

PRACTICE UPDATES

Recovering Costs Of Expert Accountant's Reports

Peter Carter, Carter Capner Solicitors,
QLD

Britz v. J B Davies Enterprises Pty Ltd (unreported)
Pratt DCJ, Brisbane District Court 19.03.93

Plaintiffs often encounter difficulty on taxation, recovering the costs incurred in engaging an expert accountant to prepare calculations of the plaintiff's economic loss. In a recent District Court case in Queensland which resulted in an award of approximately \$130,000.00, Pratt DCJ remarked most favourably on the practice of the preparation of such reports:

"As to the remaining heads of past and future economic loss I have been greatly assisted by a report from [chartered accountants] which became Exhibit 10. Such assistance is to be encouraged. The time is long past when Judges of this Court should be expected to flounder about with a mass of material which is not brought together in professional manner. I am prepared to accept the chartered accountant scenario 1 in point of concept and calculation so that one can safely take the figure of about \$90,000 as a starting point."

Although this was a high damage case, the plaintiff was an employee rather than self-employed, there seems no basis why the same reasoning can not be applied in cases of smaller losses. The judgment generally lends great assistance to the plaintiff's cause in endorsing the practice of engaging third parties to prepare reports in relation to economic loss. As the current District Court Cost Scale makes no allowance for solicitors carrying out work of that type, it would seem expedient to engage accountants in appropriate cases rather than carry out the calculations themselves.

Recent Workers Compensation Decisions Important for Lawyers in South Australia

John Pearce, Morris Pearce & Associates,
SA

Two recent decisions of the South Australian Full Court are of great importance for South Australian practitioners dealing in the Workers Compensation jurisdiction. Both decisions concern the interpretation of the Third Schedule to the Workers Rehabilitation and Compensation Act 1986 ("the Act"). This schedule is a type of "Table of Maims". Pursuant to Section 43 of the Act injured workers are entitled to lump sum compensation for non-economic loss in accordance with the Third Schedule.

Both Section 43 and the Third Schedule were substantially amended in December of 1992, which amendments were held to be retrospective in Workers Rehabilitation and Compensation Commission v Hoiski (1993) 170 LSJS 130. The effect of the amendments was to make the Third Schedule the complete code for the entitlement to, and calculation of, lump sums for non-economic loss.

The recent decisions of Workers Rehabilitation and Compensation Corporation v Battaglia (Judgment delivered 22nd July 1994) and Workers Rehabilitation and Compensation Corporation v Hann (Judgment delivered 28th July 1994) have made clearer some other consequences of the December 1992 amendments.

In Battaglia the worker had sustained an injury to his back. He had already received some compensation for non-economic loss because of the resultant permanent disability to his back. The Full Court held that he was entitled to further compensation pursuant to the Third Schedule for the permanent loss of capacity to engage in sexual intercourse (even though that loss of capacity was only partial). In other words it was held that for the purpose of the Act the worker had two compensable disabilities for which claims could be made pursuant to Section 43.