States. He then cast an eye at the non-EC countries, pointing out that steps were being taken in those countries towards introducing a strict liability regime similar to that established by the Directive.

His feeling was that the Directive would be likely to increase the awareness of consumers of their legal rights, thus leading to more claims being reported.

This year's seminar, excellently hosted by Ray Hodgin, Senior Lecturer in Law at Birmingham University, brought together a very lively group of 35 or so academics and practitioners who benefited greatly from having the opportunity of spending an intensive 24 hours together discussing the various aspects of the overall theme.

So successful in fact was the seminar that plans were immediately made to hold one in April 1991 at Sheffield University, when the overall organisation will lie in very capable hands of John Birds once again. Our thanks go especially to Ray Hodgin and also to Jim Keane of the Association of British Insurers for dealing so effectively with all the pre-seminar administration work and to the ABI itself as an organisation for having given not only its backing but also its financial support to the event.

G.C.

Lunchtime Meeting held on 1st March 1990
"DISASTERS: WHAT HAVE WE LEARNT? - ACCOUNTABILITY"
BY RODGER J. PANNONE
Senior Partner, Pannone Blackburn and Pannone Napier

INTRODUCTION

Mr Chairman, Ladies and Gentlemen, it is, of course, a great pleasure to be invited here today. It is fair to say that the majority of you earn your living by acting for the other side. I recognize a considerable number of worthy adversaries in the audience. Some of you I have fought for many years, but I am sure there is going to be much more upon which we agree than upon which we differ. I, of course, tend to act for individuals and am therefore more frequently viewed as being on the side of the angels than the majority of you are. I believe it is the duty of both plaintiff and defendant lawyers to learn from the disasters which have occurred. Undoubtedly, such disasters do give a platform for change and the arguments are much more forceful and more acceptable if there is a consensus.

I would like to give an outline of a number of areas where change is being championed, move on to the plaintiff tactics, then outline certain specific disasters before dealing with access to and the conduct of litigation.

Accountability is one of the themes, but I intend to deal with this more in the question and answer session at the end. I will also field any of your questions concerning the armoury and tactics of a plaintiff lawyer, without totally emasculating myself.

SETTING THE SCENE

Hardly a month goes by without there being a major disaster in some part of the world. In Britain, there is now a fairly sophisticated legal operation that swings into force soon after. My own practice has been invited on a number of occasions by the Law Societies of England, Scotland and Northern Ireland to establish a Steering Committee of lawyers. Our preference has not been to act for individual victims and we encourage those individual victims or their families to consult their own local lawyer. Our task is normally to negotiate on behalf of all the victims with the other side and it is at this point that I come into contact with many of you.

In fact, the insurance lobby worldwide is a powerful organisation. What I find, with some amusement, is that after a settlement of a disaster has been achieved, whether "Mid-Atlantic" or otherwise, or a judgment has been obtained, supposedly learned articles are written, indicating why that settlement would not now be achieved. Often, disasters with which I have been involved are used as examples to demonstrate that there is a litigation explosion, particularly in America (where I litigate, if possible); the reality is that there is no litigation explosion but, undoubtedly, worldwide, consumers have become more aware of their rights.

WHY AMERICA?

Lord Denning referred to the fact that the plaintiffs are drawn to America like moths are drawn to a lamp. I think the word "moth" is one of those more pleasant nouns which has been applied to me during the course of our negotiations.

On a very basic level, it is the duty of the plaintiff's lawyer to choose the best forum for his or her client. It would, therefore, be a breach of that duty not to choose America if it is the most attractive. That does not necessarily mean that American compensation will be considerably higher than in Europe. Although this is often true, recently it has been shown that in a number of cases it is possible to obtain levels of compensation in this country that get very close to America, when one takes into account contingency fees and expenses.

It is, I believe, axiomatic however that if an American multi-national company negligently/recklessly develops or manufactures a product in America, sells that product throughout the world, retaining the profit in America and continues to market that product when it knew, or should have known, of its defective nature, then it is right and proper that that company is accountable to the American courts and that the victim is compensated according to the laws of America.

I do not intend this address to be a eulogy for the American system, for I have a number of criticisms. Their tort system has produced products which are as safe, if not safer, than any other country in the world. Of course, the levels of compensation paid to plaintiffs and indirectly to their lawyers at times is grotesque, but officers of the company are well aware of the risks they run if they are reckless.

Access to justice is undoubtely much greater in America than here. I meet with a number of American judges and, undoubtedly, many of them have a romantic view of the English legal system. Certainly, in a number of cases where British claimants have been "forum-ed" out of America it is largely due to the inability of the judges to believe that it can take ten years for a case to come to trial and that over half of our population may not be able to bring the claim at all, because they are too "rich" for legal aid and too poor to litigate.

CONTINGENCY FEES AND PUNITIVE DAMAGES

These two topics have generated more emotion and ill-informed comment than almost any other two topics involved in the litigation process.

CONTINGENCY FEES

Lord Hailsham, with his usual humility, described American style contingency fees as immoral. The Civil Justice Review recommended an element of speculative fees or contingency fees, and the Government, not having gone the whole hog, has decided to introduce speculative funding in England and Wales. It is a system that has operated in Scotland and, in fairness, is one that has operated in England for many years, albeit contrary to the *Solicitors Act.*

Undoubtedly, we live in a consumer-led society and the times when the consumer is told what will be good for his or her health have to be severely restricted. If there is equality of bargaining and one side is not vulnerable, then undoubtedly contingency fees should be permitted.

One of the most powerful pieces of evidence put into the Lord Chancellor that I have seen in support of contingency fees is that submitted by Clyde & Co, a practice which most of you will know has a substantial amount of work in the Commercial Courts. Their evidence indicated that they were in competition for subrogated marine insurance work with Japan, Korea, some Southern American States and America - all of whom operate under a contingency fee basis; their potential clients, knowing totally what they are doing, have asked them to work on such a basis and they have had to decline.

Personal injury victims may be vulnerable and need to be protected from immoral lawyers. It is argued that contingency fees encourage "bent" lawyers and therefore must be forbidden. Motorways encourage speeding, but we have not abolished them. We must attack those who are not fitted to practice Law.

Again, looking at it from the consumer's point of view, it is argued that a contingency fee encourages lawyers to settle the case early, take their cut and run. My experience of America is that that good American law firms do not undersettle their claims but, undoubtedly, a system that encourages an early settlement is to be preferred to one that encourages prolixity. In passing, it is interesting to read the indictment of our profession in the United Kingdom by Hazel Genn, who was with Wolfson College, Oxford and now Queen Mary College. In a book she has published called "Hard Bargaining" she demonstrates quite clearly the inadequacy of plaintiff lawyers acting for victims; particularly that they tend to take the first offer that is made by an insurance company.

Secondly, it is suggested against contingency fees that lawyers will only take on those cases which they are likely to win. Actually, that is what the plaintiffs really want to know when they consult their lawyers. It is no satisfaction at the end of four years to be told that you never had a case anyway.

Lastly, it is said that lawyers will only be interested in taking on large cases. All I will say is that this is not the experience in America.

Undoubtedly, our levels of compensation make contingency fees less attractive, but surely there should be an option available to the consumer and to the lawyer.

PUNITIVE DAMAGES

This topic has generated almost as much emotion and ill-informed comment as contingency fees.

May I start by quoting James Tighe, Director General of the British Safety Council, who said:-

> "it is no use putting these accidents down to acts of God. Why does God always pick on badly managed places with sloppy practices? He does not seem to pick on well-managed places. Acts of God do not seem to occur in well-managed places". (Pulpit by Julia Neuberger, in "Blaming disasters on acts of people". The Sunday Times, 27th August 1989).

Recently, I have called for the introduction of punitive damages in England. What I have said has been misconstrued by some.

There is a small minority of manufacturers and suppliers of services in England who have a reckless or wanton disregard for safety. Their competitors who take safety seriously are at a considerable financial disadvantage.

It is accepted that there is no incentive for such an organisation to improve its safety standards simply because its insurance company has to pay out compensation. The fines meted out in our country by our magistrates' courts are almost de minimis. I have no doubt, therefore, that we need a system where, if such recklessness is established, the company should have to pay very substantial sums indeed, such sums being uninsurable. If our criminal system was competent, I would be content, to a large extent, for that to be the administration and collection agency, but to date this has not been so. The alternative is to give to the Civil Court the power to make punitive awards and, as I have said, I would prefer the vast majority of that award to go into a fund for industrial safety, but I do not mind if it ultimately goes to the State.

It is said that I will punish innocent shareholders and consumers. This would not punish consumers; it would, of course, make the product perhaps more expensive and then consumers would vote with their feet. I do not deem the shareholders to be totally innocent, for they have invested for profit in a bad company. Shareholders should be encouraged to invest in good companies. In any event, the burden on shareholders is far outweighed by the beneficial effect that will be obtained.

I believe such penalty should go in parallel with criminal conviction of senior management. They have a heavy duty and perhaps not all of them are aware of their responsibilities. It may be that the Zeebrugge prosecutions for corporate manslaughter will clarify the issue.

Whether or not the victim receives any element of the punitive award is

emotive.Undoubtedly, the individual or the family of a child run down in the middle of a zebra crossing by a drunken driver believes that there should be an extra element paid to them over and above that which would be paid if there was mere negligence. If such a sum was available in appropriate cases, it would be claimed and investigated, which would not be the case if no sum went to the victim. On balance, I would prefer a small sum, say less than 10 per cent, to be available in such cases to be awarded out of the punitive damages.

We should not be insularly arrogant and not, perhaps, only look at America, One of the best papers on this topic I have read is by Professor Stoll of Freiburg University. He considers those countries where what is called a "Satisfaction" Award is made. Undoubtedly, in a number of countries, including Eastern Bloc countries, such award is available.

DEFENDANT LAWYERS

May I start with a non-contentious statement.

Lawyers who act for the world's underwriters and insurance companies are a select group – aren't you? I have litigated against you for 25 years. Very substantial resources are available and these organisations do buy in lawyers who are in the main first class. That,of course, applies to all who are here today. Many of you are difficult, awkward and abrasive and - at times - wrong. Our correspondence would suggest that we are bitter enemies. That is not correct. In a number of cases, settlement would not have been achieved without a dialogue and, at times, a certain strength on both sides has to be exhibited in dealing with one's clients. Without being too self-righteous, there is no substitute for experience and hard work. In the last year or two, that select group of lawyers to which I have referred has faced competition both nationally and internationally. The desire to obtain new clients has become public and the means of attracting new insurance clients most sophisticated. Put crudely, the amount of creative attraction of work that has been going on by defendant lawyers makes all but American plaintiff lawyers appear angelic.

Any good plaintiff lawyer who has to litigate against these companies should know what is going on. Further, it is very important that plaintiff lawyers should know their opponents individually, their strengths and their weaknesses. It helps to know those cases that they have been involved in and the philosophy of those who pay their fees.

The new groups come from a number of types of practice. Undoubtedly, the very largest practices in the United Kingdom and America no longer spurn this type of

work. They may be new to it, but their learning curve is very steep. The fact remains, however, that just because they have been involved in one international disaster does not mean that they know it all and, from the plaintiff point of view, when they are on the opposing team, their lack of experience may be exploitable.

THE PLAINTIFF'S TACTICS

May I deal with some of the criticisms and comments levelled at us.

1. Until recently, undoubtedly, the struggle between the defendants and plaintiffs was unfair. Plaintiffs were not well organised, victims were represented individually and it was possible to pick them off. As I have said, now, when there is a disaster in Britain, the Law Society in either England, Scotland or Northern Ireland normally calls a meeting of interested solicitors and an Action Committee is appointed. That is wholly appropriate, although I have reservations about the size and constitution of such lead firms or committees.

2. In appropriate cases, a demand is made straight away for an admission of liabilty. It is quite indefensible for a company to maintain a denial of liability when the circumstances obviously dictate that the reverse should occur. From a pragmatic point of view, there are very great dangers for defendant companies in not admitting liability where appropriate.It has been interesting to note that attitudes change between disasters, and, in England, there was a much more rapid admission in the Clapham rail disaster than there was in the Kings Cross.

3. In the question and answer session, it may be possible to develop my views on how inquiries may be used more efficiently and effectively, so obviating the need for some parts of the legal process. Certainly, an inquiry is an excellent opportunity to obtain useful information at an early stage.

4. Some companies and their advisers had taken an extremely moral and responsible position before the introduction of the Consumer Protection Act. They stated that it was their product that harmed, they were not negligent, although they were going to compensate victims because it was their product. I have no hesitation in comparing such conduct with that of those firms who decide to brazen it out.

5. I am opposed to trial by the media. Equally, the public have a right to be informed of the actions of those who have created disasters. Public pressure is a legitimate tool and I make no apology for using it.

6. I have already indicated that when there are multiple defendants, their strengths and weaknesses must be investigated in very great detail. In appropriate cases, of course, divide and rule is applicable.

7. At times, individuals are to blame for their corporation's disaster. It may be comfortable for them to shelter behind the corporate veil. Once they recognize that their own shortcomings will be made public, they can often operate an effective lobby to obtain settlement.

8. I could talk for a week on the concept of a lead case, the Opren drug litigation in England having focused everyone's attention. The considered selection of the lead cases is, however, very important.

9. Defendants like to deal with a multiplicity of claims, picking off one or another which may seriously prejudice their defence. If there are many hundreds of claimants, the principle of settlement should be determind before the death.

DETAILS OF DISASTERS

Certainly, we have had more than our fair share of disasters, having had seven major transport disasters in three years. May I start with the Manchester air crash; not only because a number of you in this room were involved in it, but it was the first case which settled which had the term "Mid-Atlantic" applied to it.

MANCHESTER AIR CRASH

On the 21st August 1985, at 6.12am, 131 passengers and 6 crew were on board a Boeing 737, which was cleared for take-off along Manchester Airport's runway number 24. Manchester has only one runway but "24" does make it sound so much more important! The pilot had over 8,000 hours' experience and had 12,000 kg of kerosene on board. He gave controls to the co-pilot and 32 seconds after take-off there was a loud bang. The engines were put into reverse thrust and 40 seconds after take-off, it was confirmed that there was a fire on board. The plane turned off the runway and came to a stop. As it came to a stop, foam was being sprayed onto the fuselage.

It was a totally survivable accident, but there were 54 deaths immediately and one later. Nearly all of the deaths were due to toxic poisoning from carbon monoxide, cyanide and phosgene.

Very soon after the accident, a steering committee was formed, representing a large

number of firms of lawyers - it being essential, in my view, that people who are injured go to their local lawyers, whom they trust and that they form together into a team.

It was my job to attempt to negotiate. Contact was made with the other side and we considered the very large number of people whom we could sue but, particularly, British Airways, British Airtours, Boeing, and Pratt & Whitney. Our American lawyers were invited over - not those who came over uninvited. There were 200 hours of negotiations, and settlement was achieved within four-and-a-half months. I think it is to the credit of both sides that this was achieved. I know that the underwriters felt that they had paid too much, because I was addressing them very shortly after. However, I didn't think we obtained enough, so the settlement was probably about right. At the same time, however, we were able to organise a concerted action and campaign for smokehoods, for virtually everyone (if not everyone) would have survived had they been wearing smokehoods, and for speeding up the introduction of safe materials in 'planes, which, of course, had been fitted by NASA since 1969.

CHINOOK

In comparison, there was the Chinook helicopter crash on the 6th November 1986, when it fell into the sea. There were 45 deaths, with only 2 survivors. Incidentally, one of the only survivors was the last chap to get on the helicopter. As his seat was taken, he was made to strap himself into where the Air Hostess would normally sit. This has something to say about the design of seats.

This was the first occasion that I was invited by the Scots to join their committee. I appreciate that it was not an easy task for a Scot to ask the help of an Englishman. Having spoken to the group, which had been so effectively organised by two Aberdonian Lawyers, I joined the group. It was, perhaps, unusual in that I had no clients and, in fact, declined instructions. Immediately, negotiations were started. It was the same firms of lawyers that had been involved in the settlement at Manchester, but their instructions were only to offer Scottish levels. The result was that we filed in Pennsylvania, taking us two years to succeed on forum. The carrier has refused, in isolation, to pay the victims any money, having joined forces with the manufacturer, and after our recent success, a relatively small increase in the offer has been made. There was, however, a very efficient inquiry, which apportioned blame, and I hope that in the near future we will demonstrate that it would have been far better to have settled on the same "Mid-Atlantic" basis.

PIPER ALPHA

On the 6th July 1988, the oil rig, Piper Alpha, exploded, killing 167 people. There were 4 operators. I was invited by the steering committee to attempt to negotiate a settlement. The group against us at this time included 5 United Kingdom law firms, 2 law firms from America and a very powerful in-house lawyer. Again, we have been able to demonstrate within a year that the case has been settled, for levels of compensation which are considerably higher than anything that could have been obtained in the United Kingdom. Shortly after the settlement, a paper was written indicating that if the case had been negotiated later, a much lower settlement could have been obtained, because the law in Texas had changed. The irony was that we were not going to litigate in Texas, but Louisiana, and immediately after the article appeared, the Supreme Court in Texas found in favour of the plaitiffs in a similar forum argument.

PAN AM

The PAN AM air disaster occurred on the 21st December 1988, killing 270 people in the air and 12 on the ground. In this case we are proceeding in Florida. It does, of course, raise a number of very interesting problems concerning national and international security. Equally, the treatment of the victims on the ground, who do not have their damages capped in the same way as the victims who were passengers do under international convention, produces interesting arguments in terms of forum.

BRITISH MIDLAND

This disaster occurred on the 8th January 1989. 47 people were killed. This is proceeding in Louisiana.

British Midland would have been the first strict product liability action in the United Kingdom. As many of you know, The United Kingdom adopted the EEC Directive on strict product liability, but in too restrictive a way, in my view. British Midland is significant, for it demonstrates, to my mind, how well a company can deal with such a tragedy, and its chairman, Mr Bishop, is to be congratulated. What is not, however, so laudable, is the attitude of the lawyers who have indicated and stated publicly in a radio-broadcast, that they did not intend to negotiate a settlement at this stage. That is regrettable.

ZEEBRUGGE

Zeebrugge, on the 6th March 1987, was, of course, the Herald of Free Enterprise roll-on-roll-off ferry, which sank with 193 deaths. What we learned there was that there could be a very quick and speedy, first class judicial inquiry, which was under taken by Mr Justice Sheen, and it is my view that, in certain disasters, such a judicial inquiry would be preferable to an adversarial battle to establish liability.

Following Zeebrugge, my partner Michael Napier, set up an arbitration panel with 3 very experienced Queen's Counsel, to value post traumatic stress disorder (PTSD), a concept which had been totally undervalued in the United Kingdom, in our view. The result was that in half the time, at half the cost, almost for double the existing levels of compensation, settlement has been achieved.

CREEPING DISASTERS

All of the above are instant disasters, but creeping disasters often kill and maim as many and can be much more difficult legally - time delay and causation being two obvious problems.

As I indicated, I cut my teeth over 20 years ago in the ASBESTOSIS and THALIDOMIDE litigation. However, most recently, I have been involved in the OPREN litigation. In the United Kingdom, this has probably generated more publicity than any other case, with the result that governmental interest and debate has been engendered.

Opren was a modified form of aspirin, being a "me too" drug to treat arthritis. Before Opren, there were already 21 of these so-called Non-Steroidal Anti-Inflammatory Drugs ("NSAIDs") on the market. In 1981, in the United Kingdom, there were over 18,000,000 prescriptions for NSAIDs and the value was over £105,000,000. One NSAID in America, Feldin, had sales of 346 million dollars. When Opren came on to the market in America, it was under classification "C", which meant that it was of little or no new therapeutic advance.

It does not matter, for the purposes of this paper, about liability, although it is agreed that causation would have produced considerable problems in some cases. Because of the relationship I had with the lawyer on the other side, we were able to negotiate a settlement but, before we arrived at that settlement, however, a number of faults of the English system were thrown up.

Firstly, in Thalidomide, I had 30,000 documents to deal with. In Opren, there were 1.3 million. The American judge sent us back to England, saying that he thought that the English system could cope. We had to go to the Court of Appeal to obtain the right structure - computerized structure - to deal with the documents but, more importantly, the Government (for we were suing the Government as well as Eli Lilly and its servants) said that it was quite wrong for 1,400 plus victims to wait in the wings, whilst one victim took the case forward, supported by the state, on legal aid. I think that it was a forgone conclusion what the result of that application would be. Properly, it was said that this was wrong and that everyone would have to share in the costs. This meant that those people who were not legally aided had to be advised by us that they could not risk the cost of litigation for, whilst they stood to recover perhaps five thousand pounds they also stood to have to pay and to lose many thousands more. They would have had to have dropped out of the litigation had a millionaire benefactor not come forward and put in up to £5 million, which may have helped in bringing things to the table. The fact is that we had not a personal injury judge, but a commercial judge, David Hirst, who behaved most impressively in coming to terms with a country that does not have a class action. However, he wanted the final settlement to be determined without access to him and wanted Eli Lilly's solicitors and me to play god. This, we were not prepared to do, but over 1,400 people have settled. 40 people refused to accept the terms of the settlement, which has raised an interesting debate about the interests of a small minority and whether they can hold to ransom a settlement which is in the interests of the vast majority.

Undoubtedly, elderly people in Britain do not receive a great deal of money for disability in their twilight years, It was for this reason that Lord Scarman, I, and an organisation called Citizen Action, have been promoting a Private Bill to have a High Court judge and committee look at levels of compensation. It is no use blaming our British judges for the levels of compensation - they are, to some extent, caught by precedent and, if not, tend only to make increases in line with inflation. We have the peculiarly unacceptable situation in this country that the death of a child is valued at £3,500 and we have been trying to get that changed. I think it unlikely that our Bill will succeed, but it has caused the Government to accept certain inadequacies.

DALKON SHIELD

In this case, we have been acting for somewhat more than 1500 British claimants. In terms of accountability, the American manufacturer has entered into a Chapter 11 bankruptcy. It would be interesting to debate whether or not we should have a similar procedure in this country. It is not, however, only the defendants who have had to face bankruptcy. It has produced a suprising result in relation to American plaintiff

attorneys, for a number of them have experienced financial difficulties in maintaining these actions for so long. It does now appear, however, that the cases are likely to be resolved.

COMMENT

Those disasters that I have been dealing with, together with, I hope, informed comment from a number of interested parties, have produced a number of substantial changes in Britain. Those changes I would like to divide into two categories. Firstly, access to litigation and, secondly, conduct of litigation.

ACCESS TO LITIGATION

In relation to access, it is very necessary that plaintiffs are able to instruct lawyers who know what they are doing.Referral agencies are becoming far more sophisticated, but the relaxation of advertising restrictions and self-promotional directories has meant that many lawyers have indicated a willingness to undertake work without having the requisite experience.

Civil Justice Review, The Law Society, and others are, therefore, taking steps to ensure that people dealing with personal injury tortious claims can demonstrate an expertise. They have already instigated an expert panel for child care matters and mental health matters.

In passing, may I say the people who really know whether I am competent or not are not my partners, or even my clients but, of course, the other side. There must be a peer review in terms of assessment and representatives of the other side must be made available.

THE CONDUCT OF LITIGATION

May I now turn to the conduct of litigation and it is here that the biggest single number of changes will be brought into effect. This is the Civil Justice Review recommendation and it was one of the (if not the) most interesting committees upon which I ever served. It had a majority of lay people, although the three other lawyers were a House of Lords judge, who is extremely popular and extremely good, a Queen's Counsel who is now a High Court Judge, and an academic. We met on over 40 occasions and came to the conclusion which may suprise you - that litigation takes too long, costs too much and is too complex! There had been well over 30 previous inquiries, and there was some cynicism as to whether or not our recommendations would be taken up by

the Government. The Government, as I have said, has accepted the vast majority of our recommendations and, insofar as legislation is necessary, has embodied them in the Courts and Legal Services Bill, which should have passed through Parliament by the summer.

Running throughout our recommendations is that the way we eventually determine our cases is fairly well conducted. Equally, the quality of our judiciary is high. In passing, you may know that we are going through what has been called "The Bar Wars". "The Times" recently paid me the backhanded compliment of being one of the two instigators of the paranoia that has gripped our Bench and our Bar. It did, in fact, give me great support to hear that it was one of the leaders of the Australian legal profession who referred to our judges as demonstrating the best legal brains of the 17th century - I must not allow myself to be sidetracked! Before we get to a court in the United Kingdom, our procedures are cumbersome. We have suggested that litigation should not be progressed at the speed of the lower common denominator, and that there should be an inquisitorial, hands - on approach by the court. It should not be that the better prepared lawyer succeeds at the expense of truth, and the way that we have conducted litigation, keeping our cards close to our chest, has to be stopped. Very early on in the action, all statements on both sides should be exchanged, the expert evidence should be exchanged, pleadings should be more full and, as I have said, there should be a more inquistorial system by the court.

At trial, more and more is to be dealt with on paper, something that the United Kingdom has been particularly bad at doing, whereas the continent has been particularly good at this. The court should have the right to order a split trial, on liability first and quantum second. Not all cases should be heard in the High Court and, in fact, the majority should be dealt with in the lower courts - something that was already recognised by the High Court judges before our recommendations came out.

My only reservation about all of our recommendations is that the Government may not give an adequate funding, with the result that we will get the worst of all possible worlds. We suggested that judges should have more training in civil work and we even suggested, at one stage, that the judges might like to work a little bit longer for more pay. This produced total apoplexy, mainly because what we were saying was mis-understood - or rather we did not express ourselves as clearly as we should.

The last debate that has blossomed following our recommendation is that in small road accident cases, as was recommended in a previous report, there should be a no-fault system, and that the whole concept of no-fault should be looked at for medical accidents and other accidents. We have looked very carefully at the New Zealand and

Swedish systems, which are, of course, countries very different from the United Kingdom, but I expect there will be more debate over the next few months and, certainly, alternative dispute resolution will become prevalent.

CONCLUSION

Mr Chairman, may I end by addressing what I see as a worldwide threat, not only to our tortious system, but to the very essence and raison d'être of lawyers. The United Kingdom Government is one of the leaders in bringing lawyers and the law down to the level of the marketplace. Our independence and the need for an independent legal profession is questioned. One stop advice on everything from human rights to haemorrhoids is advocated. Let us resist that threat, for society without total legal independence will be debased. The lawyers here today are well placed to take steps to ensure that that independence is maintained and everyone has access to a lawyer who is well trained, independent and willing to fight for his or her client and the integrity of our profession.

A MATTER OF INTEREST
by David Abraham & Roger Doulton, Winward Fearon & Co.

Back in the good old days Solicitors regularly advised those writing motor business to admit liability. The reason for this was that paying a Plaintiff's costs of proving liability when that was a forgone conclusion was simply a waste of money. Since December, however, everyone has had to think again. Just as the insurance industry was getting used to paying interest on costs from the date of judgment rather that the date of taxation *(Hunt v R.M.Douglas (Roofing) (1983) 3 All E.R.)* further disaster struck in the shape of *Putty v. Barnard (The Times 15th December 1989).*

In *Putty v Barnard* the plaintiff brought Application for Summary Judgment. In both actions the negligence of the Defendant was admitted. Notwithstanding this, however, the Defendant argued that it would be wrong for Summary Judgment to be entered because the effect of that Judgment would be interest that under the Judgments Act 1838 would run at 15% from the date of Summary Judgment on whatever sum was eventually assessed as the proper amount of damages. Interest at such a rate was contrary (inter alia) to the traditional guidelines for the payment of interest in personal injury actions as laid down in *Wright v British Railways Board (1983) 2 All E.R.* and *Jefford v Gee (1970) 1 All E.R.* Those cases decided that, in normal circumstances, interest would be payable on general damages from the date of service of the Writ at 2% and on special damages at half the rate payable under Court Special Account