

## **Summing up in the inquest touching upon the death of Jan Van Alphen**

### **In the absence of the jury**

I have concluded that I will leave the verdict of accidental death to the jury, which as you are aware requires the jury to complete box 3 with a statement as to the time place and circumstances of Mr Van Alphen's death. It is my belief that this conclusion is appropriate as indicated by the evidence and realistically reflects the thrust of the evidence referred to by the Court of Appeal case of R V Douglas Williams.

### **Jury Brought In**

## **SUMMING UP OF Jan Van Alphen**

### **(part 1)**

Members of the Jury, as I have previously indicated, that is all of the evidence that you are to hear. All that remains for me to do now is to sum up the evidence to you because we are approaching the time when you must make your decisions. If you wish to take notes during my summing up you may do so.

My summing-up will basically be in three parts. The first part will be very short and I will deal with this right away. This part deals with one or two rules to which by law I have to draw your attention. The second part of the summing-up will take some considerable time. This is where I summarise the evidence you have heard. The third part will be quite a bit shorter than the evidence as

I will explain the law to you and leave you the various choices that you will have to make from the evidence when you retire.

You will recall that when we started I told you that the basic questions that you would have to answer were who has died, where and when the death occurred and how and by what means and Jan Van Alphen died. My summing-up is to assist you in focusing on areas of evidence that may assist you in answering these questions.

The Coroner's Rules 1984 that govern my actions in Court require me to sum up the evidence to you, to direct you upon the law and to draw your attention to two specific rules. The first rule is Rule 36 and this says:

*“The proceedings at an Inquest shall be directed solely to ascertaining the following matters:*

- (a) who the deceased was*
- (b) how, when and where the deceased came by his death.*
- (c) The particulars for the time being required by the Registration Acts to be registered concerning the death.*

I would suggest to you that the answers to the questions of who has died and when and where the death occurred are straightforward. A much more taxing question is that of “how”, which in a case such as means “how and by what means”.

The reference to the information required under the Registration Acts is, you will recall, contained in Box 5 of the annotated Inquisition and I will return to this later on. The rule concludes that

*“neither the Coroner nor the Jury shall express any opinion on any other matters”.*

This means exactly what it says. Neither you nor I are here to express opinions. We are here to decide upon and record what facts you find proved. Years ago in Coroners’ Courts verdicts could include a rider or a recommendation. That is no longer the law and we must not do so in this case.

The second rule that I have to remind you of is Rule 42 this is shorter and more easily understood and states:

*“No verdict should be framed in such a way as to appear to determine any question of criminal liability on behalf of a named person or civil liability.”*

In other words you cannot use words in your verdict that tend to show that a named person has committed a criminal act or that one party or another was negligent in your view. I will return to this again in part three of the summing-up but for the moment you should understand that your verdict should contain

no-one's name except that of the deceased. You will be required in this case to complete box three of the inquisition as to the time place and circumstances of Mr Van Alphen's death.

I will now go through the evidence for you to remind you of what I regard to be the salient points in this case. I will then address you on the law and the possible conclusions in the case. When I go through the evidence, as I am about to do, I will try and be quite selective otherwise we would be here for as long as the evidence has taken. The facts of this case are your responsibility. As I have said, you will wish to take account of the whole of the evidence that you have heard. As you are aware, you should only have regard to the evidence that you have heard in this Court. You are not bound to accept all of the evidence you have heard. It is a matter for you what weight you give to each piece of evidence. You can reject any that appears to be untruthful or incorrect. If I do not mention in my summary something that you think is important, you should have regard to it and give it such weight as you think. Equally, if I mention something that you regard as unimportant you should again give it what weight you believe is appropriate. When it comes to the facts of the case, members of the jury, it is your judgement alone that counts. However, you cannot fill any gaps in the evidence with speculation or supposition.

I will try to present the evidence in a logical sequence although this may not always be the same order that the evidence was presented to you. As this point you already have a copy of the inquisition form, which you may write on

if you so choose. As I have explained, this is completed so far as the name of the deceased and the registration particulars in box 5. However, it is entirely a matter for you if you find these facts proved to the relevant standard.

### **Factual summary (Part 2)**

Mr Van Alphen was an experienced competitor in the world of tractor pulling. As you have seen, the tractors used for this sport at the level at which Mr Van Alphen competed bear no resemblance to agricultural tractors. Mr Van Alphen's tractor, Popeye, ran in the 4.5 ton modified class and was powered by three aero engines. There is no evidence before you that the tractor played any part in the events which claimed Mr Van Alphen's life.

In competition, the tractors pull a sled down a 100m course. The sled in this case was a sled called the "Mighty Challenger". As the tractor pulls the sled down the course the sled increases the difficulty of pulling it by moving a box containing weights from the rear of the sled to the front, which increases the weight above a plate that drags along the ground. The weight box is wheeled and driven along the sled using the drive from the road wheels. This drive from the wheels is taken to a differential. The differential has the weight box drive on one side and the other side has an air brake. When the air brake is applied, the weight box drive is engaged and the box begins to move up the sled. When the air brake is released the box is able to freewheel and is not connected to the road wheels of the sled. The air brake is a brake such as your car brakes but relies on air pressure to make it work. If there is a

sufficient air pressure and the driver of the sled applies the air brake, the brake will come on. If there is little or no air pressure, a spring inside the airbrake applies the brake – hence the other name of an air brake, which is a “spring brake”. However, if there is a certain amount of air pressure in the air brake, the spring will not apply the brake but the brake will not come on.

After the weight box has travelled up the sled the weight box drive is disengaged before the weight box strikes the end plate. This disengagement of the drive is achieved by the weight box hitting an air valve which in turn releases the air brake on one side of the differential allowing the weight box to be brought back to its start by another mechanism that played no part in events which lead to Mr Van Alphen’s death.

In addition to the air brake on the differential there were also air brakes on the wheels, which if air pressure was lost would be activated by a spring brake. In addition, there were also air brakes on the weight box itself, although these were not spring brakes and if air pressure were lost would cease to function at all.

Prior to the Great Ecclestone event the sled was inspected by Mr Blake the owner of the sled, and Mr Crozier, an agricultural engineer, who noted no defects at that time. On the 25<sup>th</sup> August 2007 a truck called Ruddy Lightning pulled the Mighty Challenger. At the start of the run the weight box did not move. Ruddy Lightning went a considerable way up the course before stopping. At this point the weight box free wheeled up the sled and struck the

end stop with some force. The end stop is the plate across the end of the sled that should stop a free wheeling or “flying box” and on this occasion did so. Mr Andrew Blake, Mr Crozier and Mr Coultard, the sled driver, set about looking for the fault and found that there was a split in the 6mm air hose on the inlet side of the air valve. This was replaced and the weight box operation checked. Later in the day a similar occurrence of a flying box occurred when a tractor called Red Fever pulled Mighty Challenger. On this occasion the same air hose was found to have fractured and a 1m length replaced. Both Mr Crozier and Mr Blake both commented that the unshielded plastic air pipes might have been struck or bent by debris thrown up by the pulling tractors rear wheels, particularly so as the ground at the Great Ecclestone show was a of a heavy clay variety. However, both said they had not had ruptured lines in the five years that the sled had been in their possession. Later on that evening the sled again malfunctioned during the run by Little Gold when the weight box initially did not move but then began to do so. Despite looking for a cause of the problem on this occasion a cause could not be found.

On the following day Mr Blake and his team examined and worked on Mighty Challenger for about an hour an a half and noted no damage to the end stop where it had been struck by the weight box and found no other faults in the air system. Mighty Challenger then took part in approximately 40 pulls without incident, one of which included a pull by Popeye driven by Mr Van Alphen. In the 4.5 ton modified class there were then a number of runs during which the weight in the box was adjusted to 9.7 tons prior to Popeye’s run at just before 5pm. On this run Mr Van Alphen waited until the track marshalls and the Mr

Coulthard indicated that it was appropriate for him to proceed. Mr Coulthard noted as the run began that the weight box did not move and immediately activated his red warning light by releasing the air brake on the differential. I will return to this action in a moment. Mr Coulthard then applied the wheel brakes (lever 11) and the box brakes (lever 3). Mr Karl Carter, an experienced tractor driver in the 4.5 ton class, explained that at this time Mr Van Alphen would have been watching his engine gauges for performance and malfunction and it was quite normal for a tractor driver to do this. Such is the acceleration of 4.5 ton modified tractors that when the driver does look up he is 30m down the course. On this occasion Mr Williamson, first track marshal, said that Mr Van Alphen had passed him by the time he had raised his red flag. Mr Coulthard indicated that Mr Van Alphen probably attained a maximum speed of about 60mph during the run. Mr Van Alphen shut down his tractor at about the 60m mark and brought it to a halt under control. It was at this point that the weights box began to accelerate and after moving along the sled passed straight through the end stop before causing fatal injuries to Mr Van Alphen.

Mr Frackleton, a mechanical engineer with the Health and Safety Executive, gave expert evidence as to the causes of the accident. Mr Frackleton stated that these failures were in three main areas. The first area of failure was in respect of the air system. Mr Frackleton explained that his investigation was hampered as to the exact cause of the loss of air pressure due to the damage to the air system caused by the flying weight box. The loss of pressure may have been due to a fracture in an air line, as had occurred on the two previous

occasions with Ruddy lightning and Red Fever. However, such a fault had to occur relatively close to the run itself as the air pressure in the system reduced to zero in about 15 seconds and this would not account for the intermittent fault experienced on the Little Gold run. The other alternative was a sticking air valve an item had not been replaced since the sled was acquired in 2001 and was struck by the weight box as it moved up the sled. However, Mr Frackleton's view was that it was not particularly important as to which item had failed as he was convinced that one or other of these had failed. The consequence of this was that the weight box was now free to move. The second failure was that with the loss of air pressure the box brakes ceased to work at all, but even had they been applied they were little more than parking brakes. The third failure was in respect of the end stops. In 2003 the European Tractor Pulling Committee (ETPC) inspection had required a second set of end stops to be welded into place and confirmed that these were appropriate under ETPC rules in the 2006 inspection. Mr Frackleton stated that the welding on the first set of end stop brackets was of poor quality and potentially had a crack in the weld prior to the events of 26<sup>th</sup> August 2006. Mr Frackleton said that the end stops in place on 26<sup>th</sup> August 2007 were wholly inadequate to deal with a flying box although this had been subsequently inspected by the ETPC inspectors on two subsequent occasions and passed.

Finally, let be briefly deal with the action of Mr Coulthard as sled driver in releasing the differential airbrake when the weight box did not move. Mr Coulthard said that this was to activate the red beacon on the roof of the sled

and alert the track marshals. In the accident involving Mr Van Alphen's death there is no evidence that this action affected events as air pressure had already been lost. However, in other situations it effectively released the weight box.

### **Legal Directions (Part) 3**

As I have said at the outset of the Inquest our functions in this hearing have been and remain quite different. Throughout this Inquest the law has been my area of responsibility and I must now give you directions as to the law that applies to this Inquest. When I have done so, you must accept those directions and follow them.

I have reminded you of the prominent features of the evidence before you. However, it has always been your responsibility to judge the evidence and decide what the relevant facts are in this case and, when you come to consider your verdict you, and you alone, must do that.

### **Inquisition**

Members of the jury, you have been provided with a copy of the Inquisition form that has what I believe to be the undisputed areas completed. You will see that there are five questions on this form. Let me provide you with some sort of structure as to how to approach your task.

**Question one**, relates to the name of the deceased. You have heard from my Coroner's Officer Mrs Wight that the deceased was identified as by his wife shortly after his death. This evidence is unchallenged and I would suggest that you can accept this evidence as proved on the balance of probabilities, which is being more likely than not. By this I mean if the evidence is such that you as a jury can say, "we think it more probable than not", you will find the fact proved: but if the probabilities are equal or less than equal the fact is not proved. You will do this by having regard to the whole of the evidence and forming your own judgement about the witnesses and assessing which evidence is reliable and which is not.

**Question two**, the injury or disease causing death, should again cause you little difficulty. Dr Sheppard, the home office pathologist, stated that there was no natural disease that accelerated or contributed to the death and that the death was caused by ***1a shock and haemorrhage and 1b crush injuries to legs***. This evidence is again unchallenged and I would suggest that you accept this evidence as proved on the balance of probabilities.

**Question three** requires you, members of the Jury to make a statement as to the time, place and circumstances of the death. In this case Jan Van Alphen was certified dead on the afternoon of 26<sup>th</sup> August 2007 and the place of death is entered in Box 5 of the Inquisition. Again these facts are for you to find proved on the balance of probabilities

Before turning to how you should approach box three, let me give you some guidance on how to approach the evidence of experts given in this case. This case heard expert evidence from Mr Frackleton, a chartered engineer who works for the HSE. Mr Frackleton was called to this inquest by me and not on behalf of any party. Expert evidence is permitted at an inquest to provide you with information and opinion which is within the expert witnesses' expertise but which is likely to be outside your experience and knowledge. It is by no means unusual for evidence of this nature to be called and it is important that you should see it in its proper perspective. It should be viewed by you as part of the evidence as a whole and to assist you with regard to one particular aspects of the evidence.

An expert is entitled to express an opinion in respect of his findings and the matters on which he is asked questions. You are entitled, and would no doubt wish to have regard to this evidence and to the opinions expressed by the experts when coming to your own conclusions about relevant aspects of the case. Your consideration should also include a consideration of the evidence available to and considered by the expert when forming his views and opinions. In this case it included the fact that the sled was fitted with a kill switch that activated the braking systems which was unlabelled and which Mr Frackleton was unaware of when forming his views.

You should bear in mind that if, having given the matter careful consideration, you do not accept the evidence of the experts, you do not have to act upon it. Indeed, you do not have to accept even the unchallenged evidence of an

expert. You should remember that this evidence relates to only part of the case and that whilst it may be of assistance to you in reaching a verdict, you must reach your verdict having considered all of the evidence.

The when and where Mr Van Alphen's death occurred is entered in box five of the inquisition. Members of the jury it is a matter for you to identify the circumstances of Jan Van Alphen's death. You should indicate those circumstances that have on the balance of probabilities caused the death. Any such casual connection must, on the evidence that you have heard and evaluated, be proved on the balance of probabilities as I have just explained to you. An example totally unconnected with the case may be "***Mr John Smith, following a fall downstairs at his home address due to poor lighting conditions in the stairwell and contributed to by unsecured carpet and poor fitting slippers, died on 22<sup>nd</sup> February 2005 after fifteen days as an inpatient at between 2 and 4 pm at ward 4 of St Swithin's Hospital***". Members of the jury what the facts that make up the circumstances of the case is a matter for you to determine which should remain brief. It is important that at this point you keep to the forefront of your minds that an Inquest is a fact-finding exercise. It is neither a trial, nor a disciplinary hearing nor a complaint process. It is an attempt to find out and record facts about Jan Van Alphen's death. What happens to those facts elsewhere after we have finished with them is not a matter for us.

**Question four** deals with verdicts. In this case, having heard the facts of the case, it is appropriate to leave you with only one verdict. This verdict is that of an accidental death. You may return this verdict if on the balance of probabilities you find that Jan van Alphen died due to an unintended outcome of an unintended occurrence. To put this way an “accident” in this verdict has its normal construction in that it is an outcome no one intended. If you find this verdict proved you should return a verdict that “Mr Jan Van Alphen died an accidental death”.

You may wonder why after hearing two days of evidence you are only left with one verdict. Firstly, deaths in the workplace are of such significance in this country that Parliament feels that they should be considered by a jury. Secondly you are able to express your views as to the circumstances in box three. Thirdly, some of the evidence that has been heard is relevant to my other functions.

Let me now sound a note of warning. Any Inquest enquires into a death after the event and therefore with hindsight. Your task, when assessing the evidence, is to view it from the perspective of what the situation looked like in real time as the events were unfolding. You must also ascertain what each person knew at a relevant time. These matters are for you to evaluate.

On a separate warning note, and I cannot stress this too much, you must on no account in your conclusions identify any person or persons individually in your answers to question 3. There must be no names in any part of your

verdict other than that of Jan Van Alphen, it is vital that you comply with this direction. Finally, you must also refrain from making any recommendations yourselves or suggesting changes to any system if you found it to be defective. This is not your role, it is mine, and please do not stray into this area.

Question 5 records the registration particulars, which were given to you by my Coroner's officer, Mrs Wright and again the evidence is unchallenged. They are set out for you on the Inquisition, confirmed as correct by the family and the evidence is unchallenged and I would suggest that you find this evidence proved, but it is a matter for you as to whether or not you accept them.

Members of the jury I should remind you that they have a right to return to Court to seek further clarification or guidance from me at any point. However in order that the advocates may assist me in best addressing your needs I should be grateful if an indication of the questions should be given in writing. You may take with you the papers that you have been provided with and may review the DVD evidence again if you wish.

Finally, you must reach, if you can, a unanimous verdict. As you may know, the law allows me in certain circumstances to accept a verdict which is not the verdict of you all. Those circumstances have not arisen, so when you retire I ask you to reach a verdict on which each one of you have agreed. Should, however, the time come when I can accept a majority verdict, I shall call you back into Court and give you a further direction.

