Periodical payments and the Courts Act

32nd ANNUAL GIRO CONVENTION

The Imperial Hotel, Blackpool

Agenda

The plenary will cover:

- Periodical payments – where are we?  
  Andrew Parker
- The claims manager's perspective  
  Doug Brown
- Report from the working party  
  Anthony Williams
Periodical payments – where are we?

Andrew Parker
Head of Strategic Litigation
Beachcroft Wansbroughs

Periodical payments – a new model?

Periodical payments: a numbers game?

- 100 + 101 = 2 – 6
- 1.4.2005
- 6/12
- < 50
- 2% +
How do Periodical payments work?

- The types of case considered by the courts
- Stage 1 – indication (not binding)
- Stage 2 – decision
- Settlements – the role of the courts
- Infants and “patients”
- Trials

How are claimants approaching this?

- Do claimants want PPs?
- Financial advice – for whom?
- Investment risk – transferred?
- Security – what does the Act say?
- Indexation

Indexation – an old argument

- The legal history
  - *Wells v Wells* – 3% discount rate
  - *Damages (Personal Injuries) Order 2001* – 2.5%
  - *Cooke v UBHT* – an accountant’s argument
  - 2005 – a labour economist’s argument
- The parliamentary position
- The wider debate
Future trends

- Steep learning curve...
- ...unusual arguments
- Cautious approach by judges
- Claimants do not want PPs, but...
- Pressure to settle
- Financial advisers – additional cost?
- Growth market?

The claims manager's perspective

Doug Brown

The perceived impact of periodical payments on claims management varies significantly

- Wants vs. Needs
- Polarized views as to perceived impact
- 'Wild West' mentality
- No longer a claims decision
- Business impact assessments being conducted
The level and type of response to the introduction of periodical payments is driven by a variety of factors:

1. The type of business written by the insurer
2. Estimates of number/proportion affected
3. Contract wordings and capitalisation
4. Variation of Case Estimation
5. Settlement Strategy and Part 36 Offers
6. Claims infrastructure and Claims Management

Predicting the future impact of the periodical payments cannot be simply based on historical experience:

- Impact on the claimant — Needs not wishes
- Limited impact for insurers
- Increased focus on early settlements and rehabilitation could lead to higher costs
- Fewer cases proceeding to court?

The advent of periodical payments should be seen as an opportunity rather than a threat.
Report from the working party

Anthony Williams

Periodical payments and the Courts Act Working party

Members:

Fabrice Brossart, Catherine Cernesson, Doug Brown, Catherine Gwinnett, Sheree Howard, Simon Marks, Joe Monk, Jamie Reid, Anthony Williams (Chair), Gary Yeates

Working party report

- Background to periodical payments
- Understanding the impact on insurers
- Impact on claims management
- Reinsurer specific issues
- Financial impact
- Survey results
- International perspective
- Looking forward
- Numerous appendices providing background information
Understanding the impact on insurers

- Classes most likely to be affected
  - Motor, Liability and Medical Malpractice
- New risks introduced to insurers and reinsurers
  - Including life insurance style risks
- Options for insurers
  - Self funding
  - Purchase of an annuity
  - Mortality pooling
- Many other challenges

Survey results

- Our informal survey includes 9 insurers
- Very few claims to date
- Approaches to funding were mixed
- Discussions with reinsurers were ongoing
- Cost impact was uncertain
- Reserving allowance for periodical payments

Workshop

- Aimed at being a discussion forum, considering:
  - Reserving for periodical payments
  - Reinsurance issues
  - How periodical payments may work in practice
- and an opportunity to discuss the details of the paper with the authors
Any questions?