MEETING NOTES

DATE: 15 June 2011, 5pm – 7pm
SUBJECT: APIL East Anglian Regional Meeting
LOCATION: Cambridge Quy Mill Hotel, Cambridge.
ATTENDEES: Tom Cook, Mark Copley, Deborah Hargreaves, Grant Hegley (speaker), Robert Horner (speaker), Orla Lawlor, Siobhan McWhinney, Victoria Mortimer-Harvey (EC Officer), Adrian Mundell, Jan Parry, Hannah Rutterford (Regional Co-ordinator), Joe Speed, Paul Taylor, Mick Upton (Regional Secretary).

1. INTRODUCTION BY HANNAH RUTTERFORD (HR).

HR welcomed everyone to the meeting and introduced the speakers. Rob Horner, Counsel from 3 Paper Buildings has a wealth of experience in personal injury claims and inquests. Grant Hegley is a Costs Lawyer from Imperial Costing, he has been practising for 22 years and has worked in the costs field dealing with bills in many areas of law including personal injury, general civil litigation, criminal cases and matrimonial cases. He has attended courts all over the country including the House of Lords and he works for both Claimants and Defendants.

2. "A CONTRIBUTION TO CONTRIBUTORY NEGLIGENCE" BY ROB HORNER (RH)

RH gave a useful overview of the law of contributory negligence. He explained how he felt it was an issue which often arose in cases but arguments raised by parties often showed a misunderstanding of the doctrine.

Because most cases settle, judgments on contributory negligence are not particularly common but where there are judgments on contributory negligence, RH is often surprised by how broad-brush judges are in their approach.

RH then went on to discuss the basics behind contributory negligence, including comment on the Law Reform (Contributory Negligence) Act 1945, the requirements which have to be met for contributory negligence to apply, the fact that contributory negligence must be pleaded if a Defendant wants to rely on it and the burden of proof, which is on the Defendant.

RH then went on to consider the concepts of fault and causation in relation to contributory negligence. RH felt that there had to be a causal link between the fault of the Claimant and the damage that Claimant sustained for contributory negligence to apply, not necessarily a causal link between the fault and the occurrence of the incident itself. Fault of a Claimant could arise from negligence, breach of statutory duty or carelessness in looking after his own safety.

An assessment of causation and fault help decide what responsibility each party should accept. First you should consider the person's relative blameworthiness and then go on to consider the causative potency of the relevant act or omission.

RH proposed a 4 stage "combined approach" to assessing contributory negligence:

1. Identify each relevant area of fault for each party;
2. Score each element of fault out of 10 and consider whether it fell below the reasonable standard;
3. Consider each element of fault and how causative it was to the loss/damage;
4. Compare/weigh the factors of blame and causation for each party against the other and then apportion contributory negligence.

RH referred to the case of *Gleeson v Court* where the Claimant's contributory negligence was assessed at 30% where he had travelled in the boot of a car carrying 6 people and was driven by a drunk driver.

RH said that contributory negligence cannot be assessed at 100% and he said courts rarely assess contributory negligence at less than 20%. If they assess contributory negligence at less

than 20% they do not usually find any contributory negligence as they will usually consider it not to be just and equitable to apply any.

Where there has been a breach of statutory duty by an employer contributory negligence will not usually exceed 50%. Employers have a non-delegable duty and inadvertence is entirely foreseeable.

RH reviewed the principles established in *Froom v Butcher* with regard to contributory negligence and seatbelts and stressed that recent challenges to *Froom* have failed and it remains good law.

Defendant's wanting to argue that the wearing of a seatbelt would have reduced the injuries sustained, should get evidence to show the difference which would have been made. In practice, they may need to get accident reconstruction evidence then medical evidence. The test to be satisfied is that the wearing of a seatbelt would have made a *"considerable difference"* and the injuries would have been *"a good deal less severe"* not merely made *"a lesser difference."*

RH also looked at contributory negligence in the context of part 36 offers and cycle helmets.

A hand out of Rob Horner's talk is available from APIL.

3. "THE ASSESSMENT OF A BILL OF COSTS – TIPS ON HOW TO MAXIMISE RECOVERY" BY GRANT HEGLEY (GH)

GH took everyone through a bill of costs and gave tips on how to maximise recovery of your costs at the end of a claim.

The area of costs has changed considerably over the years and with Lord Young's report on the compensation culture and the Jackson proposals, the costs picture could well change further.

Less bills now go to Detailed Assessments than in the past.

GH worked through the key areas of a bill of costs, providing tips along the way on how to help the cost draftsman produce a thorough bill which will increase your chances of recovery. Tips included:

1. Highlighting key facts to the costs draftsman that would impact on costs, such as unusual features of a case, conduct issues and difficulties encountered during the case.

2. A detailed narrative is key because when the Defendant's costs lawyer is asked to advise on what should be paid to the Claimant's solicitor, he/she will only be able to go from the Claimant's bill of costs because it is unlikely they will have seen the file.

3. In relation to funding methods, highlight the risks as they were assessed at the time of the funding agreement so that any success fee can be considered in light of those risks.

4. Enhanced rates can be argued for in some circumstances, for example if you did not use Counsel or if a Legal Executive is very experienced. Guideline rates are not meant to replace a judge's local knowledge and experience.

5. Make attendance notes detailed so that they are there to justify the time you are claiming. This enables a bill to give sufficient detail to the Defendant in the bill.

6. Chasing for medical records is often not recoverable so delegate this task to support staff.

7. Funding costs are often allowed so record this time and include it in the bill.

8. If claiming travel time to see a client, say in your note why it was necessary to travel and see them. If it is going to cost a lot, consider whether it would be cheaper to pay for a taxi for the client to come to you.

9. You can claim the cost of instructing a costs draftsman so record this time.

10. Success fees can be charged on the cost draftsman's fees and the Claimant solicitor will usually be able to keep this in practice.

11. In light of *Grey v Toner*, at present the Defendant is unlikely to pay interest as it is now payable only after detailed assessment. In this light, consider asking for more payments on account of costs.

4. EC UPDATE BY VICTORIA MORTIMER-HARVEY (VM)

A new APIL CEO, Deborah Evans, started on 6 June 2011.

The M.O.J are consulting on the possibility of extending the RTA process vertically and horizontally. APIL need to file a response by 31 June 2011. The M.O.J. are looking to extend the scheme to employer's liability and public liability cases for higher value cases.

APIL's view is that the RTA process still has teething problems and so should not be expanded at this stage.

APIL are still lobbying Parliament to say that implementing Jackson would not be a good thing, particularly non-recovery of success fees and insurance premiums. There is not a great deal of public interest. VM sent out 250 letters to clients on this issue, to send out but she only got 3 responses.

APIL's judicial review on the discount rate review has been delayed. APIL are awaiting the Lord Chancellor's acknowledgment.

A recent change in CICA policy has meant that payments now go to clients rather than lawyers. APIL have made a Freedom of Information request to see why the policy was changed.

The employer's liability insurance tracing code is now in place but APIL are still pressing for a fund of last resort to assist past claims.

The meeting was closed by HR who advised that the next meeting was due to take place in Bury St Edmunds. There would be District Judge Kirby and a Defendant insurer from Axa speaking.

MICK UPTON (Taylor Vinters, Cambridge)
Associate