Trevor & Gilbert ASSOCIATES

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Providing you with answers

premex group

the voice *of FOIL* May 2010

President's Notes

May was a relatively short month for me. For the last couple of years I have fled the country as soon as the office financial year end has ended. This year was no exception but what remained of May was busy, as you will see.

Firstly, the Association of British Insurers has confirmed that it fully supports the recommendations made by Lord Justice Jackson and supports the implementation of his package of interlinked reforms. We have been liaising closely with the ABI on this and will continue to so. Further meetings are planned.

Thus over the coming months we will see more activity on Jackson and it will be good to have some more positive vibes around it after the chorus of moans and groans that we have had from the claimant lobby.

It is clear that APIL is still viewing Jackson as not proposing a solution to the cost of litigation but rebalancing the civil justice system away from injured people and in favour of the compensator. I struggle to see that myself and what concerns me most is that the claimant community still does not appear to want to concede that the costs of litigation have become disproportionate. I think that this needs to be accepted by all: a meaningful debate can then be had once that proposition has been accepted.

On our side of the fence we have put some more work into the Employers' Liability Disease Fixed Fees. The eagle–eyed amongst you will recall that Jackson was due to supply further data at the end of March and there would be a further period of 6 weeks for written submissions. These dates have slipped but the data gathering is still underway and this part of Jackson's report will be completed but it will be delayed. Data gathering for RTA, EL and PL accident cases did not have the complexities faced on the disease side with multiple defendants and varying contributions.

FOIL organised a meeting with the ABI and representatives of insurers to discuss the issue of fixed fees in the disease arena. The meeting involved myself, Michelle Penn, Nick Pargeter and two representatives from our Disease SIG (Jim Byard and Gary Fitzpatrick) . If anyone is keen to help out in future please let me know. Disease cases are, of course, very different to EL/PL cases but even the number of cases migrating

up to the multi track still allows scope for fixed fees for some disease cases when the action stays on the fast track.

We discussed possible exceptions to the fixed fees and concluded that the existing arrangements under Part 45 would suffice. It was felt that the greatest need was for fixed fees in the pre-litigation space.

Much will depend the available data and I understand that some may be available later this month and that we are likely to have further consultation on both disease and housing cases over the summer.

Charity Golf Day

Lastly can I take this opportunity to thank all the firms who entered the Charity Golf Day and all the golfers who gave so generously on the day.

We raised £2,300 pounds for the The Buddha Memorial Children's Home Trust. This is a charity providing practical, long term solutions to the plight of destitute, orphaned, abandoned and underprivileged children regardless of religion or culture in Nepal through a boarding school near Kathmandu, and the Sherpa School in Eastern Nepal. This area of Nepal is so poverty stricken that a little bit of money goes a long way. £300 will feed, clothe , house and educate an orphan for a year and £150 will support and educate a child in the day school for a year. You will quickly see that our contribution will make a real difference to many lives.

Thank you very much.

Report from the CEO

Long before coalition became a way of government, Steve Thomas, then of Zurich, said, "From reforming the personal injury claims process to Government intervention in asbestos litigation, it has never been as important to have a strong voice and lobby to influence outcomes. There needs to be some 'cabinet responsibility' attached to this. If insurers want a strong and effective FOIL then they need to support those lawyers who are prepared to commit".

The future will be no less challenging than the past and it therefore remains imperative that we work together with insurers, and that insurers continue to support FOIL, whilst at the same time maintaining the independence of FOIL that is critical to our credibility and keeping our "place at the table".

Manchester Claims Association

I gave a talk to the Manchester Claims Association on 13 May and during the Q & A, I was asked whether FOIL could help change the law on genuine claimants giving evidence under oath to support fellow but fraudulent claimants. The recent Ul Haq case was cited. I was not familiar with the case but was able to refer the matter to Damian

Ward, Head of our Fraud SIG. My thanks to Damian for his excellent review of the law in this area which was passed on to the questioner shortly after the event. This served to remind me how useful focus groups can be and we absolutely want to continue with this practice although I do also recognise that some radical rethinking on the areas of law covered, the structure of the teams and the funding is needed. Proposals in this area will be put to the National Committee for discussion at the next meeting on 8 June in Manchester.

It also got me thinking that, whilst we respond to consultations extremely well, actually mounting a challenge to existing anomalies is far harder. I would however like to get FOIL to a position where we can try to set the agenda where possible as well as responding to consultations. Asking as well as answering should be our aim.

Multi track code pilot

Andy Underwood and I recently met with a leading insurer not currently involved in the MTC pilot. FOIL supports development of the code and we would very much like to see sufficient cases going through the pilot to allow valid assessment of its worth. There is clearly something of a chicken and egg here in that the more cases that go through, the better the assessment that can be made; yet without a bank of credible data, it is understandable that some insurers are reluctant to test a code of conduct in real time using real cases and real money.

I agreed that FOIL should play a bigger part in the pilot starting with an appraisal of the available data. I'll report back on this as the pilot evolves.

Meeting with the CII

I recently had an extremely useful meeting with the Chartered Insurance Institute in London and it is clear that we can link the various activities of our respective organisations for mutual benefit. I'll report back in more detail on that next month as well.

"Improving the process" seminar

This will be held in Manchester on 13 July. Once again we have a terrific roster of speakers. The debate is about whether the right of everyone to have access to justice, a concept at the heart of any equitable society, is actually being positioned by vested interests to promote unsustainable levels of compensation and cost. Are there in fact improvements in the current process, which, with a bit of goodwill, would not be difficult to achieve and which would improve the process considerably both for the genuine claimant and for the defendant compensator?

I look forward to seeing as many members as possible at this event.

In the meantime, on any issue please contact me on 07921 491 426 or 01256 466 354 or email to: laurence.besemer@foil.org.uk

Diary Dates

As you will see from the schedule below FOIL Exec meetings for 2010 will alternate between London and Manchester. All members are welcome to attend the meetings, subject to space – if you would like to attend please contact Carmela Clarke on carmela.clarke@foil.org.uk

8 June 2010 FOIL Executive meeting, Weightman's office, Manchester

6 July 2010 FOIL Executive meeting, Weightman's office, London

13 July 2010 FOIL Conference 'Improving the Process', Manchester Conference Centre – *see below*

FOIL in Action

Coalition announces proposals

The new Government has now announced the full line-up and details of the new responsibilities at the Ministry of Justice. In addition to having oversight of all departmental business, Ken Clarke, the Lord Chancellor and Secretary of State for Justice, plays to his interests and experience in having responsibility for criminal justice, judicial policy and EU and international issues. Tom McNally, Secretary of State and Deputy Leader of the House of Lords will have responsibility for legislation and law reform and the Law Commission. Jonathan Djanogly, Parliamentary Under-Secretary of State, will have responsibility for Legal Aid and legal services; HM Courts Service, Tribunals and administrative justice; civil law and justice; coroner reform and the Criminal Injuries Compensation Authority. Nick Herbert (the Police Minister), and Crispin Blunt, will have responsibility for mainly criminal issues.

The MOJ has confirmed that it will deliver £343m of savings as its contribution towards the £11bn savings across Government. A number of areas of savings are set out including:

- Saving £27m by 2012 by reducing the MOJ's arm's-length bodies, including reducing their number by one-third this year.
- Streamlining the Legal Services Commission (and moving it to Executive Agency status)
- Bringing together HM Courts Service and the Tribunals Service into a unified agency
- Abolishing the 19 Courts Boards
- Reviewing the role and operation of the Judicial Appointments Commission (subject to legislative approval).

Andrew Dismore MP loses seat

Andrew Dismore, the Labour MP for Hendon, lost his seat at the General Election by 106 votes. Previously a partner at Russell Jones and Walker, he was a highly vocal supporter of compensation for individuals with pleural plaques, and for the creation of

an Employers' Liability Insurance Bureau. He introduced private members' bills on both issues during the last Parliament, both of which fell at the end of the last session.

It has been reported that Andrew Dismore might be the first defeated MP to challenge his result. Having lost by only 106 votes he claimed that difficulties with postal votes and queues at the polling stations had denied him hundred of votes. It has been reported that he has written to the Returning Officer and the Electoral Commission but at the time of publication of The Voice no formal challenge to the result has been made.

APIL disappointed by new legislative programme

Whilst the full list of bills announced in the Queen's Speech contained little of direct significance for FOIL members, APIL's concerns focused on a perceived omission: reform of the law of damages which it claimed had been "dropped from the new Government's agenda".

The draft Civil Law Reform Bill was undergoing pre-legislative scrutiny in Parliament during the last session. Its proposals would have introduced changes to the law on damages under the Fatal Accidents Act 1976, to increase the number of people eligible to make a claim. As reported in the FOIL Update on the legislative 'wash-up' process at the end of the session, the Civil Law Reform Bill was not included in that process as it was a draft bill, not part the legislative programme, and it is therefore up to the new Government to decide what further steps to take on the issue.

APIL has described the failure to include reform provisions on damages in the first Queen's Speech as a "blow for injured people". The President, Muiris Lyons commented "it is bitterly disappointing that nothing will be done now until at least November" (the start of the next parliamentary session).

Pleural Plaques compensation under the spotlight

With the new administration criticising Labour's spending record over the final weeks of government it has come to light that the proposed compensation payments for pleural plaques was one of the spending decisions subject to a letter of direction. These written ministerial directions are sought by senior civil servants when they disagree with a minister's decision so strongly that they require independent evidence to show that that they were not responsible for it. Many of the letters of direction were requested due to concerns about value for money but it is understood that the concerns around the pleural plaques initiative relate to regulatory and propriety issues. David Laws, the new Chief Secretary to the Treasury, in a reported interview for 'Newsnight' indicated "We're very concerned indeed that over the last few months of the last government there were a lot of spending commitments that were made and some of those may not represent good value for money and in some cases the decisions seem to have been made against accounting officer advice. There are examples of this and that concerns us greatly". Obviously since giving that quote David Laws has resigned, although the presumption is that the approach of the new government will remain the same. There is no further information at this stage on any impact which the letter of direction may have on the proposals.

Unsteady start for RTA reforms

The new MOJ process for RTA claims has had a difficult month since its launch on 30 April. There were immediate press accounts that the system was dogged with problems including a failure to supply solicitors with access codes and problems with logging in. As early as the first week in May, Fraser Fundell, chief executive of IDSL, the company managing the technology, was indicating that the portal would need to be "refreshed" with additional changes being introduced in mid-July. Although IDSL has continued to report progress on dealing with the back-log of registrations by claimant solicitors some firms are still waiting for access. Tim Wallis, independent chairman of the RTA portal project steering group, has indicated that a "big push" will enable the backlog of registrations to be cleared by 28 May, although some firms will be waiting until early June.

The Law Gazette on 27 May reported that, according to IDSL, 97% of the motor insurance market is now on the portal, with steps being taken to sign up the remainder. As reported in the 'Post' for 27 May, by 24 May more than 8000 electronic claims notification forms had been created; liability had been admitted in 1256 cases , and not admitted on 112 claims.

A further Update was made available to FOIL members on 28 May confirming that IDSL has put into place a further helpline. The Update also clarifies a issue which had arisen over the payment of VAT on stage 1 costs: the rules require that VAT is paid at each stage and a refusal to pay VAT on stage 1 costs is considered an incorrect interpretation of the rules.

All of the Updates on the new RTA process can be accessed on the FOIL website, www.foil.org.uk

Referral Fees – the LSB Consumer Panel publishes its report

Following the publication in mid-May of a cost/benefit analysis on referral fees prepared for the Legal Services Board, the Legal Service Board Consumer Panel has now published its report on the issue. This further report supports the view taken in the cost/benefit analysis: that referral fees do not increase the price consumers pay for legal services or reduce the quality of work.

The Panel calls for action to tackle a number of problems:

- Closed bids and auctions mean that work is referred to lawyers paying the most, not to the best lawyers
- "Pressure selling tactics" by insurers to accept recommended lawyers
- "Competition concerns raised by the need for introducers to refer work to a small number of large law firms".

The report makes twelve recommendations including action to:

- Replace the current "hotch-potch" of rules with a consistent set of regulatory arrangements for lawyers and introducers
- Improved transparency requirements, including consideration of consumers having to give their written consent to being referred for a fee.
- Mystery shopping and enforcement action to tackle breaches of transparency rules.

Dr Dianne Hayter, Chair of the Consumer Panel, commented on the conclusions of the report, "Referral fees have their problems but they can increase access to justice, while not raising prices or reducing the quality of advice. So long as the issues identified in the panel's report are successfully tackled, referral fees have their place in the legal services market".

A full Update on the new report will be circulated shortly. It appears at this stage that the report suffers from the same weakness as the cost/benefit analysis: it only addresses the interests of the consumer and does not consider the wider public interest. The Executive Summary reports that according to economists referral fees account for the 30% gap in hourly rates charged by claimant and defendant solicitors but the consumer panel does not comment further on this increase in costs.

The FOIL Update on the cost/benefit analysis of referral fees prepared for the LSB can be accessed on the FOIL website, www.foil.org.uk

The report from the Legal Services Board Consumer Panel can be accessed on its website:
http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html

SRA – "once-in-a-generation" reforms

The Solicitors Regulation Authority has announced its "biggest ever consultation exercise" over "once-in-a-generation" changes. The campaign, labelled "*Freedom in Practice: Better Outcomes for Consumers*" will consider the SRA's move to Outcomes-Focused Regulation, coming into effect at the same time as the new ABS business structures.

In place of the current Code of Conduct the new approach will introduce ten overarching principles, some taken from the existing Rule 1 with some being newly introduced. Whilst detailed rules will still exist in some areas, for example, accounts, indemnity and compensation and disciplinary procedure, in other areas the focus will be on setting out the principle and the outcome that the SRA expects to see, augmented by the provision of non-mandatory 'indictative behaviour' and guidance on how firms might achieve the required outcome. The aim is to move away from box-ticking to focus on issues which are really of concern.

This new approach represents a sea-change in the way the profession will be regulated. Firms will be expected to take responsibility for meeting the new requirements and compliance will need to be demonstrated.

The SRA states that under the new approach, firms which can manage their own risks "will then be left largely to get on with running their businesses." As part of its supervisory role, however, the SRA is likely to require much more information from firms than at present. It is likely to also become more pro-active, aiming to identify issues and potential problems before they become more serious and harm consumers. At a recent workshop run by the SRA, which FOIL attended, concern was expressed that the SRA might become "pseudo-management consultants, second-guessing business decisions and questioning business plans and practices." A number of issues were raised at the meeting: the potential for the SRA to become excessively involved in the running of firms; the cost of implementing the proposals; the imposition upon firms of providing information to the SRA; and the question of whether the SRA has the expertise and resources to deal with the issues which may arise.

A series of road-shows is being run around the country at present. FOIL will be represented and more information will then be made available. A full Update and request for member input will be circulated shortly. In the meantime the consultation paper can be accessed on the SRA website:
http://www.sra.org.uk/sra/consultations/OFR-consultation.page

The consultation closes on 27 July 2010.
If you have any comments at this stage please contact Shirley Denyer on shirley.denyer@foil.org.uk

Wilkinson v Churchill and Cockayne v Evans

The Court of Appeal has now given its judgment in these conjoined cases, looking at the interpretation of Sec 151(8) of the Road Traffic Act 1988. You'll recall that these two cases, both heard at first instance in June last year, hinge on the same point: on the basis that an insurer is obliged to compensate a passenger injured in an accident where an insurance policy was in place but the negligent driver was not insured (Sec 151(4) RTA 1988), can the insurer then recover the sums paid to the passenger where that passenger is also the policy holder and permitted the use of the vehicle which caused the accident (Sec 151(8)). At first instance in Wilkinson it was held that the insurer could not recover, whilst in Cockrayne a right of recovery was recognised thereby effectively denying the claimant compensation.

The cases rest on the interpretation of Sec 151(8), against the background of EU obligations. The Court of Appeal held that the questions on whether Sec 151(8) in its present form complies with Community Law should be referred to the European Court of Justice. In the meantime it would be inappropriate to consider whether, as a matter of national law, Sec 151(8) could be interpreted to comply with Community Law.

The full Court of Appeal judgment is available on Bailii: http://www.bailii.org
A FOIL Update on Wilkinson at first instance is available on the FOIL website:
www.FOIL.org.uk

The FOIL Conference – *"Improving the Process"*

The FOIL summer event, on 13 July, in Manchester, will be examining some of the important issues behind the use of the much-worn phrase "Access to Justice". Speakers from across the industry will consider and debate the current process, look at the latest innovations and the case for change.

Full details of the programme and speakers are available on the FOIL website, www.foil.org.uk. The event is free to FOIL members and attracts 4 CPD points.

FOIL Golf Day

As Dan has highlighted above, the FOIL Golf Day on 7 May was extremely successful. The President's charity was the overall winner but golfing glory went to the following:

Individual			
Winner	Mike Simpson	Weigtmans (2)	36 points
2nd place	Mark Hudson	Horwich Farrelly	33 points
3rd place	Brian Tunnah	Keoghs (3)	33 points
Nearest the Pin	Paul Baxter	BLM	
Longest Drive	Matt Wade	BLM	
Putting Competition	David Tait	Simpson Marwick	
Team			
Winner	Horwich Farrelly	75 points	
2nd place	BLM (2)	73 points	
3rd place	Keoghs (2)	71 points	

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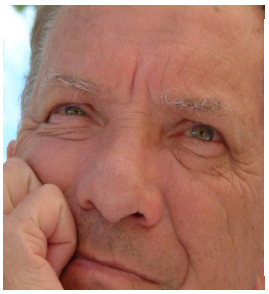

Trevor Gilbert, Chairman of Employment Consultants, Trevor Gilbert and Partners, ponders the conundrum; if lawyers place reliance on ASHE values by extracting the same data direct or from other sources such as Facts and Figures, why rely on employment experts who do the same? And shouldn't an employment expert be an expert on employment?

From the outset I should make it plain this article is not directed against any particular employment expert. I say this with some trepidation as whenever I offer what I believe to be a reasonable and balanced critique of my opposite number's report, it generally attracts a robust if not downright rude response.

So, sorry guys, nothing personal, but it would be helpful if an employment expert did more than attempt to forecast a career based on just ASHE statistics. I have written extensively on the use of ASHE in APIL's 'Focus', suffice it to say the data should be used only for the purposes of comparison.

To go beyond ASHE requires the dissection of a claimant's career aspirations, investigating and separating fact from fantasy and undoing untruths. To achieve this an employment expert should have his/her feet firmly planted in the real world of employment, preferably at a recruitment or HR level where discovering information and the right fit is standard practice.

Too often, it seems to me, an employment expert will report the aspiration of the claimant as definitive, without investigating the various possible outcomes. "*Next year, Rodders, we're gonna be millionaires*". Scratching the surface, implicitly trusting a CV and producing a report without proper discovery helps no-one.

"*Trust, but verify*" was the signature phrase of President Reagan. So it should be with experts.

Although I subscribe to the principles of Rudyard Kipling's poem 'I keep six honest serving men' to set the structural foundations of an interview, I am also a keen reader of the Book of Five Rings by the revered Japanese sword saint, Miyamoto Musashi (1584-1645), regarded as one of the great books on strategy and referred to by military and business schools throughout the world.

The interpretations are too numerous and complex, but I find these extremely useful when interviewing; "*Do not concentrate on detail, but the entire situation*", and "*everything has its value, even if it is not apparent to you*".

In my experience a claimant will often take a defensive position at interview if the expert has been appointed by the defendant and will view the expert as 'agin them'. This may cause the claimant to close down and offer limited information, or in the alternative to over-emphasise how genuine they are, but in either event it undoubtedly requires skill to expose or verify the reality of their job/career projection.

It is fair to say the more senior the position, the more important it is to apply these 'soft' skills to probe the characteristics that may, for example, distinguish a good manager from a true leader, or a wannabe apprentice from a vehicle technician. Interviewing is all about learning a person's core.

Limitation of space prevents me from fully exploring the myriad occupational scenarios in which a claimant sits, but the key is to listen carefully and then drill-down into the person's exact role and involvement. As Musashi said, "*Perceive that which cannot be seen*".

Trevor Gilbert is Chairman of employment consultants Trevor Gilbert & Associates. He has owned and operated a recruitment business since 1972 and counts major private and public sector organisations in his

client portfolio. Trevor's specialist knowledge of real time employment and recruitment issues is substantial and widely recognised.

Trevor has practised as an expert since 1990, but remains very much 'hands-on'. He has a reputation for impartiality, robustness and integrity, and "*unmoveable when his opinion has been properly formed, persuadable when logic dictates, well researched and impressive*" (leading Counsel).

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The CPD Questionnaire

In order to take part in this month's CPD exercise you will need to read the following materials:

- This issue of the voice
- The FOIL Update on Collective Actions

And **one** of the following:

- Wilkinson v Churchill Insurance Company Ltd [2010] EWCA Civ 556

Or

- Horwood & Others v Land of Leather (In Administration), Zurich Insurance PLC & Others [2010] EWHC 546 (Comm)

All of these materials are available on the FOIL website in the members' section, under 'CPD materials'.

You should then complete the following questionnaire.

You will need to make arrangements within your firm to have your answers marked. Some firms are making arrangements for questionnaires to be marked centrally, by the training or PSL team. If this applies in your firm you will receive information internally. As an alternative you can work with a 'CPD buddy': simply exchange questionnaires before 21 May. On that date the answers will be circulated and you and your buddy can mark each other's questionnaire. If you have achieved a score of 11 out of 14 you have successfully completed the questionnaire and you are entitled to claim CPD for the time taken to read the material and answer the questions. FOIL's aim is for the process to take an hour.

This is a trial – any comment or feedback on the CPD process is very welcome. Please contact Shirley Denyer on shirley.denyer@foil.org.uk

The Questionnaire

1. Coalition announces proposals

Which of the new ministers at the Ministry of Justice has responsibility for civil law and justice?:

a. Kenneth Clarke
b. Tom McNally
c. Jonathan Djanogly
d. Nick Herbert

2. APIL disappointed by new legislative programme

In the last parliamentary session the Civil Law Reform Bill included provisions to reform damages in which area?:

a. Disease cases
b. Fatal Accident cases
c. Catastrophic cases
d. Motor cases

3. Pleural plaques compensation under the spotlight

The letters sought by senior civil servants from ministers when they disagree with ministerial decisions are called:

a. Letters of direction
b. Letters of discretion
c. Letters of explanation
d. Letters of exclusion

4. Unsteady start for RTA reform

In the 8000 claims which have been issued so far using the new process, liability has been denied in how many?:

a. 220
b. 156
c. 112
d. 86

5. Referral fees – the LSB Consumer Panel publishes its report

Which of the following recommendations was ***not*** made by the Legal Services Board Consumer Panel in its report on referral fees?:

a. Replace current 'hotch-potch' of rules with a consistent set of regulatory arrangements
b. Improve transparency requirements
c. Introduce mystery shopping and enforcement action to tackle breaches of transparency rules
d. Introduce changes to the Code of Conduct to require mandatory information to be included in the letter of engagement

6. SRA – "once in a lifetime" reforms

The SRA's new approach to the regulation of law firms is called?:

a. Outcome-Specific Regulation
b. Outcomes-Focused Regulation
c. Required-Outcomes Regulation
d. Mandatory-Outcomes Regulation

7. Wilkinson v Churchill and Cockrayne v Evans

These cases rest on the interpretation of which statutory provision?:

a. Section 155 Road Traffic Act 1988
b. Section 155(8) Road Traffic Act 1988
c. Section 151(4) Road Traffic Act 1988
d. Section 151(8) Road Traffic Act 1988

8. Collective Actions

In its final report on "Improving Access to Justice through Collective Actions" what did the Civil Justice Council recommend?:

a. A generic collective action should be introduced
b. A generic collective action should not be introduced
c. A generic collective action should be introduced for financial services actions only
d. Further research should be conducted on the economic impact of introducing a generic collective action before a final decision is made.

9. Collective Actions

In his report what did Lord Justice Jackson recommended as a starting point for collective actions in personal injury cases?

a. The retention of two-way costs shifting
b. A requirement that the court make a decision on the appropriate costs model at the outset of the case
c. Qualified one-way costs shifting
d. No costs orders in collective actions

10. Collective Actions

In the draft rules produced by the Civil Justice Council in February this year, what is the draft rule on ADR?:

a. ADR must be attempted prior to the issue of a collective action
b. ADR must be attempted before the trial of a collective action
c. At CMC stage the court will decide which form of ADR is appropriate for the claim and require the parties to use it
d. There are no mandatory requirements to use ADR in the draft rules

Below – please answer either questions on

- **Wilkinson v Churchill Insurance Company (questions 11-14)**

Or

- **Horwood v Land of Leather (In Administration) (questions 15-18)**

11. Wilkinson v Churchill Insurance Company

Lord Justice Waller sets out common factors between the two conjoined cases before the Court of Appeal. The factors are:

a. The persons injured were travelling in or on vehicles they were insured to drive and the negligent driver was insured with a different insurer
b. The persons injured were travelling in or on vehicles they were insured to drive, the negligent driver was not insured and was driving with their permission
c. The persons injured were travelling in or on vehicles they were insured to drive, the negligent driver was not insured and they were driving without permission
d. The persons injured were travelling in or on vehicles that they were driving, with passengers who were contributorily negligent.

12 Wilkinson v Churchill Insurance Company

Section 151(5) of the Road Traffic Act 1988 deals with:

a. The duty to satisfy judgments
b. The 'excluded liability' provisions
c. The insurer's entitlement to recover
d. The definition of "permitted".

13. Wilkinson v Churchill Insurance Company

The proper meaning of "permitted" in relation to the use of a vehicle by another has been considered by the Court of Appeal, by Pill LJ. In which case?:

a. Worthington v Randolf-Wolper
b. Lloyd-Wolper v Moore
c. Herzog-Fitgerald v Hunter
d. Grime v Potter-Wall

14. Wilkinson v Churchill Insurance Company

Lord Justice Waller compares the situation in the cases before him with the position under the MIB scheme, asking "Why would community law suggest that so far as RTA insurers are concerned the position should be different". What is the MIB position to which he is referring?:

a. It makes no difference in terms of entitlement whether or not a passenger knows that the driver is uninsured

b. A passenger knowing that the driver is uninsured can be excluded from compensation
c. A passenger who knows he is travelling in a stolen vehicle is still covered by the MIB scheme
d. A passenger who knows he is travelling in a stolen vehicle is not entitled to recover compensation under the MIB scheme.

15. Horwood v Land of Leather (In Administration)

Which of the following was not a preliminary issue before the court?

a. Whether Land of Leather had a right of indemnity against its suppliers
b. Whether Land of Leather agreed not to pursue any right of indemnity
c. Whether any such agreement is unenforceable due to lack of consideration
d. Whether any such agreement was a breach of the policy of insurance

16. Horwood v Land of Leather (In Administration)

Teare J found that in his view there was consideration for the February agreement. What was the consideration that he identified?:

a. a further credit note
b. a structured credit agreement
c. a reduction in agreed orders
d. substantially improved delivery times

17. Horwood v Land of Leather (In Administration)

What was the argument put forward by the claimants to argue that they were not in breach of Condition 3 in the policy?:

a. the prohibition on settling claims applied only to claims against Land of Leather, not claims by Land of Leather
b. the condition had not been incorporated into the contract of insurance
c. the defendants had impliedly agreed to the agreement reached by the claimants with their supplier
d. the condition was inherently unreasonable

18. Horwood v Land of Leather (In Administration)

Mr Justice Teare considered what the result would be if, in fact, there had been no consideration for the February agreement? What was that result?:

a. The terms of the policy would then not apply
b. The claimants would then not be in breach of the terms of the policy
c. The claimants would then be in breach of the terms of the policy, and their claim would fail
d. The claimants would then be in breach of the terms of the policy but the breach would not have caused loss

A pass mark of 11 out of 14 on the questionnaire will be required to obtain CPD.

If you have any queries about the questions and the issues raised please contact your firm's FOIL main contact who will give you contact details for FOIL CPD.