

LORD CHANCELLOR'S DEPARTMENT CONSULTATION

REPRESENTATIVE CLAIMS

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

30 APRIL 2001

The executive committee would like to acknowledge the assistance of following people for assisting with the preparation of this response:

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REPRESENTATIVE CLAIMS

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents around 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To promote health and safety;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.
2. APIL welcomes the opportunity to respond to this consultation paper concerning representative claims. In summary, we wholeheartedly support the proposal that organisations should be able to bring proceedings on behalf of persons whose collective interests they support, despite their lack of a direct interest in the proceedings.
3. We fully agree that representative claims would improve access to justice, especially for personal injury victims who often have to pursue stressful, lengthy and costly litigation.

REPRESENTATIVE CLAIMS IN THE CONTEXT OF PERSONAL INJURY LAW AND PRACTICE

4. In the context of personal injury practice, APIL can envisage two areas in which representative claims would be extremely useful, as follows:

- Obtaining a decision on a particular issue generally affecting personal injury practice, such as the correct interpretation of legislation (category 1);
 - Obtaining a decision on a particular issue within the context of a specific claim / claims (category 2).
5. Examples of areas in which it would have been useful for an organisation such as APIL to pursue a representative claim are as follows:

Category 1

- Callery v Gray: whether after-the-event insurance premiums paid for before the issue of proceedings are recoverable under section 29 of the Access to Justice Act 1999
- Heil v Rankin: the appropriate level of damages awarded for pain, suffering and loss of amenity in view of the Law Commission's report on the same
- Wells v Wells: the appropriate discount rate to be applied to damages for future loss.

Category 2

- Tobacco litigation: the date of (objective) knowledge for the purposes of determining limitation under the Limitation Act 1980
 - Litigation concerning chronic obstructive lung disease of coalminers: causation
6. Allowing APIL to pursue representative claims in the above contexts would be extremely useful because:
- It would allow issues to be determined even if individuals are not in a position to pursue the issue themselves (due, for example, to financial difficulties)

- Prevent interested organisations from having to search for a suitable case on a particular issue to pursue and support so that an issue can be resolved
- Allow issues to be seen in context through submissions of all interested parties, including the Forum of Insurance Lawyers and the Association of British Insurers and not in the more limited context of an individual claimant and defendant.

THE APPLICATION FOR PERMISSION TO PROCEED

7. It is agreed that the representative party should be required to obtain permission from the court to issue proceedings to ensure that the representative is an appropriate body or person, with sufficient interest to be bringing the claim and to ensure that bringing the claim is the appropriate way to proceed.

THE IDENTITY OF THE GROUP TO BE IDENTIFIED

8. It is further agreed that representative parties should be able to make claims on behalf of a group whose individuals may or may not be named but where a situation exists in which an individual would have a direct cause of action. APIL are often aware of issues that cause concern, or are problematic, for personal injury victims and / or APIL members. It would be burdensome if our organisation had to identify individuals with a relevant direct cause of action as this would cause undesirable delay and expense.

OTHER INTERESTED PARTIES

9. APIL believes that it is imperative that all interested parties are properly involved and represented in all representative claims. For example, a

representative claim pursued by APIL may not only involve our equivalent defendant organisation, the Forum of Insurance Lawyers, but also, potentially the Association of British Insurers or legal expenses insurers, for example. For this reason, we believe that an independent party should be appointed by the court to investigate and involve all interested parties. This is extremely important as it must be ensured that all decisions reached on a representative claim are reliable and not subject to scrutiny because not all interested parties have had their views conveyed.

THE EXTENT OF THE CLAIMS / REMEDIES AVAILABLE

10. It is envisaged that most representative claims in the field of personal injury law would be pursued in relation to discreet issues rather than as a cause of action for damages. The representative claim would be pursued, therefore, for its value as a precedent, to assist related claims to be pursued or settled more easily. It would, however, also be beneficial if the range of claims and remedies available for a representative claim on behalf of named individuals were the same as the claims and remedies available for individual claimants.
11. APIL believes that the issue of damages for unnamed claimants and the usefulness of a trust fund to distribute damages to those affected should be revisited when representative claims are sufficiently developed.

PUBLICISING THE COURT'S DECISION ON A REPRESENTATIVE CLAIMS

12. The importance of raising awareness of decisions in representative claims is recognised. It is believed, however, that it would be sufficient to require all judgments in representative claims to be reported in the appropriate law reports. As the representative claim should involve all interested organisations, such organisations would also play a natural role in

disseminating relevant information regarding a representative claim to their members.

COSTS

13. APIL fully agrees with the working group that a representative organisation should not be prevented from litigation on the grounds that they may be unable to pay costs and that this should not be used as a criteria to determine their suitability to pursue such a claim. Further, APIL believes that each representative organisation should bear their own costs in all representative claims and that no costs liability should attach to a losing party.

14. This is extremely important for non-profit making organisations such as APIL. Non-profit making organisations such as APIL would simply not be able to take full advantage of the ability to pursue representative claims if cost implications had to be considered. This would be unfair in view of the fact that representative claims relevant to APIL would involve wealthy multi-national industries such as insurance, tobacco and chemical companies, which would not have to worry about costs to the same extent. Representative organisations can only operate on a level playing field if costs liabilities do not arise regardless of the outcome of the claim.

15. In addition to the above, APIL would also like to add that in category 2 type cases, where a representative claim is pursued to resolve a particular issue in the context of multi-party litigation, it may be appropriate for the Legal Services Commission to fund such a representative claim on the grounds of public interest.