

## **MINUTES OF MILITARY SPECIAL INTEREST GROUP ASSOCIATION OF PERSONAL INJURY LAWYERS**

Meeting held at Freemason's Hall, Manchester on 22<sup>nd</sup> March 2007.

### **PRESENT**

Jeremy Taylor  
Katie Gemmell  
Donna Dodd  
Raymond Donn  
Mark Fielding  
Clare Gooch  
Mark Gray  
Simon Harrington  
Liz Hoskin  
Paul McClorry  
Geraldine McCool  
Andrew McDonald  
Peter Quegan  
Zoe Sutton  
Andrew Taylor  
Clare White  
Barbara Woodbridge  
Andrew McDonald  
Mark Creuy

### **GUEST SPEAKERS**

Colonel (Rtd.) M.J. Capper  
Gerard Martin Q.C  
Neil Sugarman - EC Officer /Speaker

#### **1. Welcomed by co-ordinator.**

Jeremy Taylor opened the meeting and welcomed the guest speakers and introduced Neil Sugarman EC Officer as the first speaker to update on the activities of the Executive Committee.

**2. Neil Sugarman Executive Committee update.** Neil Sugarman advised that the current big issues which the Executive Committee are dealing with are firstly the Compensation Act which comes into Force on 6<sup>th</sup> April 2007 making it an offence to provide Claim Management Services without authorisation. APIL are trying to ensure that Claims Management Companies are under regulation. He explained that Martin Bare Vice President has had a meeting with the FSA to explain why we want insurers to be regulated and the FSA are looking at this issue.

Second issue is streamlining of the claims process, he advised that the Small Claims Consultation paper is still not out but feedback is imminent. It is going to be a very

important document and is likely to provide a super protocol for small claims. He advised that APIL will look to the membership for input when preparing its response.

There is a Damages Law Commission Report which is outstanding and has not been addressed. The Government said that it would look at the topic again in January but this has not happened and APIL are pushing for this consultation.

With regards to the Mesothelioma cases, APIL are working on a Protocol to speed up claims and payment in a draft protocol, in discussions with the TUC and asbestosis support group. Also looking at the EL insurance tracing code as it is not working as well as it could and the DCA have promised changes to the code. He advised that we are to report any problems to APIL.

He advised that APIL are commissioning surveys on trends in the PI market on the impact of LEI and payments for referrals and if we are approached to participate please do as APIL needs hard fact evidence.

Garrett and Myatt still rumbles on and if you experience problems then please feed this information into the office. APIL continues to work at securing information where third party insurers contact clients direct Quinn Direct has been identified as one of the insurers doing this. He stressed that feedback is needed from the membership.

### **3. Guest Speaker Colonel Mike Capper talking on career forecast.**

Colonel Capper explaining his background. He was in the Reme when serving and was responsible for dealing with APC issues. He retired 6 years ago. He got cases through Stone Star and joined the group however he explained that Mike Trace who started Stone Star is looking to give up as they have lost a number of experts and they were short in some areas so they are braking up but he still accepts instructions and if we have any RAF claims then he can put us in touch with people who can assist.

He was responsible for policy manpower of the Reme, career management division and has insight into structure.

He sat on promotion boards. He explained the Army is split into Arms and Services. He advised that if we are experiencing difficulty getting information then we should go direct to Glasgow Head of Litigation Cell is Sheena Sinclair on 0141 224 3033 Injury Compensation is dealt with by Dave McAdam on 0141 224 3028 and Carol Black on 0141 224 3031. He reminded us that we can use the Freedom of Information Act if we are still experiencing difficulty.

He explained that promotion boards use annual confidential reports. Officers have staff College reports. He explained the P file is not used at promotion boards.

Colonel Capper explained that confidential reports are about to change. In 2-3 years he is not going to be able to deal with cases because things will have changed. He went through the current confidential reports and explained important bits of the documents. The front page deals with fitness and has the PES date. FE means fit everywhere HO/P7 less fit. Also details what position you are recommended for, the

period it covers and there should be no gaps in the periods covered by the confidential report. It details substantive date and when this was achieved. To be promoted you need O/A report which is outstanding or adequate. If you are to be promoted it needs to say yes you should be promoted now not potential for promotion. He then explained the first part describes job potential, how well you have done, what you have contributed etc. If people served in the field force you need to know how well they have they have done in the field, you are looking for leadership. If for example they have got low physical stamina grade need to check when this came in if it was before the accident that may cause problems. Explained that the promotion board marked out of 10 there are 4 markers and you are looking for a score out of 40.

He then explained his role and how he could assist. He is an expert who can write a career forecast. To do this he needs confidential reports or insert slips, if someone has been detached to a unit then it would be the employing officer who writes the insert slip. He would then probably have an interview with the client, he needs statements from old employing officers, family, friends who have served with the client then he will do his own forecast on what the Claimant would have achieved had the accident not happened including how long he would stay in. He explained that sometimes you cannot argue with the MOD's forecast. He said that is happy to have a look at any case free of charge to see if it is worth fighting. He explained key things are average length of service, when he last got promoted, family background, previous Cadet service or being in the TA. He also stressed to let him know when a case has finished so that he can destroy papers and also timely of fees payment is appreciated.

4. **Guest Speaker Gerard Martin Q.C** introduced his talk which was to provide an update on Military Case Law over the last 2 years.

First of all the case of Smith –v- MOD which is a limitation Case. Point of interest is the MOD seeking to claim prejudice. The Claimant pursuing claim on a CFA with a success fee now and in the relevant period Legal Aid would have been available so there would have been no success fee. This argument didn't find favour. He also referred to the decision of Judge Hawksworth in Clack –v- Thames TV this was the same point in Halifax District Registry however S.33 discretion was allowed so didn't have to make a decision.

Next Case is West –v- MOD. This was successful PTSD claim that came out of Bell –v- Others. The point of interest is that following the symptoms of PTSD Mr West began consuming cannabis and was convicted and sent to prison. The argument which the MOD ran was regarding illegality. Owen J heard the case. Counsel for the Claimant conceded that the Claimant could not claim within the PTSD claim future loss of earnings during the conviction period or disadvantage on the open labour market because he would have been disadvantaged by being a convicted criminal even though it was found he wouldn't have taken cannabis but for PTSD. There was then an argument that the Claimant whilst in prison was abused because it was found out he revealed to the police the supplier of his cannabis, that didn't flow from the illegality it was caused by the Claimants own lawful behaviour and he was compensated for this.

In January 2006 the case of Jackson –v- MOD which was in relation to exaggerated claim. The Claimant served a schedule in excess of £1m. Parts of the claim were later abandoned and the claim was for £240,000.00. The Defendants made a Part 36 offer of £150,000.00 which was rejected there was an Order to attend a joint settlement meeting. At Trial the Claimant was awarded £155,000.00. Judge took the view that the Claimant had significantly exaggerated the claim and even though had just beaten the payment into court reduced the Claimants costs by 25% in view of conduct. The MOD appealed this decision their Counsel argued that firstly the Judge had failed to take anything into account which happened at the joint settlement meeting secondly that the discount of 25% should be greater to provide a disincentive to exaggerated claims and thirdly should take into account the costs the Defendants incurred in responding to the exaggerated claim. The Court of Appeal held that the MOD failed to show the Judge had been plainly wrong on the Cost Appeal. Joint Settlement Meetings are without prejudice and are privileged and there was nothing wrong with the balancing exercise regarding 25%. Mr Martin QC pointed out that a practical point to make would be to write without prejudice on the schedule for benefit of joint settlement meeting to prevent it being referred to at Trial regarding any exaggeration.

Brown –v- MOD which is case regarding valuation for loss of a chance and how you approach the valuation regarding loss of pension. Herring –v- MOD was referred to in the Judgment of Lord Justice Potter. Conclusion, that in terms of pension and chance of completing 22 years service called for an assessment on a percentage basis by way of loss of a chance.

Mr Martin QC advised that there had been 2 Crown Censures for MOD work place transport facilities this is where the HSE forms an opinion that but for Crown Immunity there was a realistic chance of prosecution against the MOD and these are useful things to ask for.

General discussion regarding combat immunity. Mr Martin Q.C advised that Bell is the starting point and Owen J sets down the principles in paragraph 2.3.20 of the judgment.

Then look at Neil J's approach in Mulcahy in which consideration was given to the Judgment of Dixon J and implied that there was nothing inconsistent in the way Dixon J had approached the problem with the later decision of the House of Lords in the Burma Oil Case. Mr Martin had argued that it is legitimate to draw upon the additional passages from the Judgment of Dixon in order to gain the meaning of active operation and to distinguish between active operations against the enemy and other activities of combatant services in time of war.

Then there is the Case of Bici where Elias J stated that for immunity to apply for a policing or peacekeeping function the attack or threat of an attack must be imminent and serious.

He then opened a general discussion regarding activities which are in theatre but would probably be o.k for example the Burma Oil, Shaw Savile Case, RTA on the sea when you are in a warship, Land Rover carrying shells, not on active operations driver falls asleep vehicle rolls passenger paralysed that is probably o.k.

There was then a discussion on cases which we were bringing and the responses we were getting from the MOD.

**MEETING ENDS**