

THE HIGH COURT

[2022] IEHC 619

[2018/8428P]

BETWEEN

DANIEL KUCZAK

PLAINTIFF

AND

TREACY TYRES [PORTUMNA] LIMITED

(No. 2)

DEFENDANT

JUDGMENT OF Mr. Justice Twomey delivered on the 9th of November, 2022

INTRODUCTION

1. This case may herald the end to the practice whereby the taxpayer has been subsidising personal injury settlements to a significant degree. As regards the amount of money at issue, reference is made to €20 million shortfall to the taxpayer in an article in the *Irish Law Times* (referenced below), but it is not clear for which period of time this relates.

2. The reason this practice appears to have come to an end is because the Minister for Social Protection (the “Minister”) has confirmed to this Court that she agrees with the interpretation of this Court that a ‘consent settlement order’ is not an ‘order of a court’ for the purposes of s. 343R(2) of the Social Welfare Consolidation Act, 2005 (the “2005 Act”)

3. The background to this issue is that the Law Reform Commission has said in very stark terms that it was ‘*wrong*’ that in personal injury cases the taxpayer was made to ‘*foot the bill for what might be regarded as a business expense of the insurance companies*’. Yet this is what happens when a consent settlement order, made by a court on the settlement of a personal injuries case, is used by an insurance company to claim that it is not legally obliged to repay sums due to the taxpayer.

4. In a similar vein, Keane J., writing in the *Irish Judicial Studies Journal*, highlighted that this use of consent settlement orders amounted to a ‘*subvention from the State (or taxpayer)*’ to insurance companies.

5. Both the Law Reform Commission Report and Keane J.’s article were relied upon by this Court in the principal judgment (*Kuczak v. Treacy Tyres* [2022] IEHC 181, (the “Principal Judgment”). In it, this Court concluded that insurance companies and personal injury plaintiffs should not be able to get the taxpayer to subsidise the settlements which are paid to personal injury plaintiffs by insurance companies. In particular, this Court concluded that it is not possible for an insurance company to be relieved of its obligation to reimburse the taxpayer the amount of social welfare benefits that had been paid by the State to the plaintiff. This was because this Court held that an insurance company could not claim to have an ‘*order of a court*’ simply because it had got a court to insert a term (that was *agreed* between the parties to the personal injuries’ claim) in a consent order issued by a court on the settlement of a personal injury case (a ‘consent settlement order’, in the words of counsel for the Minister).

6. In this supplementary judgment, it is noted that the Minister has now confirmed that she agrees with the interpretation adopted by this Court. Her counsel stated that she does not accept that an insurance company is relieved from its obligation to reimburse the taxpayer by using a consent settlement order. On this basis it seems likely that this costly practice for the

taxpayer of insurance companies and personal injury plaintiffs using consent settlement orders to have the taxpayer finance personal injury settlements will come to an end.

7. This case therefore illustrates the important role of the Law Reform Commission and the *Irish Judicial Studies Journal* in bringing matters of significant public interest to the attention of the judiciary and the public at large.

Shortfall of €20 million due to the taxpayer

8. The practical financial benefit to the taxpayer of the resulting clarification which has been provided by the Minister appears to be very significant. See for example the reference to a shortfall of €20 million in the recovery by the taxpayer of these benefits from insurance companies in Peters, *Recovery of Benefits and Assistance Scheme: Aim and Implementation* (2020) Irish Law Times, Vol 38(19) at p. 289.

9. It is not surprising that there might be such a large sum of taxpayers' money involved when one considers the huge number of personal injury cases each year (15,071 in 2021 *per* the Courts Service Annual Report 2021 at p. 46), combined with the fact that 97% of personal injury cases settle (see the Statement of the President of the High Court, 10th July, 2020 in relation to High Court cases).

10. This means that courts are dealing on a daily basis with a huge number of consent settlement orders. It is clear therefore that this is a matter of considerable financial importance for the taxpayer.

11. Before, considering the various confirmations that have been provided by the Minister, it is helpful to clarify how it has been possible for insurance companies to get the taxpayer to '*foot the bill*' for their '*business expenses*', in the words of the Law Reform Commission. This is necessary because a cursory reading of the the relevant legislation, s. 343R(2) of the 2005 Act, would not lead one to conclude that this is intent or effect of that section. It reads:

“(2) Where the recoverable benefits specified in the statement of recoverable benefits exceed the amount of the relevant compensation payment and that relevant compensation payment was the subject of an order of a court or assessment by the Board in accordance with the Act of 2003, the compensator is liable only to the extent of that amount so ordered or assessed.”

12. It seems to this Court that it would not be possible for a lay person, and indeed many lawyers, to discern from this section that it could be used by insurance companies and personal injury plaintiffs to have the taxpayer fund their settlements.

13. For this reason, it is important to give an example which will illustrate how this section has been used by plaintiffs and defendants in personal injuries’ claims to have the taxpayer fund their settlement payments.

How have insurance companies got the taxpayer to foot their bill for business expenses?

14. In a typical personal injuries’ case, a plaintiff claims that his injuries were 100% caused by the negligence of a defendant, who is insured. The plaintiff may receive disability or other payments from the State as a result of being out of work due to those injuries. In Mr. Kuczak’s case, these payments amount to approximately €90,000.

15. Since the State is not responsible for the injuries, it is entitled, as a matter of logic and as a matter of law (under s.343R(1) of the 2005 Act), to be reimbursed this €90,000 by the party that caused the accident.

16. Crucially however, the insurance company chooses not to challenge its liability for the injuries in court and instead settles with the plaintiff. It is important to note that by opting not to contest its liability and settling, the insurance company is effectively assuming liability for the accident. Logically therefore, there is no reason why the insurance company should not

repay the State (which has no responsibility for the injuries) all the money paid by the State to the plaintiff arising from the injuries.

17. However, what sometimes happens is that in return for receiving the settlement payment, the plaintiff agrees with the insurance company that, despite originally claiming that the insurance company was 100% liable, he will now agree that a consent settlement order (the “s. 343R(2) Consent Order”) can be issued. This consent order, which is issued by a court striking out the proceedings, states in addition that the plaintiff was in fact, say, 90% liable for his own injuries and so the defendant/insurance company was only 10% liable for the injuries (A consent order in these terms was sought in *Fahy v. Padraic Fahy Tiling Contractors LTD & Anor* [2021] IEHC 682, which, if this Court had acceded to it, would have led to the insurance company claiming an entitlement to write-off 90% of its liability to the taxpayer.).

18. By this simple expedient of getting the plaintiff to agree that the s. 343R(2) Consent Order will contain such a term, the insurance company will then be able to claim that they only have to pay back 10% of the sum due to the State because it has an ‘*order of a court*’ (for the purposes of s. 343R(1)) to that effect. The insurance company will then be able to use this saving to fund the settlement payment to the plaintiff.

19. It is crucial to note that this consent term in the court order is clearly in the financial interest of the two parties agreeing it, i.e. the plaintiff and the insurance company, who are the only parties to the proceedings and so the only parties in court. It is in the *direct* financial interest of the insurance company, since it will only have to reimburse 10% of the benefits to the taxpayer. It is in the *indirect* financial interest of the plaintiff, since the insurance company will have more money to pay him a greater settlement. However, it is to the *financial detriment* of the taxpayer, who is not party to the agreement or the court proceedings, as it will only recover 10% of the benefits paid.

20. An ‘order of a court’, to the effect that an insurance company is only 10% liable, might normally be understood to mean a decision of a court after hearing evidence under cross examination in an adversarial hearing. Despite this, insurance companies claim that a s. 343R(2) Consent Order has the status of an ‘*order of a court*’, even though it is obtained without any evidence or an adversarial hearing, is in both the plaintiff’s and defendant’s financial interests and it is to the financial detriment of a party not represented in the proceedings. Accordingly, they argue that, if they get a s. 343R(2) Consent Order, this means that a court has *ordered* that an insurance company is only 10% liable and so the insurance company only has to pay 10% of the amount due to the taxpayer.

21. This is despite the fact that these s. 343R(2) Consent Orders are typically granted in less than a minute by a court striking out a case that has settled, where a judge simply agrees to insert a term in the order ‘on consent’ of both parties. It is also despite the fact that consent terms inserted by a court usually only affect the parties to the proceedings and so do not prejudice third parties. Thus, the usual consent term is a term that one party will pay the other party’s costs and in this type of situation, the Court might be said to be merely ‘rubber-stamping’ a consent term which was agreed between, and only affects, the parties.

22. However, this is clearly not the case with a s. 343R(2) Consent Order, where a court is being asked by the lawyers for the parties to ‘rubber stamp’ a finding on liability, and give it the apparent status of an order of court, in order to financially favour their clients, but financially prejudice the taxpayer.

23. No criticism is being made of the lawyers in this regard, since they are simply acting on the instructions of their clients. To the extent that these instructions are in their client’s financial interests, Chareton J. has observed that it is ‘*a natural aspect of human nature that even a professional person retained on behalf of a plaintiff or defendant may feel themselves to be part of that side’s team*’ (in *James Elliott Construction v. Irish Asphalt* [2011] IEHC 269

at para. 13). In contrast, a court is not part of any team and so a court can have regard to the public interest and thus to the interests of the taxpayer (see for example the Supreme Court decision in *Riordan v. Government of Ireland* [2009] 3 I.R. 745 at p. 765)

24. Notwithstanding the manner in which these s. 343R(2) Consent Orders are obtained, insurance companies have argued that, for the purposes of s. 343R(2), a consent order resulting from an *agreement* that the defendant/insurance company was only 10% liable, without the court hearing any evidence, has the same status as *a court making a finding* that the defendant/insurance company was only 10% liable, after hearing all the evidence.

25. As noted hereunder, the Minister has now confirmed that she does not agree with the approach of the insurance companies.

26. Having clarified how insurance companies and personal injury plaintiffs have to date ensured that the taxpayer is footing the bill for what might be regarded as a business expense of insurance companies, this Court will next deal with how the Minister came to give her views on this practice.

BACKGROUND TO THE MINSITER'S INVOLVEMENT

27. The Principal Judgment deals with an application to court, with the consent of both the plaintiff and the defendant/insurance company in this case, to insert a term in the s. 343R(2) Consent Order stating that the insurance company is only 50% liable for the plaintiff's injuries. This application was made with the intention of relieving the insurance company of its obligation to reimburse the taxpayer in respect of 50% of the benefits paid by the State to the plaintiff, a saving of €45,000. This would then leave the insurance company with this 'subvention' from the taxpayer of €45,000, which it could then use to pay-off the plaintiff to settle his personal injuries case.

28. Although not of direct relevance to this case, it is nonetheless relevant at this juncture to note that insurance companies achieve the same effect in relation to loss of earnings

provisions which are inserted in s. 343R(2) Consent Orders. These terms are intended to, not just reduce, but eliminate completely the obligation of the insurance company to reimburse the benefits, which have had to be paid by the State to a personal injuries' plaintiff. It is typically achieved by inserting a term in the s. 343R(2) Consent Order that '*there was no claim for loss of earnings*'. Inserting such a term, which has simply been agreed by the parties, in a s. 343R(2) Consent Order, gives that term the cloak of being an '*order of a court*' for the purposes of s. 343R(2). This enables the insurance company to rely on s. 343R(2) to claim to the Minister that it is relieved from its reimbursement obligation, since it then claims it has an '*order of a court*' that there was no claim for loss of earnings. In his article at p. 54, Keane J. gives examples of the types of terms, which insurance companies seek to insert in s. 343R(2) Consent Orders, so as to reduce/eliminate its obligation to repay benefits paid by the State to a plaintiff arising from his injuries:

“Examples include a recital that ‘the plaintiff has made no claim for loss of earnings’; ‘the plaintiff has withdrawn the claim for loss of earnings’; ‘the plaintiff has incurred no further loss of earnings after a [specified date];’” – Keane, *Friends with Collateral Benefits? Consent Recitals on Loss of Earnings in Orders Striking Out Settled Personal Injuries Actions and the Recovery of State Benefits from Tort Damages* [2020] *Irish Judicial Studies Journal* Vol 4(2) 43 at p. 54.

29. Keane J. also highlights, at p. 54, the two key issues for a court to consider regarding s. 343R(2) Consent Orders. The first issue is whether an '*agreement between the parties*' amounts to a 'court order' for the purposes of s. 343R(2) in the first place? The second issue is, even if an agreement between a plaintiff and defendant could amount to a court order, whether it is '*appropriate in justice or fairness*' for a court to insert such a term, when the effect is to financially prejudice a party that is not represented (the taxpayer)?

30. In this regard, he notes, at p. 56 a key issue in relation to s. 343R(2) Consent Orders, namely that they have no apparent purpose other than limiting *'the public law reimbursement entitlement'* of the taxpayer from insurance companies.

31. In the Principal Judgment, this Court agreed with the analysis of Keane J. and also agreed with the views of the *Law Reform Commission* that it was *'wrong'* for insurance companies to have the taxpayer *'foot the bill for what might be regarded as a business expense of the insurance companies'* (see *Consultation Paper on Section 2 of the Civil Liability (Amendment) Act 1964: The Deductibility of Collateral Benefits from Awards of Damages (LRC 68-2002* at para 5.108)).

32. Accordingly, this Court decided, in the Principal Judgment, that a s. 343R(2) Consent Order does not amount to an *'order of the court'* for the purposes of s. 343(R)(2).

Inconsistency of approach in courts may affect public confidence

33. It is also relevant to note that Keane J., at p. 58, observed that the approach of the courts is not consistent in relation to s. 343R(2) Consent Orders:

“[C]urrent practice is not uniform in that some courts are willing to accede to consent applications to include loss of earnings recitals in orders striking out proceedings, while others are not.”

34. Thus for example, in *Matthews v. Eircom* [2021] IEHC 456 it was held that a s. 343R(2) Consent Order was an *'order of a court'* for the purposes of s. 343R(2).

35. Keane J. also pointed out, at p. 58, that if this inconsistency of approach were to continue indefinitely, it was *'bound to have an adverse effect on public confidence in the tort liability system'*.

36. The primary way in which this inconsistency is resolved is by a party to personal injury proceedings seeking an interpretation of s. 343R(2) from the Court of Appeal or the Supreme

Court. However, as noted in the Principal Judgment at para. 82, in the seven and a half years since the commencement of s. 343R(2) (on 6th May, 2015), it is curious that there does not appear ever to have been an appeal of the refusal of a court to insert terms in a s. 343R(2) Consent Order.

37. In the absence of an appeal providing clarity, the only other way in which to provide, at least some, clarity, and so reduce the '*adverse effect on public confidence in the tort liability system*', is by seeking the views of the Minister on whether a s. 343R(2) Consent Order amounts to an '*order of a court*' for the purposes of s. 343R(2). This case provides at least this clarity, since the Minister made submissions in this regard to the Court.

The insurance company seeks Minister's consent to s. 343R(2) Consent Order

38. As is clear from the Principal Judgment, this Court refused to insert a consent term in the s. 343R(2) Consent Order striking out the proceedings. The proposed term had been agreed between Mr. Kuzcak and the defendant's insurance company to the effect that the insurance company is only 50% liable for the accident. This Court's refusal meant that the insurance company was denied the opportunity to claim to the Minister that it had an '*order of a court*' reducing in half its obligation to reimburse the taxpayer the amount of benefits paid by the State to Mr. Kuzcak. In real terms, this Court's refusal meant that the insurance company was denied a saving of €45,000 and the taxpayer was entitled to be fully reimbursed the €90,000 in benefits paid to the plaintiff.

39. However, before this Court finalised the order striking out the proceedings, the insurance company requested that the Court delay the perfection of the court order until the insurance company had sought the agreement of the Minister to such a consent term being inserted in the s. 343R(2) Consent Order.

40. In making this application, the insurance company relied on the fact that one of the reasons that this Court gave in the Principal Judgment for refusing to insert 'consent terms' in

s. 343R(2) Consent Orders is because the party that is financially prejudiced by the insertion of that term, the taxpayer/the Minister, was not represented.

41. The logic behind the position adopted by the insurance company appears to be that if the party prejudiced by the s. 343R(2) Consent Order, the Minister, agreed to the insertion of the ‘consent term’ in the order, then there would appear to be no reason for this Court not to insert that term in the order.

42. As is clear from the Principal Judgment, this Court acceded to the application to stay the perfection of the order until the Minister had been consulted. This Court also requested the Registrar to provide the Minister with a copy of its judgment and gave the Minister liberty to apply to court.

The views of the Minister

43. On behalf of the Minister, the Chief State Solicitor’s Office (“CSSO”) duly applied to make submissions to the Court on the issues in this case. On the 26th July, 2022, this Court heard submissions from counsel on behalf of the Minister and from counsel on behalf of the insurance company. In particular, the Court was provided with a copy of a letter dated 25th July, 2022 from the CSSO to the solicitors for the defendant/insurance company, which states, in part, that:

“a. The Minister does not consent to the insertion of the consent terms to which reference is made in the judgement of Twomey J.

b. It is the Minister’s contention that **section 343R(2) properly interpreted simply does not apply to settlements**; that it was intended by the Oireachtas to apply only to cases in which there had been a full hearing by a court or a full assessment by the [Personal Injuries Assessment Board] [...]

[...]

d. [T]he judge is correct in determining that a consent order affecting the interests of the Minister could not properly be made in her absence [...]” (Emphasis added)

Minister’s interpretation is that s. 343R(2) does not apply to consent settlement orders

44. It is clear from this letter that the Minister interprets the expression ‘*order of a court*’ in s. 343R(2) as not applying to consent settlement orders. In oral submissions, counsel for the Minister relied on s. 5(1)(b)(1) of the Interpretation Act 2005 to support this interpretation. Counsel for the insurance company did not make any submissions on this or the other points of interpretation made by the Minister. That section states:

“5. (1) In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction)[...]

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of—

(i) in the case of an Act to which *paragraph (a)* of the definition of “Act” in *section 2 (1)* relates, the Oireachtas, or

(ii) in the case of an Act to which *paragraph (b)* of that definition relates, the parliament concerned,

the provision shall be **given a construction that reflects the plain intention of the Oireachtas** or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole.” (Emphasis added)

45. In light of this section, the Minister submitted to the Court that the objective of the recoverable benefits scheme as set out in s. 343R(2) is to recover from compensators (in most cases, insurance companies) social welfare benefits that were paid to plaintiffs. Thus, the Minister argued that the intention was to:

‘save public funds by not subsidising compensators [insurance companies] who may otherwise pay reduced amounts’.

As noted previously, the insurance companies are compensating plaintiffs, because the insurance company chooses not to contest in court its liability for the losses and instead to settle with the plaintiffs. Thus, the insurance company is, in effect, accepting liability for those losses. The losses arising from an injury include losses of income as an injured plaintiff may be out of work and so the losses, resulting from the injury, include disability and other benefits paid by the State to an injured plaintiff. Thus, it is clear that the State should be reimbursed by the insurance company. If the State is not reimbursed, then the insurance company ends up paying ‘reduced amounts’ in respect of the losses for which it is assuming liability and the taxpayer is at a loss.

46. It was the Minister’s view that, when considering the objective of s. 343R(2), i.e. to save the taxpayer money, it would run completely contrary to that intention to interpret an ‘*order of a court*’ for the purposes of s. 343R(2), in the manner suggested by the insurance company. This is because the insurance company suggested that an ‘order of a court’ included a term which was simply *agreed* between an insurance company and a plaintiff to be inserted in a consent order on the striking out of their proceedings, with the intention of depriving the taxpayer of a reimbursement to which it would otherwise be entitled.

47. Accordingly, the Minister confirmed that it agreed with the interpretation adopted by this Court at para. 47 of this Court’s judgement in *Condon v. HSE; Szwarc v. Hanford Commercial Ltd. T/A Maldron Hotel Wexford* [2021] IEHC 474. In that paragraph, it was concluded that when one considers the ‘*purpose of s. 343R*’, one could not interpret the term ‘*order of a court*’ as including a consent settlement order.

Minister believes that courts should not insert these terms in consent orders

48. The Minister also dealt with the issue raised by Keane J. in his article, of whether it was ‘*appropriate in justice or fairness*’ that a court would insert these consent terms in s. 343R(2) Consent Orders. She confirmed that it was her view that a court should not insert terms (which are intended to relieve insurance companies of their reimbursement obligations to the taxpayer) in s. 343R(2) Consent Orders and so she agreed with para. 68 of the Principal Judgment.

49. As noted in that judgment, courts should not insert terms relating to the percentage liability of the defendant or the fact that there was no loss of earnings claim in consent settlement orders. This is because they give the impression (and are intended by insurance companies and personal injury plaintiffs to give the impression) that a court has *ordered* that an insurance company is, say, only 50% liable, when it is simply *an agreement* between the parties that is put into a court order on consent.

50. The Minister also confirmed her agreement with the interpretation of s. 3434R(1), at para. 97 of the Principal Judgment, that the wording therein (i.e. ‘*before making any compensation payment to, or in respect of, an injured person*’) makes clear that the reimbursement of the taxpayer by insurance companies takes precedence over any compensation paid to an injured plaintiff.

If the Minister had consented to the insertion of the split of liability in the consent order?

51. As noted above, the apparent logic, behind the insurance company seeking the agreement of the Minister to insert the term in the consent order, was that if the Minister consented, there should then be no reason why this Court would not insert that term in the order, since the only person affected is the Minister.

52. However, as the Minister pointed out in her submissions, this approach suffers from one flaw. That is the fact that even if the Minister consented to the insertion of the percentage liability in the consent order (which she does not), this would still not make that consent settlement order an ‘*order of a court*’ for the purposes of s. 343R(2). This would be, in the

words of the Minister, *'simply another form of consent settlement order'*, albeit one that was agreed by the Minister. Thus, it would still not be, in her view, an *'order of a court'* for the purposes of s. 343R(2).

53. In this regard, the Minister relied on paras. 32 - 48 of this Court's judgement in *Condon*, where this Court made it clear that a *'court order'* for the purposes of s. 343R(2) was one where there had been a:

“[D]etermination by an independent and neutral person of the evidence which was subject to cross examination or other testing during an adversarial process when the defendant's and plaintiff's interests were not aligned”.

Thus, an *'order of a court'* for the purposes of s. 343R(2) is not one which results from a court acceding to a request by the parties to put in a term *agreed* by the parties when their interests are aligned.

54. This Court agrees with this submission by the Minister that, even if she had consented to the percentage liability of the parties being inserted in the consent order, this would not have meant that the resulting order was an *'order of a court'* for the purposes of s. 343R(2). It would therefore have failed to achieve its objective of relieving the insurance company of its obligation to repay €45,000 to the taxpayer.

The position of the Minister where a liability split is 'noted' in the court order

55. In addition to refusing to insert, in the operative part of a s. 343R(2) Consent Order, a term designed to reduce/eliminate an insurance company's reimbursement obligation to the taxpayer, this Court also made it clear, at para. 130 of the Principal Judgment, that it refuses to *'note'* such a consent term as a recital in the court order. This is because it is clear that the purpose of such a *'note'* is to enable the insurance company to claim to the Minister that, as this term is *contained in a court order*, even if only noted or as a recital, it nonetheless amounts to an *'order of a court'* for the purposes of s. 343R(2).

56. While the insurance company may make such a claim, it is clear from paras. 132 - 134 of the Principal Judgment, that this Court concludes that a term which is '*noted*' in a Court Order, rather than ordered, does not constitute an '*order of a court*' for the purposes of s. 343R(2).

57. In her submissions to Court, the Minister confirmed that she agreed that a term which is '*noted*' in a consent order does not amount to an '*order of a court*' for the purposes of s. 343R(2).

The perfection of the court order in this case

58. As already noted, the perfection of the order in this case was stayed under the terms of the Principal Judgment, until the Minister had been consulted. The Minister has now been consulted and has also made submissions to this Court regarding her interpretation of s. 343R(2).

59. The Minister confirmed that she is not consenting to the insertion of the 50:50 apportionment of liability in the consent order to be issued by the Court in this case.

60. Accordingly, the outstanding matter, for this Court to deal with, is to lift the stay and perfect the order striking out the proceedings, but without inserting the apportionment of liability, which the plaintiff and the defendant/insurance company had asked this Court to insert.

CONCLUSION

61. The fact that the Minister does not regard a s. 343R(2) Consent Order as an '*order of a court*' for the purposes of s. 343R(2) is obviously significant from the perspective of what happens in practice, when personal injury cases settle. However, it is important to bear in mind that this is just the Minister's interpretation of s. 343R(2). It is not the interpretation of an appellate court and an appellate court could take a contrary interpretation. Accordingly, one could not rule out the possibility that, because of the clarity that has now been provided by the

Minister regarding her interpretation, that this may precipitate an appeal in order to get a definitive interpretation from an appellate court of what constitutes an ‘*order of a court*’ under s. 343R(2).

62. It is of course open to the insurance company in this case (or Mr. Kuczak) to appeal this Court’s refusal to insert the consent terms and to appeal this Court’s interpretation (with which the Minister agrees) that a ‘consent settlement order’ is not an ‘*order of a court*’ for the purposes of s. 343R(2).

63. However, as noted previously, no insurance company or personal injury plaintiff has to date appealed the refusals and interpretations which were handed down by this Court in *Condon v. Health Service Executive*, in *Szwarc v. Hanford* or in *Fahy v. Padraic Fahy*. Similarly, this Court is not aware of there being any appeal of any other refusals by the High Court of s. 343R(2) Consent Orders.

64. In the absence of any appeal therefore, this confirmation of the Minister’s position may see an end to the practice of insurance companies seeking these orders from courts on the settlement of personal injury cases. If so, it will put a stop to the practice of insurance companies and personal injury plaintiffs getting the taxpayer to ‘*foot the bill for what might be regarded as a business expenses of the insurance companies*’, which the Law Reform Commission described as ‘*wrong*’.

65. For this reason, one can say that the clarity provided by the Minister is one step towards avoiding the ‘*adverse effect on public confidence in the tort liability system*’ caused by the inconsistent practice regarding consent orders on the settlement of personal injury cases, to which Keane J. referred.

66. Finally, this case also highlights the value to the courts of the *Irish Judicial Studies Journal*, as an *independent* journal providing ‘*analyses and opinions that are relevant and useful to [judges] in their work*’ (Mission Statement on the Journal’s website).

67. This is because Keane J.'s article played a critical role in making judges, as a whole, aware of the true nature of these consent settlement orders. This was at a time when applications for these consent settlements orders had no opposition (or *leigitimus contradictor*) and where this Court is not aware of any insurance company or plaintiff ever raising concerns about such consent settlement orders prior to the publication of that article (or indeed since that article).

68. In particular, the article highlighted concerns about whether courts should be putting in a court order what they are told by lawyers is the *agreed* proportionate liability of the parties (rather than independently verifying the position by means of evidence and cross examination during a court hearing), particularly when this is in both parties' financial interests, but to the financial detriment of an unrepresented third party (the taxpayer).

69. Thus, the journal and its editorial board played a key role in highlighting the true effect of these apparently innocuous consent orders, which are issued on a daily basis by courts in Ireland on the settlement of personal injury cases. In particular, the article highlighted how obscure and technical provisions of social welfare legislation are used by insurance companies and plaintiffs to get a '*subvention from the State (or taxpayer)*' to settle personal injury claim. Were it not for the *Irish Judicial Studies Journal*, the use of this obscure legislative provision in this way might not have been appreciated by the general public, but more importantly by some judges involved in the grant of those consent settlement orders.