

Special Committee on Personal Injuries

1. By way of continuation of last year's work in drafting the Revised Practice Direction 18.1 on the Personal Injuries List, this year kicked off with the Civil Justice Reform Training General Seminar on the new Practice Direction. The Seminar was organised by the Hong Kong Bar Association, under their General ALE Programme, and was held on 12th February 2009. Mohan Bharwaney SC, Raymond Leung and Julia Lau of the Special Committee made presentations at the Seminar drawing the attention of the participants to the important revisions under the CJR and the corresponding amendments made under the Revised Practice Direction 18.1. The Seminar was very well received.
2. Following that, a meeting was held among members of the Special Committee on 31st March 2009 to discuss and compile a list of issues to deal with in the coming year, not least of which was the question of introducing a Hong Kong Damages Ordinance, similar to the provisions under the UK Damages Act 1996. This is a matter of critical concern, given the prevailing poor rate of return on savings and investments.
3. Senior Counsel specialising in personal injury litigation were invited by the Special Committee to comment and to discuss the issue of the multipliers the courts ought to award in the present financial climate. A meeting was held on 29th June 2009 during which Mr. Michael Ozorio SC, the former chairman of the Special Committee, suggested that members should launch an in-depth study of similar reforms in UK and conduct comparative studies on this issue in other common law jurisdiction before the matter could be discussed further with the Judiciary and the Law Reform Commission. This is currently being undertaken by Nicholas Pirie, Corinne Remedios, and Julia Lau. Copies of the Law Commission Consultation Papers No. 125 and Law Commission Report No. 224 of the Law Reform Commission of UK had already been obtained and circulated to members for their perusal and consideration before the meeting.
4. The Special Committee was invited by the Law Society of Hong Kong in early June 2009 to consider providing pro bono assistance on PI matters to their newly launched Helpline to the general public. The Special Committee was supportive of the proposal.
5. While the provisions of the Revised PI Practice Direction appear to be generally followed by PI practitioners, members of the Special Committee anticipate that there will be new matters and issues which need to be considered in the near future, including the new provisions regarding mediation which come into effect next year.
6. Currently, members are in the course of studying the recently issued consultation paper prepared by the Law Reform Commission of Hong Kong on Class Actions.
7. The other main issues under consideration are:
 - (1) Multipliers and the rate of return;
 - (2) Medical evidence in Personal Injury cases and in particular:

- i. the provisions in the Practice Direction in connection with joint medical examinations make it difficult if not impossible for plaintiffs' solicitors to have an independent assessment of the strength of the case before commencing negotiations and/or issuing the Statement of Claim;
- ii. the problem of the relatively more junior doctor in a joint examination "deferring" to the more senior doctor so that the former's opinion does not surface;
- iii. it is now customary for there to be no live medical evidence even where there is a material difference in the opinions (for example, whether or not the Plaintiff can return to work at his pre-accident employment): how is the court to make a proper assessment just by reading the different opinions;

(3) Case management issues, including:

- i. the problem of proforma "standard terms" CLR Orders – the use of these standard terms may not be entirely appropriate to the case in question;
- ii. whether CLR hearings should proceed where the Writ has been issued but not served; and
- iii. the role of a PI Master and the PI Judge at case management conferences.

(4) The need for a Hit and Run MIB Agreement.

8. A vote of thanks must go to my whole Committee for their valuable contributions throughout the year. Many of the topics discussed have required heavy time commitments and enthusiasm from members of the Special Committee whose efforts have enabled us to come forward with meaningful contributions to the continued development of the law and practice of personal injury litigation.
9. I must also thank Julia Lau for recording minutes of our meetings and for producing the first draft of this report.

Membership:

Mohan Bharwaney, SC (Chairman)
Nicholas Pirie
Corinne Remedios
Ashok Sakhrani
Christina Lee
Raymond Leung
Julia Lau

Mohan Bharwaney, SC
Chairman
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7 December 2009