The innocent actuary in court

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Richard Cumpston

Introduction

Most of the time, an actuary's job is simple. The bases for the claimed economic losses have already been decided, and the actuary only has to collect data, apply the relevant tax rates, and calculate the present value of earnings and superannuation. But sometimes things get more difficult, as the following real-life cases show.

The brilliant inventor

The plaintiff had recently started his own lighting business, winning industry prizes for innovative residential and arcade lighting. He walked into a suspended beam on a building site, suffering shoulder injuries. The company had excellent sales growth in the two years before the accident, but no profits. Like many small businesses, it seemed to be paying for costly vehicles beyond its immediate need. We suggested that the claim for earnings losses be based on his prior earnings as a technical teacher, suitably indexed. The validity of this approach was untested, however, as the defence produced details of a large payment by the Transport Accident Commission for a similar injury, as well as several workers compensation claims. The similarity between the injuries was too strong to ignore, and the plaintiff got nothing.

The honest heiress

An orphan had been left a substantial inheritance, which her guardians invested in a house in Toorak. We were asked to estimate the extra amount she might have received from more conventional investments in a spread of bonds and shares. With a variety of assumptions, we consistently obtained estimates of at least a million dollars. The judge, apparently keen to resolve the action, asked her how much she would like to receive. She answered "three hundred thousand".

The well-organised widow

The couple met in New Zealand, where he was employed as an insulator, using asbestos supplied by an Australian firm. They came to Australia, where he established a very successful company, but died of mesothelioma in 1986. The solicitor warned us that there were acute jurisdictional issues, and gave us a bundle of documents a foot high. In its four-year existence the company had operated through a complex series of trusts, paying substantial wages and superannuation but little tax. The widow's claim that the company had met the lease costs for her personal Porsche was supported by documents we found deep in the files. But her claim that she and her husband had travelled overseas each year to international industry conferences was harder to prove. Fortunately, she had kept bills from hotels in the Bahamas and France as souvenirs, and her passports had stamps from seven overseas trips in eight years. With penalty interest, our estimates came to about three million dollars. Sadly, the jurisdictional issues proved insuperable.

The interested judge

Judges often take a continuing interest, asking questions as evidence is delivered.

This ensures they understand the details, as well as keeping them awake after lunch.

But one afternoon a judge suddenly showed more than normal interest, asking

"Did I hear you correctly, Mr Cumpston?"

His question had been provoked by a reference to the higher tax paid on benefits from government superannuation schemes. An explanation was duly provided of the 15% tax reduction on benefits introduced by Keating in 1988, as compensation for the new 15% tax on employer contributions. As many government schemes do not pay the contribution tax, their members still have to pay the higher taxes on lump-sum benefits. It did not seem a good moment to mention the 15% tax rebate that the judge would not receive on his pension.

The Voyager disaster

The solicitor asked whether we were willing to help a survivor from the Melbourne-Voyager collision in 1964, given that he could only offer us $1000 in fees. We recklessly said that we would be happy to help, as it was a national disgrace that compensation had been so long delayed. The petty officer had a tendency to lose good-behaviour awards, so that there was doubt whether he would have progressed much beyond chief petty officer. The navy supplied details of 314 pay rates applying to relevant ranks, as well as 46 service and marriage allowance rates. After leaving the navy in 1971, he had a number of well-paid jobs, sometimes as a coal miner or maintenance engineer. Resourceful as ever, the plaintiff provided us with metal industry award rates for a base tradesperson, with 55 rates covering the whole 27 years. As the barristers negotiated, we had to make estimates with various assumptions about how far he would have progressed in the navy, and when he would have left it. We modified our software to cope, but it was still hard work. One of our last reports ran to 38 pages. The plaintiff got a good settlement, but the Commonwealth is still arguing about fees.

The erudite judge

The associate to a Supreme Court judge asked for help in preparing a speech that the judge had promised to give at his old school. He wanted to know the present value of a pound in 1800, and had been getting unhelpful responses from the State Library and the Australian Bureau of Statistics. Although no fees were offered,

we saw this as a professional challenge. Using a facsimile edition of the Sydney Gazette and New South Wales Advertiser of 1811, we showed that wages had increased a thousand-fold, but the price of wheat had only tripled. We even quoted an 1811 legal joke:

"A person practising as a Solicitor, a few days since meeting a client for whom he had repeatedly been unsuccessful, cordially took him by the hand, and asked if he had another Suit for him? To which the other with some little acrimony replied, *"Indeed, Sir, I have not! You have brought me to my last SUIT already, and that I intend to keep for my own use."* ■

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Book Review - That Disreputable Firm -the inside story of Slater & Gordon

Bill Madden, Sydney

Bill Madden

"On that hot summer's day I like to think of Bill Slater and his mates racing barefoot through the paddocks of South Yarra..."

So, somewhat romantically for the subject matter, begins this history of law firm Slater & Gordon.

Michael Cannon's book traces the history of Slater & Gordon from its inception, beginning with a quite interesting and detailed depiction of the character and life achievements of the founding partners.

The same style characterises an overview of the life of the firm's early development, the dominant personnel and the times in which they lived, particularly the 40's and 50's.

In what perhaps is a reflection of the fortunes of the firm, there is then something of a gap before the history picks up.

In the eighties, the author begins a review of the major pieces of litigation which the firm has pursued.

For my own part I found the book provided a strong reminder of the breadth and public face of that litigation - Asbestos, HIV, Christian Brothers. Of this recent history, the highlight for me was the final chapter which covers the OK Tedi litigation.

The photographs are a nice touch - a good selection of the members of the firm, clients and some of the early advertisements which the firm has refined over the years. And the index is extraordinarily detailed, in the style of a reference book!

Slater & Gordon has played a prominent if sometimes controversial role in Australian litigation, summed up in Michael Cannon's conclusion :

"...Slater & Gordon has done a great deal of good ....has made mistakes of course.....but has fulfilled the historical purpose of doing its best for injured people who often have nowhere else to turn. "

Although I found this book interesting, I am unsure of its target audience. I suspect it will be of more interest to other legal practitioners than the general public, and for that reason can recommend it to APLA members. ■

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An unusual conference with clients: John Gordon (centre) meets plaintiffs Rex Dagi (left) and Maun Tepke in Papua New Guinea. - from *That Disreputable Firm*.