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

(previously known as short term investment rate) from the date of the accident. An additional anomaly of granting Summary Judgment, and one with far reaching effect on insurers, was that interest would become payable at the full rate on damages for future loss even though that loss had not yet been sustained.

There were good reasons for restricting interest to 2% on general damages because general damages are assessed at the rate current on the date of assessment. And whilst, ever since the Beveridge Committee on social and allied services, the appropriate rate of interest on special damage has been the subject of high controversy it certainly does seem strange, to put it mildly, to pay interest on damages for future loss.

Notwithstanding the strong arguments for and on behalf of the Defendant Mr Goldblatt Q.C. felt constrained to grant Summary Judgment. At the same time, however, he suggested that the Judgment could be worded in such manner as to avoid the effect which it was the Defendant's case caused such injustice.

The argument turned on the question as to whether or not a judge had discretion to refuse Judgment under Order 14 of the Rules of the Supreme Court in the absence of any issue to be tried on liabilty. Order 14 Rule (3)(1) provides:-

> "Unless on the hearing of an Application under Rule 1 either the Court dismisses the Application or the Defendant satisfies the Court with respect to the claim, or that part of the claim, to which the Application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court *may* give such Judgment for the Plaintiff against that Defendant on that claim or part as may be just having regard to the nature, the remedy or relief claimed."

How wide was the discretion imported by the word "may"?

In the event it was decided that the discretion was very limited indeed and most certainly did not extend to a situation in which liability was admitted and/or beyond reasonable doubt. Judgment, therfore, must be granted. By analogy, however, to Order 27 Rule 3 (that Order which allows for Judgment where there have been admissions of fact) Mr Goldblatt Q.C. suggested that, provided an appropriate wording was adopted, Judgment could be entered in such manner as to prevent interest being payable from the date of Judgment. He drew a distinction between two forms of Order in the first of which the enquiry as to damages was directed together with liberty to apply for enforcement after the result had been certified and in the second in which the enquiry was directed but, in addition, the Defendant was ordered

to pay the Plaintiff the amount certified. According to Mr Goldblatt Q.C. the latter of these Orders attracted interest, the former did not. He sent Counsel for the Plaintiffs and Defendant away to consider an appropriate form of Order.

We are indebted to Solicitors acting for insurers for the wording of that Order which read as follows:-

"It is adjudged that the Defendant is liable to each of the Plaintiffs in such sums of damages as the Court shall at trial find to have been caused to each of the Plaintiffs by reason of the accident."

Not suprisingly, in view of the enormous impact this decision will have if upheld, there has, since *Putty v Barnard* was reported, been a succession of cases in which the issue has been raised. These include *Tolhurst v Newland, Thomas v Bunn, Rudge v Rudge, O'Connor v Amos Bridgman Abbatoirs Limited, Wilson v Graham and Lindop v Goodwin Steel Castings Limited.* Unfortunately, however, the decisions have been somewhat inconsistent. In *Thomas v Bunn* interest in excess of £100,000 was awarded to a plaintiff to include interest on damages for future loss. In *Tolhurst v Newland*, we are told, though we have not had it confirmed, that the Judge refused to follow *Putty v Barnard* and held that it was wrongly decided. In *O'Connor v Amos Bridgman Abbatoirs Limited,* reported in The Times on 13th April, it was held by Mr Justice Scott Baker that the fact that the Plaintiff might, because of the effects of Section 17 of the Judgments Act 1838, receive an unfairly large amount of interest on damages ultimately awarded to him or costs to be incurred was not a reason for depriving him of a Summary Judgment under Order 14 of the Rules of the Supreme Court, to which he would otherwise be entitled. In particular, Mr Justice Scott Baker did not accept the approach of Mr Goldblatt Q.C, and held that the residual discretion under Order 14 was not sufficiently wide for a court to make an Order in such a form so as not to bring an Order 14 Judgment within the terms of Section 17 of the 1838 Act. The fact that the consequences of giving Judgment for the Plaintiff might result in an unjust result as regards interest on the damages that might ultimately be awarded and costs to be incurred was not a good reason for depriving the Plaintiff of a Judgment to which he was otherwise entitled. The answer to the Defendant's grievance was that the court ought to have some discretion under Section 17 of the 1838 Act as to whether to award interest on damages and costs. Unfortunately, there was no such discretion.

In *Lindop v Goodwin Steel Castings Limited,* reported in The Times on 19th June, Mr Justice Turner expressed a contrary view to that of Mr Justice Scott Baker. Mr Justice Turner held that interest begins to run not on the entry of Judgment on liability but on the assessment of damages. In the report of his Judgment Mr Justice Turner expressed

most of the concerns of the insurance industry as to the injustice which arises if interest runs from the date of Judgment on liability.

Furthermore, Mr Justice Turner reasoned that interest from the date of the assessment of damages was consistent with the wording of Section 17 of the 1838 Act because a "Judgment debt" only arises when the damages are assessed.

The inconsistency between the Judgments of Mr Justice Turner and Mr Justice Scott Baker is plainly critical to the insurance industry and it is, therefore, appropriate to analyse Mr Justice Turner's approach. Section 17 of the 1838 Act states as follows:-

> ".....every Judgment debt shall carry interest at a rate of [15% per annum] from the time of entering up the judgment..... until the same shall be satisfied and such interest may be levied under a Writ of Execution on such Judgments."

Mr Justice Turner gave a decision helpful to the insurance industry by finding that where effectively there are two Judgments, one on liability and one on the assessment of damages, and not that which established or decreed that there was a liability. In other words, a Judgment debt does not arise until damages are assessed.

This was, without doubt, a clever argument which Mr Justice Turner used to avoid what he considered to be a manifest injustice to the Defendant. However, we are of the opinion that, unfortunately, Mr Justice Turner's argument is wrong. In *Hunt v R.M. Douglas* (the case which started the ball rolling) Lord Ackner specifically considered the argument raised by Mr Justice Turner and dealt with it as follows:-

> "for the sake of completeness I should add that Counsel for the respondents strongly argued that an Order for the payment of costs to be taxed cannot be a Judgment debt within Section 17 of the 1838 Act because until taxation has been completed there is no sum for which execution can be levied. The point appears to have been raised in the *Urven Warnink* case and disposed of at the end of the Judgment on the basis that the Courts have accepted since its enactment that Section 17 does apply to such a Judgment and accordingly the law has gone to far for that argument. I agree. This acceptance is because a Judgment for costs to be taxed is to be treated in the same way as a Judgment for damages to assessed, where the amount ultimately obtained is treated as if it were mentioned in the Judgment, no further Order being required. A Judgment debt can, therefore, in my Judgment be construed for the purposes of Section 17 as covering an Order for the payment of costs to be taxed".

In our opinion, it follows from the comments of Lord Ackner that a Judgment for damages to be assessed does give rise to a judgment debt and Mr Justice Turner is, therefore, regrettably at odds with the House of Lords.

Support for the House of Lord's view, if support is needed, can be found in the decision of Mr Justice Drake in *Wilson v Graham* reported in The Times on 22nd June. Mr Justice Drake found that it was correct to backdate the award of damages to the date on which liability was determined and that interest as claimed by the Plaintiff from the date of Judgment on liability should apply.

All those writing motor business await with interest the first House of Lords decision following *Putty v Barnard* but unless the House of Lords decides to disregard the approach adopted for many years and referred to by Lord Ackner we consider that the only remedy for the insurance industry is for Section 17 to be amended by legislation.

To finish on a note of optimism, however, reported in The Times on Friday 28th June was the case of *Legal Aid Board v Russell.* In the case it held that contrary to the common view prevailing within the legal profession the acceptance of a payment into Court did not amount to a Judgment for the purpose of the Judgments Act 1838 and accordingly a Plaintiff was not entitled to interest on costs unless he became entitled to apply for a Judgment on costs under Order 45 Rule 15. This decision, however, is, we understand, now the subject of an appeal to the House of Lords.

STRICT LIABILITY FOR ENVIRONMENTAL DAMAGE - EUROPEAN INITIATIVES AND THE INSURANCE EFFECT

by John Garbutt, Nicholson Graham & Jones.

1. Introduction

Whenever two or more are gathered together to discuss environmental insurance the air quickly becomes distinctly chilly. Meteorological phenomena are now common in relation to major pollution but the climate change for insurers arises mainly from the discomfort of knowing that in the US and elsewhere, pollution claims are having a serious effect upon profitability. The onrush of environmental directives from Brussels, particularly in relation to ground water and air pollution is now supplemented by the proposal for a council directive on civil liability for damage and injury to the environment caused by waste. At first sight this looks like an attractive resource for new business opportunities but the draft proposes new concepts of legal liability which serve only to increase the dilemmas of British industry and its insurers.