

Minutes of Association of Personal Injury North West Regional Group Meeting

Venue : The Masonic Hall, Manchester

Date : 9th December 2004

Introduction

The meeting was chaired by the Head of the North West Regional Group, Christopher Limb.

The minutes were taken by Ian Manners of Rowley Dickinson as Deirdre Healy of Pannone & Partners was unable to attend.

Unfortunately there was no Council representative, therefore there was no update on Council issues.

Chris Limb reminded people about the next meeting on the 24th January 2005. He asked if the group still wanted the meeting to go ahead or if matters were to be adjourned to the next North West Regional Forum which is due to take place on the 24th March 2005. It is proposed that at the meeting in March the Special Interest Groups concerned with damages, funding and representation will each take a part of the meeting.

Mr Limb also reminded people about the APIL Annual Conference which will take place on the 27th/28th April 2005 and the Clinical Negligence Conference in York which is due at the end of September 2005.

Frenkel Topping Forensic Accountants

A discussion regarding periodical payments; implications of the Court Act and potential solutions conducted by Andrew Sands and Jennifer Stone.

Andrew Sands spoke first:

Mr Sands introduced himself as a former Solicitor now working for Frenkel. Jennifer Stone has a background in financial services.

Mr Sands discussed the Court's Act in accordance with the handout, taking the Group through each of the points raised in the handout on pages 1 through to 6. The important points in relation to large value claims appear to be as follows:

- The Court's Act brings about major changes in the calculation of future loss.
- The Court will have power to order compensation by way of periodical payments in relation to future pecuniary loss.
- Periodical payments will have various advantages including - tax free income - burden of financial management removed from the Claimant - lifelong income.
- Reference should be made to the practice direction attached to CPR Part 40 - specifically 40(c) as this points out the new system will apply where the future loss is likely to equal or exceed £ 500,000.00 and in any other case where a structured settlement might be appropriate.
- The Claimant's Solicitors should consider means of meeting future loss needs other than or in addition to a structured settlement.
- Mr Sands said that the writing is on the wall for the lump sum settlement in relation to future loss. Periodical payment is going to take over.
- The Court may, if the parties consent, order that all of the damages including general damages may take the form of periodic payments. But the Court may only make a periodical payment order where it is satisfied that the continuity of payment is reasonably secure.
- Variation of periodical payments is permitted if it is proved or admitted that there is a chance that at a future date the Claimant will develop some serious

disease or suffer some serious deterioration or should the Claimant's condition significantly improve. This is very much like provisional damages.

- The Court will have power to impose periodical payments and reference should be made to the new Part 41 of the CPR and the attached Practice Directions.

Jennifer Stone then took over:

- There is a question mark over how the Defendant will fund periodical payments. Larger insurers and Government bodies will probably self fund. However, smaller organisations will have to purchase annuities in the market place.
- There are only a few companies who actually offer annuities. For example, Scottish Widows.
- Although Government bodies and large insurers may be reasonably secure, there could be a problem with smaller insurers. Remember, there must be reasonable security before the Court will order periodic payments.
- The 2035 problem - index linked gilts expire in 2035. Thereafter there will be a fixed rate increase not linked to the Retail Prices Index. At this stage no-one knows how Defendants will make up any shortfall that arises from this change.
- JS advised against imposition orders as she thought they would probably be against the Claimant's interests as they would lead to reduced sum awards. Her recommendation was that the parties should negotiate rather than allow the Court to impose an order.
- JS said it would be possible for the Claimant to apply for an interim payment early in the proceedings to deal with immediate care needs.
- The discussion finished with speculation that this regime may be extended to smaller cases in due course.

Discussion Concerning Road Traffic Accidents in Spain - conducted by Alberto Perez Cedillo, President of The British Spanish Law Association in the UK

Mr Cedillo provided the meeting with an outline of how the Spanish legal system works in relation to road traffic accidents and made some other general comments relating to other areas of personal injury litigation in Spain.

The important points would appear to be:

- The Spanish system is very different.
- Before a Claimant can instruct a lawyer to act on his or her behalf they must give a Statement to a notary to the effect that he wished to instruct a lawyer and it is only after the notary has notarised that Statement that a Claimant can actually go to a personal injury lawyer to ask them to pursue a claim.
- Limitation in Spain is one year from the date of the accident or, the date in which the victim became fully aware of the injury or, from the end of any criminal proceedings that were commenced. The one year time limit is quite strictly applied and Defendant insurance companies in Spain will not agree to extensions.
- The Defendant must be notified and proof must be provided of that notification.
- In road accident cases, the notification can be sent to the insurer, if known.
- It is possible to interrupt the one year limitation period and therefore extend it, but this is not easy.
- If criminal proceedings are pursued, the Spanish Court has power at the conclusion of the criminal action to make an award of damages that would apply to the civil case. This is how most road traffic cases are dealt with in Spain. If criminal liability is established, the Court will also award civil damages without there being a separate civil claim.
- The Criminal Courts rely heavily on the police report. These reports are not always very detailed.

- One of the first decisions a Criminal Court will make is whether the offence was serious or not. Offences are divided up into serious and misdemeanours.
- A civil claim can only be pursued where there has not been an award of damages in the criminal case. Any award of damages in a criminal action is considered final. However, it is possible to persuade the Criminal Judge not to make an award of damages which would then allow the civil case to proceed.
- It is possible for the Claimant's Lawyers to become involved in the decision about whether the offence is serious or not and to discuss with the Judge whether or not civil compensation should be awarded when the criminal proceedings are concluded or, if the award should be delayed and a civil action pursued.
- The Criminal Courts may not award damages where the full extent of the injury is unclear and it cannot quantify the claim. In practice, this means civil cases will only proceed where the injuries are serious.
- The Claimant has to bear his own costs. In Spain, contingency fees are commonly charged by Spanish claimant lawyers. Again, this means that only the larger claims tend to be pursued.
- The legal aid system is poor.
- Most Spaniards have legal expenses insurance.
- There is a high turnover in Judges in the most popular holiday resorts. This means that in practice, if you are pursuing a claim in for example, the Canary Islands, it will take quite some time to conclude.
- Since 1995, there has been a tariff system determining the level of damages. Injuries are listed and categorised on the basis of temporary or permanent incapacity. An assessment is then made of the level of disability on a percentage basis.
- Under the tariff system, points are given to each injury. Each point has a monetary value. The total number of points constitutes the basic award,

which is then increased or decreased depending upon the percentage of disability. The percentage also tries to reflect the amount of income loss.

- In general, those on higher incomes do not do as well as those on lower incomes when it comes to being compensated for loss of earnings under this system.
- Bereavement awards for the death of a child for example, are quite high. The example was 50,000 Euros for the death of a child.
- Negotiations with insurers are usually difficult. They often fail to acknowledge correspondence.
- Low value claims are not worth pursuing because of the problem with costs.
- There is a compensation fund to meet uninsured and untraced claims.
- Damages will be awarded for medical costs provided by professionals but, you are not likely to receive much or anything at all for care and assistance provided by non professional carers.
- In general, the Claimant's Solicitors will provide medical evidence.
- Any state benefits the Claimant receives as a result of the injuries are not included in the compensation awarded by the Spanish Courts. This point was not clear but it appears to suggest that if the Claimant has received benefits, the Court will discount those from the compensation award and the Claimant may suffer some sort of loss.
- If the other motorist is Spanish, you must pursue the claim in Spain. However, if the other motorist is British, you can pursue it in the UK.
- Under a Brussels Convention it is possible to enforce a Judgment against a Spanish insurer.

The meeting then concluded with thanks to the speakers.