

MINUTES

DATE: 21 November 2011

SUBJECT: APIL Damages Special Interest Group Meeting

LOCATION: Kingsley Napley LLP, London

ATTENDEES:

Edwina Rawson, APIL Damages Special Interest Group Co-ordinator

Richard Lodge, APIL Damages Special Interest Group Secretary

Richard Cropper – Speaker

Henry Witcomb – Speaker

John Spencer – APIL EC Officer - Speaker

DELEGATE LIST: See attached list

APIL Damages Special Interest Group Meeting Consisting of Three Speakers

1. Richard Cropper – “Your Place or Mine”

Richard gave a presentation on the background and alternatives to *Roberts v. Johnson*. Richard gave an insight into the work of CJC Committee who were employed with the task of examining the pros and cons of the alternatives to *Roberts v. Johnson*. The alternatives considered by the Committee were mortgage payments linked to periodical payments, Trust to give the Claimant a life interest in the property, the NHSLA have a charge on the property or renting accommodation. Richard's preferred choice was for the Defendant to have a lifelong charge on the property. Richard's view was that *Roberts v. Johnson* works most of the time but is most problematic in cases where the Claimant has a short life expectancy.

Richard also gave a general overview of the current position on the discount rate and why, in his opinion, it is not a big deal. If the discount rate goes down any benefit the Claimant will acquire is removed by the existence of periodical payments.

Richard's Powerpoint presentation was not available on the day but he offered to email the slides to those who requested a copy.

2. Henry Witcomb, Barrister, 1 Crown Office Row – “In the Quantum Trenches”

Henry had prepared a detailed handout entitled “In the Quantum Trenches” which provided a summary of the main issues arising from the recent High Court decision of *Whitten v. St George's Healthcare NHS Trust*. The main issues considered were the Claimant's condition, prognosis and life expectation. There was a significant dispute between the parties in *Whitten* as to the correct application of the Professor Strauss data. The Judge (Mrs Justice Swift) was critical of both experts but favoured the Defendant's neurology expert.

The other significant issues arising from the *Whitten* decision were: the form of award, multipliers, the award for loss of earnings, the award for care and case management, the claim for aquatic physiotherapy (this was disallowed), the award for aids and equipment and the award for accommodation.

Henry's handout was circulated at the meeting.

3. John Spencer, APIL EC Officer – “Current Activities in APIL”

John Spencer updated the delegates on APIL's current involvement in the Legal Aid and Access to Justice Bill which has now reached the House of Lords. Unfortunately the challenges to the Bill in the House of Commons have not been as extensive as first thought. The Liberal Democrat proportion of the coalition have not been as critical as APIL had hoped.

The anticipation is that the Bill will achieve much greater scrutiny in the House of Lords. APIL consider that the cross bencher peers will play a pivotal role in ensuring that individuals who have suffered injury as a result of negligence will have access to justice and not see significant proportions of their damages taken in costs.

Notwithstanding the anticipated support for scrutiny of the Bill in the House of Lords, John reminded delegates that petitioning MPs and providing statistics, case studies and anecdotal information about the likely effect the proposed changes will have to access to justice should continue to be fed through to APIL's head office. The campaign against the proposal set out within the Bill continues.

The meeting finished at 7.30 p.m