reasonably be considered to be pregnant or to have a health problem?*<br>*- require special information or training for its safe performance?* |
| *5. Other factors* | *Is movement or posture hindered by personal protective equipment or by clothing?"* |

**[18]** Mr. O'Donoghue, realistically and properly in my view, accepted that if the Plaintiff were unable to establish a breach of Regulation 4, his case could not be sustained on any other basis. It was common case that the 1992 Regulations applied and there was no dispute that the Plaintiff, on his case, was engaged in a "*manual*

*handling operation at work*" at the material time. I find that the activity in question was clearly embraced by the definition of "*manual handling operations*" contained in Regulation 2(1). Furthermore, the act of transporting a load falls within the scope of the Regulations. I further find that the factor of human, to be contrasted with mechanical, effort is clearly satisfied here. Finally, as regards preliminary qualifying conditions, the cage was plainly a "*load*" within the meaning of these provisions.

**[19]** In the present case, I consider that the spotlight falls mainly on the opening words of Regulation 4(1)(b) and in particular "*… any manual handling operations at work* ***which involve a risk of their being injured ...*** ". [My emphasis]. The word "*risk*" has been the subject of judicial consideration in previous cases. In particular, in ***Koonjul –v- Thames Link Health Care Services*** [2000] PIQR P123, the issue was considered by the English Court of Appeal. Hale LJ considered, firstly, the statement of Aldous LJ in ***Hawkes –v- London Borough of Southwark*** [unreported, 20th February 1998] to the effect that, for the purposes of the 1992 Regulations, the risk must be "*real*": see paragraph [9]. Her Ladyship also noted the comparable statement of Clarke LJ in ***Cullen –v- North Lanarkshire Council*** [1998] SC 451 (at p. 455) that the risk of injury need be "*no more than a foreseeable possibility*" and "*need not be a probability*". Hale LJ pronounced herself "*quite prepared*" to endorse these formulations and she continued:

> "[10] … *there must be a real risk, a foreseeable possibility of injury; certainly nothing approaching a probability. I am also prepared to accept that, in making an assessment of whether there is such a risk of injury, the employer is not entitled to assume that all his employees will on all occasions behave with full and proper concern for their own safety. I accept that the purpose of Regulations such as these is indeed to place upon employers obligations to look after their employees' safety which they might otherwise have …*".

Her Ladyship added:

> "[11] *However, in making such assessments, there has to be an element of realism. As the guidance on the Regulations points out, in Appendix 1 at paragraph 3:*
>
> > '*… a full assessment of every manual handling operation could be a major undertaking and might involve a wasted effort*'.
>
> …
>
> [13] *It also seems to me clear that what does involve a risk of injury must be context based. One is therefore*

*looking at this particular operation in the context of this particular place of employment and also the particular employees involved*".

**[20]** Accordingly, the duties enshrined in Regulation 4 of the 1992 Regulations do not apply to *every* risk of injury to employees. Rather, there is a threshold to be traversed before the duties are engaged. This entails applying the test of whether there was a foreseeable possibility of injury. This is an objective test, which must take into account the particular context and circumstances. Some injuries will be, objectively, foreseeable as a possibility, whereas others will not. In the present case, the evidence establishes that the specific activity upon which the Plaintiff was engaged when he sustained injury had not been the subject of a pre-accident risk assessment. This failure forms the cornerstone of the Plaintiff's case. The Defendant, on the other hand, rests its case on the absence of a risk of injury to the Plaintiff, within the meaning and compass of the 1992 Regulations, thereby absolving it of any duty to conduct a risk assessment of the activity in question. Having found that the Plaintiff injured himself as alleged by him on 15th November 2005, the question for the court is: was there a foreseeable possibility that he would sustain injury in the activity being performed by him at the material time?

**[21]** It is almost certainly correct that there is some risk of some type of injury occurring in virtually every work activity in most workplaces. Turning to the particular context and circumstances, it is incumbent on the court to identify the relevant facts and factors. In his evidence, the Plaintiff testified that it was necessary for a factory operative to pull the cage initially, in order to ascertain whether it was jammed. His evidence suggested that the "jamming" of cages was a not infrequent occurrence. Unsurprisingly, he did not attempt to measure its precise frequency. The evidence of Mr. Purdy, another factory operative, was that the cages in question were habitually stored tightly together – in his words, "*brave and tight together, touching*". He further testified that the storage dividing lines were not observed by the forklift truck drivers, who shunted the cages into their storage position. Mr. Russell, the Defendant's training and facilities manager, readily acknowledged that this "snagging" of cages could occur. He unhesitatingly volunteered what he considered to be the appropriate remedial measure: the operative, he contended, should stop and investigate upon experiencing this difficulty. He further confirmed that the snagging of cages would require increased force on the part of the operative, with the use of excessive force entailing a risk of injury.

**[22]** Mr. Wright, on behalf of the Defendant, also acknowledged that the snagging of cages could occur. He placed some emphasis on the absence of any history of previous problems of this kind or accidents comparable to that which befell the Plaintiff. While suggesting that this should carry significant weight, he spontaneously acknowledged that this could not be the sole criterion of safety or risk of injury. He further accepted that excessive snagging could give rise to a drastic increase in the physical force required to release a cage.

**[23]** In determining whether the manual handling operation upon which the Plaintiff was engaged at the material time involved a risk of injury to him, within the compass of Regulation 4(1)(b), I consider that there are two factors of particular importance. The first is that the problem which precipitated the use of increased force by the Plaintiff viz. the "snagging" of cages was not a freak or isolated occurrence. Neither the existence of this phenomenon nor the fact that it occurred from time to time was disputed on behalf of the Defendant. Secondly, when this phenomenon materialises, it gives rise to a radical increase in the physical force required of the operative. Both engineers were agreed that this could escalate from some 12 kilos to around 120 kilos. Thus there was plainly potential for exposure of the operative to significant injury. In my opinion, by virtue of this combination of factors, the Defendant was guilty of a breach of Regulation 4(1) of the 2002 Regulations, by its failure to make "*a suitable and sufficient assessment*" of the manual handling operation upon which the Plaintiff was engaged when he sustained injury. Further, I find that this breach was causative, in the sense that it gave rise to personal injuries and consequential loss of earnings on the part of the Plaintiff. I have already held that the Plaintiff's injury was sustained in the manner alleged by him. It follows that the Defendant is liable to compensate the Plaintiff.

**Contributory Negligence**

**[24]** In his closing submissions, Mr. Donoghue QC acknowledged that if the Plaintiff were to succeed, contributory negligence could feature. Section 1(1) of the Law Reform (Contributory Negligence) Act 1945 speaks of a person suffering damage "*… as the result partly of his own fault and partly of the fault of any other person or persons …*". In ***Caswell –v- Powell Associated Collieries*** [1940] AC 152, Lord Atkin defined contributory negligence as "*… the omission of the Plaintiff to use the ordinary care for the protection of himself or his property that is used by the ordinary reasonable man in those circumstances*". Contributory negligence is constituted by a blameworthy failure on the part of the Plaintiff to take reasonable care for his own safety. As explained by Denning LJ in ***Jones –v- Livox Quarries*** [1952] 2 QB 608, there is an element of foreseeability in the equation:

> "*A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man he might hurt himself …*".

Finally, the conduct in question must cause or contribute to the injury suffered.

**[25]** In the present case, I attribute importance to the Plaintiff's experience in the activity in question, his previous duties as a trade union representative and the manual handling training received by him in May 2002. His clear evidence, which I have accepted, is that his first attempt to release the cage was unsuccessful, thwarted by an obstruction. He then embarked upon a second attempt, during which his injury was sustained. He did so at once and without any thought or planning.

Applying the principles outlined immediately above, I find that the Plaintiff's damages should be reduced by one-third, to reflect his contributory negligence.

**Quantum of Damages**

**[26]** The Plaintiff suffered a prolapsed disc. The sole medical issue in the case is the extent to which the prolapse was accelerated by the subject accident. Mr. Yeates FRCS suggested that this would probably have occurred "*within an approximately six month period*". Mr. Nolan FRCS, reporting on behalf of the Plaintiff, projected a somewhat longer period:

> "*It is difficult to be very specific but I would suggest that in the absence of the incidents that he describes he may have reached a similar situation perhaps in a one to two year* [period] *in the absence of these injuries*".

He highlighted further that "*… the underlying fundamental problem is the disc degeneration which is largely genetic*". Mr. Nolan's assessment and commentary is a little more elaborate than that of Mr. Yeates. This is no adverse reflection on Mr. Yeates. Doubtless both opinions, conflicting though they are, readily satisfy the test of respectability. I propose to assess general damages on the basis of an acceleration by a period of around twelve months. In measuring damages, I take into account the acute and disabling nature of the Plaintiff's symptoms during this period. A series of physiotherapy sessions did not relieve the pain and discomfort he was suffering. One year after the accident, Dr. Evans reported that the Plaintiff was walking slowly with a crutch and his pain was progressively increasing. Dr. Evans commented that the Plaintiff "*is still in pain day and night*" and had suffered a weight loss of around 2 stones. There was significant impairment of the Plaintiff's daily living activities. Moreover, one of the reports records that the Plaintiff was no longer able to engage in swimming or walking. In my opinion, an award of £12,500 represents fair and reasonable compensation for the Plaintiff's pain and suffering and loss of amenity during the period of acceleration, as found by me.

**[27]** On the basis of the agreed figures helpfully provided to the court, I further award the Plaintiff £7,885 in respect of loss of earnings. The Plaintiff has not satisfied me to the requisite standard viz. on the balance of probabilities that he is entitled to damages under any of the other heads claimed. These were, respectively, cost of care (this being one of the notional family care cases), travel costs and the expenditure involved in purchasing a special bed. The medical evidence, in my view, does not lend the necessary support to the first and second of these items, while I accept the submission of Mr. Ringland QC that the third would have arisen in any event, given the nature and evolution of the Plaintiff's medical condition.

**Conclusion**

**[28]** Accordingly, I award the Plaintiff:

(a) General damages of £12,500.

(b) Special damage of £7,885.

Interest will be added at the appropriate rate. The total sum will then be reduced by one-third, to reflect my finding about the Plaintiff's contributory negligence. The parties are invited to agree the calculation.

**[29]** There will be judgment for the Plaintiff against the Defendant, in the terms outlined immediately above. I shall finalise the appropriate costs order following delivery of this judgment.