Multipliers – the rate of return

Adrian Palmer QC, Guildhall Chambers

9th June 2010

In the beginning :

1. Damages Act 1996 s.1(1) in force autumn 1996, but no rate of return was prescribed

2. *Wells v Wells, HL, 1*998:
   Pending any prescription by Lord Chancellor, courts should apply 3-yr average of the net return on ILGS gilts (i.e. net return in excess of inflation) - viz 3%

…… in the beginning

3. Lord Chancellor's statement June 2001 – 2.5% (rounded 2.09% to the nearest half-point and arrived at 2.5%)

4. *Cooke v UBHT*, 2004 – no challenge to 2.5%, via other methods of computation.

Developments in UK since 2004

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Developments elsewhere

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Helmot v Simon **14 January 2010**

1. RTA (cyclist); v. serious brain injury
2. Two features:
   - No power to make p.p. order;
   - Not bound by Ld Chancellor's statement
3. Snippets from evidence:
   - Daykin said 2.5% was high when it was fixed
   - Experts agreed that 3-yr rate was 1.28% gross of tax

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Helmot: C's contentions

For heads of damage not related to earnings:

• 3-yr average yield (above UK RPI)	1.28% gross	
• Net of Guernsey tax (rounded down)	1.00%	
• Less difference between UK and Guernsey RPI	0.50%	
		0.50%

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Helmot: C's contentions (cont'd)

For earnings-related heads of damage:

• Brought forward		0.5%
• Less reduction for difference between RPI and earnings inflation	2.00%	
		- 1.5%

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Helmot: the court's conclusions

For heads of damage not related to earnings:

• Starting point		2.5%
• Less decline in net 3-yr yield since 2.5% rate set	1.05%	
• Less difference between UK and Guernsey RPI	0.50%	
		1.0%

For earnings-related heads:
No further deduction – kept at 1.0%

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Helmot: further steps

- Appeal lodged by C: to Guernsey CA; then to Privy Council
- If "translated" back to UK, we have 1.5%:

Life multipliers for males

Age	2.5%	1.5%
30 yrs	29.05	36.39
50 yrs	21.86	25.60

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Developments back in UK

- Political pressure?
- 2 or 3 cases in London with following features:
  a) Serious injury case – say c.£2m conventional lump sum.
  b) PL or EL case (not RTA) with insurer's indemnity limited to say £3m.

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The tale of the expert witness: *Jones v Kaney*

Adrian Palmer QC, Guildhall Chambers

9th June 2010

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The facts of the case:

- RTA March 2001
- Dr K instructed for C May 2003

…. *C had symptoms leading to diagnosis of PTSD*

The facts of the case:

- Discussion and joint statement Nov 05

"... Both experts agree that [C's] psychological reaction after the accident was no more than an adjustment reaction that did not reach the level of [any] psychiatric disorder"

" … Dr K has found [C] to be very deceptive and deceitful in his reporting ……."

The facts of the case

- Discussions between C's solicitors and Dr K

…… *Dr K's explanation*

- Court refused to allow C to instruct a different expert.
- Case settled for reduced sum
- Claim started against Dr K April 2009

Stanton v Callaghan [2000] QB 75

" … *the law does recognise immunity from suit in relation to certain things done or omitted to be done in the course of preparing for or taking part in a trial …. [including the process of joint discussion and preparation of the joint report]"*

C's contentions

1. The subsequent decisions (including two HL decisions) that have reduced the immunity of advocates.
2. The concept of a blanket immunity is now seen to offend the Art.6 right of access to court: *Osman*

The judge's conclusion

… rejected by the first instance judge (Blake J)

…. BUT certificate for leapfrog appeal to Supreme Court granted AND permission to appeal now granted by Supreme Court

Three thoughts

1. Could/should steps have been taken to prepare Dr K so as to avoid this disaster?
2. How is follow-on litigation such as this funded on behalf of this claimant in a modest RTA case?
3. The immunity of expert witnesses may well have been changed by the end of 2010.

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