



Costs of future fund management

There are a number of persons who as a result of injuries sustained in motor vehicle and employment accidents are unable to manage their compensation monies.

In NSW the financial affairs of such persons are administered by entities including the Public Trustee, Perpetual Trustees, Trust Company of Australia and the Office of the Protective Commissioner. All of the aforementioned organizations impose a range of fees for their management services. As an example the Office of the Protective Commissioner charges an annual management fee of 1.1% together with an investment fee of 0.5%.

The cost of funds management is claimable as a head of damage. The difficulty however lies with its assessment having regards to variable factors including life expectancy, taxation, investment returns and the like.

Several organizations have prepared calculations of the cost of funds management which entail a number of assumptions in particular that the compensation monies will be completely dissipated upon the expiration of the plaintiff's life expectancy. This assumption needs to be scrutinised having regards to the decision of Simpson J. in *Oroz v Hansen Yuncken Pty Limited* (2005) NSWSC 203.

In *Oroz* it was held that the damages for funds management were to be quantified upon the assumption that the Plaintiff's fund would be dissipated by 60%.

The impact of the *Oroz* decision is to increase the calculation of the costs of future fund management where a dissipation rate is deemed to be applicable.

All trustee organizations which manage the financial affairs of compensation recipients need to consider issues such as dissipation rates and in framing their budgets for such persons.

Polemic Forensic Accountants & Business Advisers

t: 1300 551 061

skype :ian.paul2095

e: info@polemicforensic.com

w: www.polemicforensic.com

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