CIVIL JUSTICE RESEARCH CENTRE
A PROJECT OF THE LAW FOUNDATION OF NEW SOUTH WALES

THE PACE OF LITIGATION IN NEW SOUTH WALES

Deborah Worthington

DECEMBER 1991

THE PACE OF LITIGATION IN NEW SOUTH WALES: Lessons from the Tail

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CIVIL JUSTICE RESEARCH CENTRE

The Centre's research agenda is supervised by an interim steering committee made up of Mr Terence Purcell, Dr Terence Beed, Dr Peter Cashman, Mr Brian Thornton, and Mr Peter Truda.

ISBN 0 909136 31 9

December 1991

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The Charter of the Civil Justice Research Centre

The principal purpose of the Civil Justice Research Centre is to help make the processes for resolving Civil Claims in New South Wales more efficient, more cost effective, and more accessible to the public.

The Centre examines the policies that shape the civil justice system, the behaviour of the people who participate in it, the operation of its institutions, and its effects on the community's social and economic systems.

The Centre adopts an interdisciplinary approach to the study of public policy issues; widely disseminates the results of its work to Government officials, legislators and judges; the unions; the business, consumer affairs, legal and research communities; and to the general public.

Executive Summary

Introduction

There is no doubt that the current delay experienced by accident victims in obtaining damages is unacceptable. Debate on the causes of this delay has been heated, and accusations of inefficiency have been laid against all the key players in the system.

At the base of much of the debate lies a lack of empirical information. Most of what has been written has been anecdotal, drawn from the particular experiences of lawyers and administrators involved in the daily routine of resolving cases.

The CJRC recognised that there was a need for a more systematic approach to the study of delay, one which would allow at least some of the debate to be considered on an empirical basis, while identifying issues requiring further research and policy consideration. Specifically, empirical data was required which would assist in answering the following questions:

- When do matters settle?
- What characteristics of claims affect their duration?
- What aspects of the processing of claims can lead to delay?
- Can the behaviour of participants in the civil litigation system lead to delay?

A major proportion of civil court load in New South Wales is made up of "common law tail" matters. These are claims which the GIO has had to deal with under the former *Motor Vehicles (Third Party Insurance) Act* 1942. The tail, it was felt, could provide some invaluable lessons on the workings of the civil litigation system.

Following discussions with the GIO, permission was given to access the files of tail matters. A 7% simple random sample was drawn from the 15,000 tail matters finalised in 1990, and data to address the above questions was collected.

When Do Matters Settle?

The typical tail matter is resolved through litigation and takes 47 months from the date of the accident and 38 months from the commencement of the claim. The amount of time claimants must wait to obtain damages is increased significantly when litigation is commenced.

Although the majority of tail matters are litigated, only a small proportion, 8%, were found to require judicial determination. A high proportion, 25%, settled either on the day allocated for hearing, or after commencement of hearing. In these cases, the full gamut of judicial resources was allocated unnecessarily.

Court Procedural Requirements

Regardless of whether claims are ultimately determined by a judge, or as is more often the case, settled out of court, the structure within which claims are litigated is provided by the rules of court procedure.

Delay in meeting with court procedural requirements is largely attributable to the parties. However, the purpose of these requirements must be questioned when it is clear that they are not fulfilling the role for which they were intended, and they are not effectively enforced.

The sampled matters revealed that while Praecipe/Notice to Set Down is intended as an indication that a matter is in a state of readiness for hearing, it is in practice treated only as a procedural step in order to obtain a place in the queue.

Both District and Supreme Court rules require that a Statement of Particulars be served by the plaintiff on the insurer. It is intended that this state the issues on which the plaintiff will rely. However, the value of this Statement is undermined as it is usually lodged well after Praecipe/Notice to Set Down, and it is often the subject of later amendments.

Unreadiness at callover most commonly occurred because information appropriate to a matter had not been supplied or exchanged between the parties.

Delay: Claim Characteristics

The effect of age, injury, award and liability on the duration of matters was examined. Characteristics found to increase the duration of matters were disputed liability, large awards in both jurisdictions, and claimants aged under 18 at the time of the accident.

Although these characteristics have previously been linked with delay, this study reveals that their value in understanding the pace of litigation overall, is minimal.

The characteristics considered were only able to explain why some matters took longer than was typical, that is, longer than 38 months. They did not explain why the majority of tail matters take as long as 38 months in the first place.

In considering claim characteristics and the stage of disposal, it was found that the problem of settlements "at the door" was equally prevalent in District and Supreme Courts. Within the District Court however, matters lodged at the Sydney venue were more likely to settle before reaching this stage than those from other venues.

Delay: Claim Processing

A substantial proportion of the duration of matters is spent prior to the initial offer being made. This is where the parties spend time collecting information and medical details relevant to the claim. In considering why this aspect of claims processing is so lengthy, it was found that the parties take significantly longer to provide requested information than do other sources.

Where information was requested from the insurer, it took the insurer more than six months to supply that information in 28% of cases. The plaintiff took more than six months to supply information in 24% of cases.

Typically, delay in tail matters does not result from difficulties in getting medical specialists to forward reports or the need for injury stabilisation, both common explanations for delay. Medical appointments do however take some time to arrange; the plaintiff can be accused of non-attendance in 5% of these.

The Pace of Litigation

To enable a better understanding of the pace with which litigation is conducted by the parties, a detailed analysis of five cases taking a "typical" time from commencement to disposal was made.

In each of these five cases, there were lengthy periods when no activities were undertaken by the insurer. These "passive" periods were as long as a year in all but one of the cases. Often, periods of inactivity occurred because the plaintiff did not supply information requested by the insurer: rarely was information supplied in less than three months, and sometimes it took as long as a year. It would appear that the insurer has little incentive to act during periods when the plaintiff does not supply information as requested.

Although insurance companies have been criticised for employing delaying tactics, the five cases illustrate that plaintiffs too are responsible for delay. It would appear that neither one is more to blame in this respect than the other.

Most Third Party matters do not actually require their day in court, however, the

current backlog of matters is a significant component of delay. It would appear that the current waiting period creates a level of expectation as to when productive settlement negotiations might be conducted.

Conclusion

The common law tail has certainly provided some valuable lessons on the workings of the civil litigation system, the behaviour of its participants, and when and why delays occur. Importantly, a number of commonly given explanations for delay have been shown to be somewhat insignificant. These explanations have been largely anecdotal, based on the experiences of lawyers and administrators involved in the daily routine of resolving claims. While they may be perfectly valid in that they describe why some cases take longer than others, they do not explain the incidence of delay in the system as a whole. The need for a systematic approach to the study of delay is emphasised, as is the need for empirical data.

In looking at the causes of delay, the focus has been narrowed to a consideration of the pace of litigation, as it is conducted by the parties. Particularly, the supply of information which must take place between the parties. The lack of effective enforcement of pre-hearing procedure, and the waiting period caused by the current backlog of matters, has left the pace of litigation in the hands of the parties themselves.

Foreword

What is the current level of delay in the civil courts? What factors are significant in causing this delay? These questions are central to the debate concerning the civil justice system today, and answers to them are fundamental to promoting changes in, as well as measuring the efficiency and effectiveness of the system. Court delay is an important issue as it not only slows the disposition of individual cases and in the process increases costs, but it may also limit access to the justice system more generally.

One area of civil litigation which has become known for unacceptably high levels of delay is Third Party litigation. Although an area of longstanding concern, until recently both policy makers and legal practitioners have largely had to speculate about court delay using fragmentary and anecdotal evidence.

The CJRC has assembled and analysed information which identifies the parts of the process of Third Party litigation which cause delay. The findings demonstrate that while many of the often cited reasons for delay may be valid in individual cases, they do not explain why it is that the majority of matters take as long as they do. Instead, it would seem that the pace of litigation is set by the parties themselves, in the shadow of the courts' current waiting period. This appears to set a level of expectation as to when productive settlement negotiations might occur.

The task of the CJRC is to provide an objective analysis which will enable policy makers and administrators to better assess the litigation system. By identifying the current level of delay, and the factors which cause delay, this study lays the essential groundwork upon which further research can be built.

I hope this report will encourage both the legal profession and researchers to join together in conducting systematic analyses, in an effort to improve the civil justice system.

Terence Purcell
Director
Law Foundation of New South Wales

Acknowledgments

This study could not have been completed without the help of a number of people. We would particularly like to acknowledge the support and cooperation of the Department of Court Administration, the Law Society of New South Wales and the Government Insurance Office. Thanks is given to the Department of Courts Administration and the Law Society for their contribution to the formulation of the research questions, and to the GIO for allowing us access to their Third Party files, their input during the design stage and review of the report. We also wish to acknowledge Peter Truda, Terence Beed and Bill Fitzgerald, for their thoughtful review and helpful comments on the draft reports. A special thanks goes to the team of data coders, who diligently scoured the files for all relevant information: Jenny Cameron, Alex Colquhoun, Vivienne Dassakis, Michael Donovan, Ian Macourt, Cheryl Walker and Danny Wood. We are particularly grateful to Tania Matruglio, our research assistant, for her support and patience through all stages of the project.

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1

Introduction

1.1 Background

The principles of the law of negligence provide that where an injury has been caused by the negligent behaviour of another person, the injured party may bring an action for damages against that party. Members of the community can attempt to enforce such civil claims by utilising the formal mechanisms of the courts. However, most of these matters are determined not by a judge in a court room but on the basis of an "out of court settlement".

The effectiveness of this system for compensating accident victims has been a serious policy concern, and many have queried the years of delay and high overhead costs which have become established characteristics of this system. Arguments have abounded as to whether such problems are inherent in any system relying on the common law negligence action, or whether they can, in full or in part, be attributed to its mismanagement.

There seems no doubt that the current delay experienced by accident victims in obtaining common law damages is unacceptable. In addressing this problem, lawyers have been accused as "the real delay villains ... not getting their clients much earlier to settlement"[1], plaintiffs have been deemed guilty of "hampering the task by a larger than expected rate of non-attendances at medicals"[2], and the courts, it has been argued, continue to propose "radical reforms ... as every other attempt at reform in New South Wales designed to reduce the backlog of cases has been a conspicuous failure"[3].

As these assertions indicate, debate on the causes of delay has been heated. Accusations of inefficiency have been laid against all the key players in the system, and to little avail, with the average delay experienced by accident victims running as high as four years in recent times.

The fact that most cases do not actually require "their day in court", but are resolved on the basis of settlements "out of court", means that the problem of delay cannot be attributed to the backlog of matters in the court alone. It must also be considered why it is that settlements often only occur after years of waiting in the queue for a hearing. Empirical data addressing this issue has been sparse, and a systematic understanding of the settlement process remains elusive.

A major proportion of civil court load in New South Wales is attributable to plaintiffs injured by the use of motor vehicles. Such matters exert considerable pressure on the court system and much effort has been focussed on the management of these in order to ensure that there are opportunities for their settlement "out of court". Of particular concern here are the so called "common law tail" claims which the Government Insurance Office (GIO) has had to deal with under the former *Motor Vehicles (Third Party Insurance) Act* 1942.

The *Motor Vehicles (Third Party Insurance) Act* 1942 introduced compulsory third party insurance to New South Wales, ensuring that plaintiffs injured by the use of motor vehicles were protected against the impecuniosity of defendants.[4] Amendments to this Act in 1984 included the requirement that all claims and proceedings in respect of such injuries be taken directly against the GIO.

In 1987, this Act was replaced by the *Transport Accidents Compensation Act* 1987, ("TransCover"), which took effect with respect to injuries sustained on and after 1 July 1987. Common law entitlements were abolished as from that day, being replaced by a statutory scheme of benefits. The rights of those injured prior to that day were not affected however, and at the end of 1990 the GIO still had some 45,000[5] claims which had to be dealt with under the former common law scheme – "the common law tail".

With the election of a Liberal/National Government in 1988, there came the commitment to an election promise to abolish TransCover, and to restore the right to bring common law actions for damages arising out of motor vehicle accidents. While the *Motor Accidents Act* 1988 (MAA) did restore such rights, they are subject to a shortened limitation period and general damages are subject to an indexed cap. Amongst other changes, the monopoly of the GIO was abolished, and innovative mechanisms for encouraging the speedy, out of court settlement of matters were introduced.[6]

Despite the introduction of a number of devices by which courts can encourage settlement, and the stated commitment to settlement maintained by key players in the Third Party system, court delays are still at unacceptable levels and the pressure exerted by both tail and MAA matters on the court system as a whole is considerable.

1.2 Objectives of the Study

At the base of much of the debate about the causes of delay and the remedies necessary to combat it, lies a lack of empirical information. Much of what has been written about delay is anecdotal, drawn from the particular experiences of lawyers and administrators involved in the daily routine of resolving cases.

The CJRC recognised that there was a need for a more systematic approach to the

study of delay, one which would allow at least some of the disagreements about the causes of delay to be considered on an empirical basis, while identifying issues requiring further research and policy consideration. Specifically, empirical data was required which would assist in answering the following questions:

- When do matters settle?
- What characteristics of claims affect their duration?
- What aspects of the processing of claims can lead to delay?
- Can the behaviour of participants in the civil litigation system lead to delay?

Following discussions with the GIO, permission was given to access the files of Third Party matters and to collect data to address the above questions. The common law tail was selected as the specific focus, rather than MAA matters, as it was felt that the latter scheme had not been in operation long enough to give a full indication of the processes at work. It was considered that the tail could provide some invaluable lessons on the workings of the civil litigation system, the behaviour of its participants, and when and why delays occur. This is particularly so as such a large proportion of civil litigation in New South Wales is made up of such matters.

1.3 Key Procedural Steps in the Conduct of a Tail Matter

Figure 1 illustrates some of the key procedural steps in the conduct of a tail matter. As a number of the terms used in this report are specific to court procedure and the processing of claims, Appendix 1 sets out a glossary of some of these.

Not all tail matters involve an application to have the matter determined by the courts, some are resolved without recourse to litigation. In such circumstances, a Notice of Claim is sent to the GIO and negotiations then take place between the injured party, or their representative.

Where an action is commenced in court, a Statement of Claim is lodged setting out the facts which will be relied upon in the claim against the defendant. The District Court of New South Wales can hear claims for amounts up to $100,000, although amounts can exceed this provided the parties consent. The Supreme Court of New South Wales has the jurisdiction to hear claims for unlimited amounts.

Following the commencement of a claim against it, the GIO is required to lodge a Notice of Grounds of Defence. This allows the GIO to reply to allegations made in a Statement of Claim, usually by denial, or by making allegations of contributory negligence.

Part 12, rule 4A of the District Court Rules and Part 33, rule 8A of the Supreme Court Rules require that where a claim for damages in respect of personal injuries is made, the plaintiff must serve on the defendant a Statement of Particulars. This

is intended to narrow the issues concerned, thus facilitating settlement.

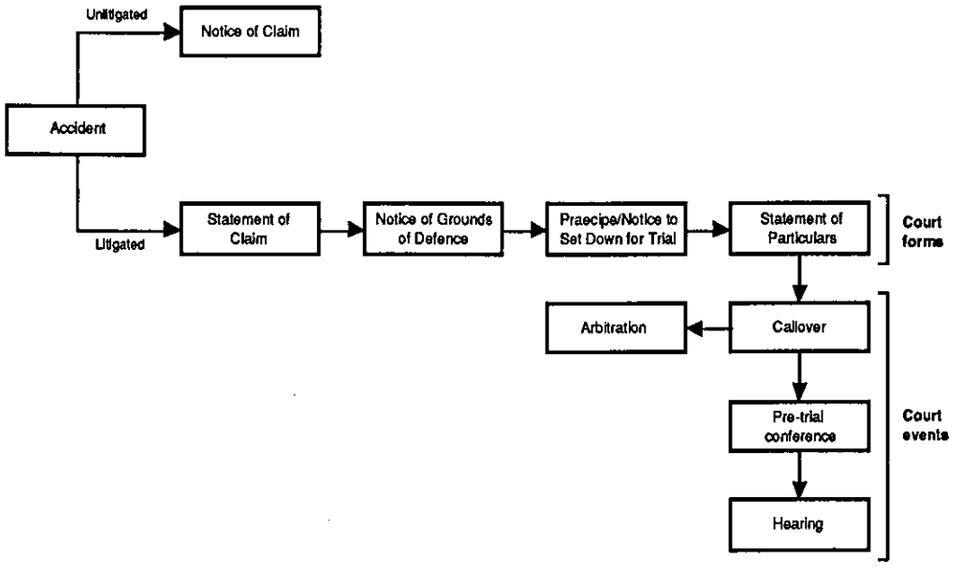
The next procedural step required by the courts is the filing of a Praecipe (District Court) or a Notice to Set Down (Supreme Court). These documents are filed to indicate the readiness of a matter for hearing. The matter is then given a place in the list of matters waiting to be heard, and when it advances sufficiently on the list, it is called over.

A callover allows a review of the progress of a claim to be made. Both sides attend the court and report on their progress, a pre-trial conference may be arranged, if suitable the matter may be referred for arbitration, or if appropriate a matter will obtain a hearing date.

In the District Court, parties are required to attend a pre-trial conference at which the registrar may fix a date for callover or further conference. In the Supreme Court, pre-trial conferences are presided over by a Master who must be satisfied that the issues have been decided upon and settlement prospects explored, whereupon a hearing date will be given.

Regardless of whether claims are ultimately heard and determined by the judiciary, or as is more often the case, settled out of court, the structure within which claims are pursued is provided by the court procedural requirements just described and also illustrated in Figure 1. It is upon this framework that parties conduct investigations and settlement negotiations. Matters may be settled, withdrawn or discontinued at any stage of these proceedings.

Figure 1. Key procedural steps in the conduct of a tail matter



1.4 Research Approach

In 1990, approximately 15,000 tail matters were finalised by the GIO, and it is upon these that this study is focussed. A 7% simple random sample was drawn from these matters, giving a target sample of 1053 matters. It was considered that a sample of this size would provide a sufficient degree of accuracy in the results reported[7], while also allowing the study to meet with time and cost constraints.

Matters are finalised by the GIO when there are no further outstanding concerns. All settlement monies have been paid, as have any additional fees such as those for counsel or medical consultations. The case files are then directed from GIO offices around the State to a common repository in Sydney.

This location of the finalised files in a common storage area was an important consideration in the selection of the sampling frame. If matters had been selected on the basis of their commencement or disposition, many of the relevant case files would still have been "live", making access to them difficult.

Files were selected for the sample on the basis of a list generated by the GIO using its computerised case management system, COGEN. Most of the targeted case files were readily available. Where this was not the case however, an alternative selection based on file numbers provided by COGEN was made. In some cases, information required from the selected files was not always available, consequently discrepancies in the "totals" reported in the tables may be apparent. This is not considered to bias the results of the study as there is no reason to believe that these cases differed systematically in crucial respects from those where the information could be recorded.

Collecting data from case files is an expensive and time consuming task, and after initial perusal of the files it was considered impractical to gather details of all the possible causes of delay from all of the sampled files. To overcome this, the data collection phase of the research was split into two. Initially, using a data coding sheet (Appendix 2), general details were collected from all of the 1053 sampled files. Information collected included the dates of key case events, details of the claim, plaintiff characteristics, initial offers made, and the stage of disposal. The list of items is presented in Appendix 3. After a preliminary analysis of this information, more specific issues were then addressed by a further data collection focussing on a subset of the 1053 matters.

To consider aspects of the processing of claims in more detail, 100 matters which took a "typical" time from commencement to disposal were selected. This was done by sorting the matters on the basis of their duration, and then selecting 50 matters immediately before and after the median. These matters were used to collect information on the activities of key players in the settlement system, and the relationship of these activities to court events. The information necessary to survey corresponding plaintiffs' files was also collected, it being expected that a further

collection of data focussing on these will be undertaken at some future date. (See Appendix 4 for data collection instrument).

The selection of 100 matters from around the median was preferred to a purely random sample as it was considered it would better highlight why "typical" tail matters take as long as they do. While a random selection might include a variety of short and long matters, these extremities are not of as great a concern as the vast majority of matters which, on average, simply take too long.

1.5 Organisation of this Report

As this research was conducted to assist policy makers and administrators in their decision making, it was considered appropriate that these "end users" of the research provide input in formulating the specific issues to be addressed. Following discussions with the Department of Courts Administration, the Law Society of New South Wales and the GIO, a list of questions was formulated, and much of this report focuses on providing answers to those questions.

The next section will address the issue of precisely when it is that settlements occur, and Section 3 will look at when the parties are meeting with court procedural requirements. Section 4 will then consider what aspects of claims affect their duration and Section 5, the processing of claims. Finally, the behaviour of participants in Third Party litigation and the relative periods of activity and passivity which occur in "typical" claims will be discussed in Section 6.

In the subsequent sections of this report, the GIO will not be referred to by name, but will be referred to as "the insurer".

1 Haines, Trevor, Secretary, New South Wales Attorney General's Department 1990, paper presented at the GIO Legal Officers Conference, Fairmont Resort, Leura, April.

2 Gosper, Jenny, 1989, "GIO's Business Plan for Tail and Intermediate Claims", *Law Society Journal*, December, Law Society of New South Wales, Sydney.

3 Millet, Michael & McKnight, David, 1989, "NSW Lawyers Jamming Courts on Purpose", *Sydney Morning Herald*, 7 Dec 1989, Sydney.

4 *Motor Vehicles (Third Party Insurance) Act* 1942.

5 Government Insurance Office 1990, unpublished statistics.

6 Dowd, John, New South Wales Attorney General, 1989, in *Motor Accidents: the Act and Background Papers*, New South Wales Attorney General's Department, Sydney.

7 A sample size of 1053 allows us to be 95% confident that the results from the sample will be within ±3% of those in the population.

2

When Do Matters Settle?

Three separate approaches will be taken in dealing with the question of when it is that matters settle. Initially, the median duration of tail matters will be considered. This will be followed by a section which reports the stage at which settlements occurred. Finally, these two approaches will be combined, and the median duration of matters settling at each of the settlement stages will be addressed.

2.1 Duration

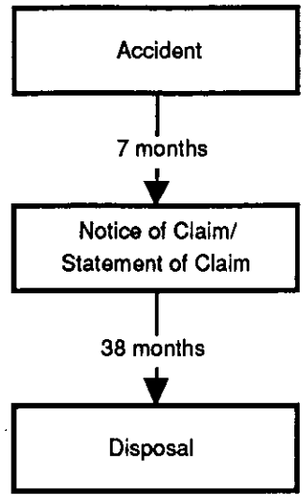
Delay in the provision of compensation to accident victims is an issue of longstanding concern both within the community and amongst administrators of the Third Party system. On the basis of the sampled matters it was found that victims wait a median of 47 months to obtain damages following a motor vehicle accident.[1] This means that in 50% of claims the victim waited more than 47 months, in the remaining 50%, the victim waited less than 47 months. This delay may not be entirely attributable to problems in the settlement system, as delay can occur even before claims are lodged.

The median duration from the date of accident to the commencement of a claim was seven months. Following commencement, the median duration to disposal was 38 months (Figure 2).

A study of motor vehicle claims commenced in the New South Wales Supreme Court in 1977–1979[2] found that matters took 41 months, from accident to disposal. Although this figure is not dissimilar from that which is reported here for common law tail matters, there is a striking contrast in the proportion of this time accounted for by the period from accident to commencement.

In the 1977–1979 study, 55% of the time from accident to disposal elapsed prior to the claim being commenced, a period of 22 months. On the basis of the CJRC sample of Third Party matters, only 15% of total time, seven months, had so elapsed. It would appear that while plaintiffs have become more timely in their commencement of litigation, the same cannot be said for the system which processes them.

Figure 2. Duration: accident to disposal



Source: CJRC sample

2.2 Stage of Disposal

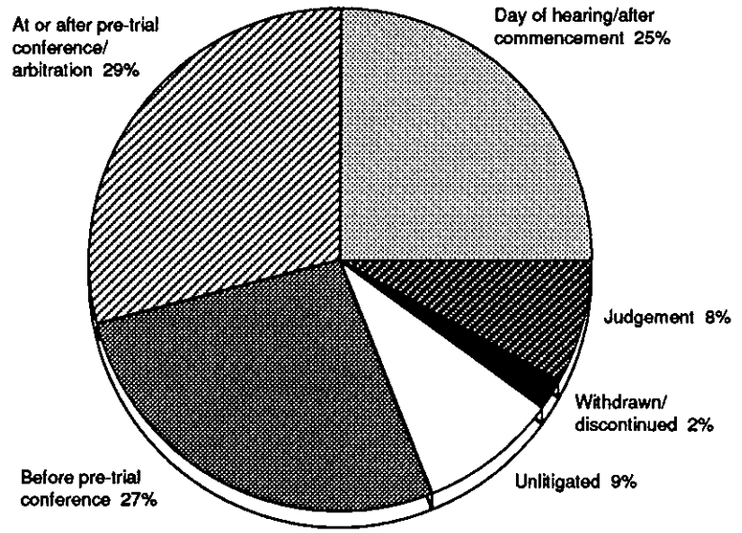
While delay in the provision of compensation to accident victims is an important issue for court administrators, of greater concern is the stage of disposal. The court does not supervise the majority of matters until notice is given that they be set down in the queue for trial. From this stage forward, an ever increasing demand is placed on court resources. When disposals are delayed until "the door of the court", the full gamut of judicial resources is allocated unnecessarily.

Figure 3 illustrates the stage of disposal for the sampled matters. As can be seen, only a small proportion, 9%, were disposed of without recourse to litigation. Where litigation was commenced, matters were largely disposed of by "out of court" settlements. Only 8% of the sampled matters proceeded to judicial determination. Settlements were reached prior to pre-trial conference in 27% of the sampled matters; 29% settled at or after such a pre-trial conference, or at arbitration. One quarter of the sampled matters, 25%, were settled either on the day allocated for hearing or after commencement of the hearing.

While the figure of 25% seems lower than some expressing the proportion of matters settling "at the door", it must be remembered that this figure is expressed as a proportion of all matters finalised by the insurer in 1990. This includes matters which may have been discontinued, settled without litigation, or prior to listing. Where, as is often the case, the size of the doorstep is expressed as a percentage of listed matters only, the figure is of course, much higher.

In a Report on a Review of the New South Wales Court System[3] the door of the court is defined as including "matters which settle after allocation of hearing date, but before the day of hearing as well as those which settle on the day". Such a definition would greatly enlarge the proportion described here as settling "at the door".

Figure 3. The stage of disposal



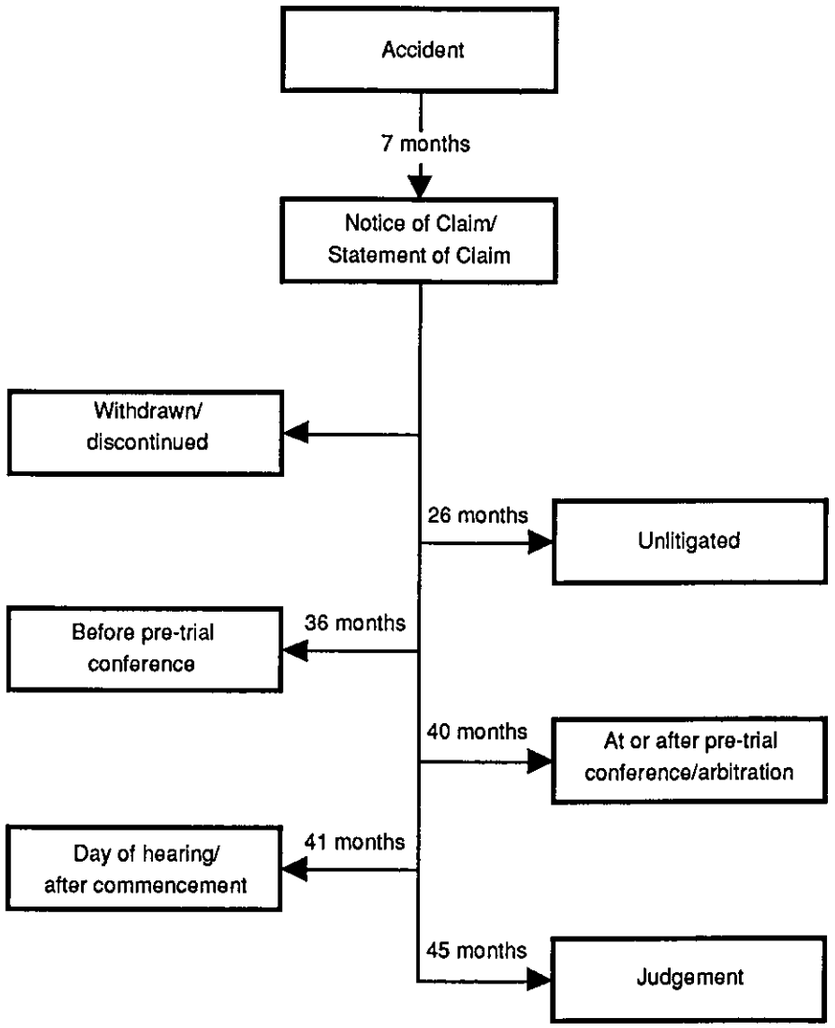
Source: CJRC Sample

2.3 The Stage of Disposal and the Time Taken

Figure 4 illustrates each of the stages of disposal, and shows the median duration from commencement to disposal for each stage. Where claims were settled without recourse to litigation, the median duration was 26 months. This is significantly quicker than in circumstances in which litigation was commenced.[4]

When settlements were reached before pre-trial conference, the median duration from commencement was 36 months. Where matters settled at or after a pre-trial conference, or at arbitration, the duration was 40 months, and settlements on the day of hearing or after commencement of the hearing took 41 months. Where matters did not settle, but required judicial determination, the median duration from commencement to judgement was 45 months.

Figure 4. The stage of disposal and the median time taken



Source: CJRC sample

2.4 Conclusion

The sample showed that the majority of Third Party matters are litigated, yet only a small proportion of these require judicial determination. A high proportion of the sampled matters were settled either on the day allocated for hearing, or after commencement of hearing. These matters are of particular concern to court administrators, as resources are allocated unnecessarily.

The sample also revealed that litigation significantly increased the amount of time claimants had to wait to obtain damages. This was the case regardless of the stage of disposal. Even when settlements occurred during the early stages of litigation, before pre-trial conference, matters were considerably longer than those which were unlitigated.

1 The median provides a measure of the mid-point in a frequency distribution. In this report, the median is considered to be a more appropriate measure of duration than the mean, or average. This is because the distributions reported are often skewed, and the mean is pulled in the direction of the more extreme scores.

Measures of duration are based on the median number of days divided by 30.4 to estimate the number of months.

2 Cranston, R, Haynes, P, Pullen, J, Scott, I R, 1985, Table 4.5, *Delays and Efficiency in Civil Litigation*, The Institute for Judicial Administration, Canberra.

3 Coopers & Lybrand, W D Scott, 1989, *Report on a Review of the New South Wales Court System*, May, unpublished.

4 Median test groups: litigated, unlitigated by duration (commencement to disposal), $p<0.05$.

3

Court Procedural Requirements

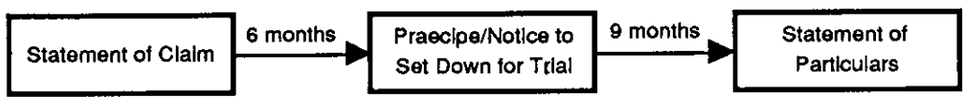
Regardless of whether claims are ultimately determined by a judge, or as is more often the case, settled out of court, the structure within which claims are pursued is provided by the rules of court procedure. This section considers when it is that the procedural requirements of the courts are being met.

3.1 Praecipe/Notice to Set Down and Particulars

It took sampled matters a median of six months from commencement to the filing of either a Praecipe (District Court) or a Notice to Set Down for Trial (Supreme Court). These are intended as an indication that the matter is in a state of readiness for trial (Figure 5).

The District Court Rules, Part 12, rule 4A, state that proceedings "shall not be set down for hearing unless the plaintiff has served a Statement of Particulars". Part 33, rule 8A of the Supreme Court Rules states that "the plaintiff may not file a Notice to Set Down for Trial ... unless a Statement of Particulars has been served". Despite these rules, the sampled matters revealed that Particulars were actually lodged a median of nine months after Praecipe/Notice to Set Down (Figure 5).

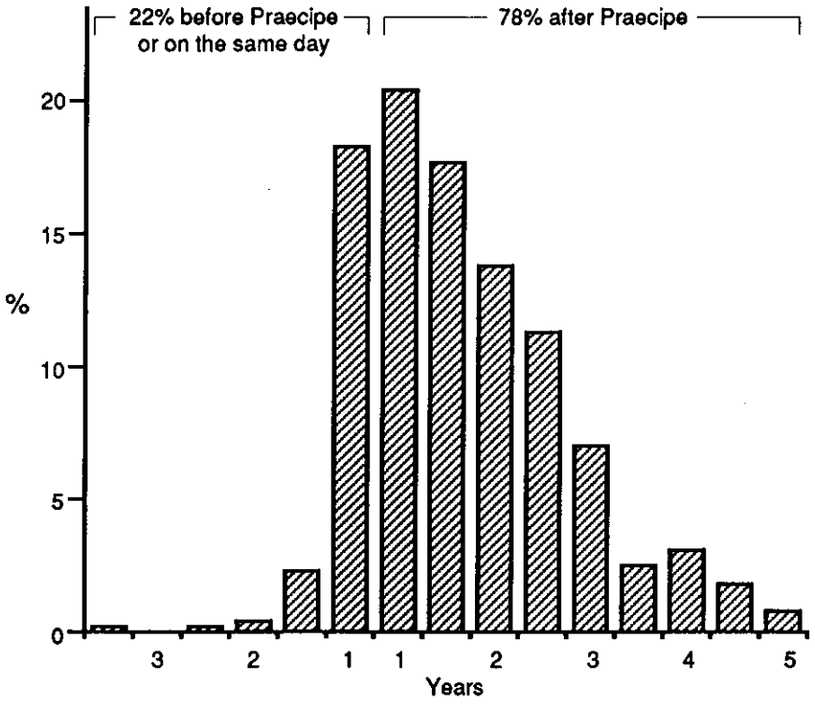
Figure 5. Median duration: lodgement of Praecipe/Notice to Set Down and the Statement of Particulars



Source: CJRC sample

That Particulars are usually lodged well after Praecipe/Notice to Set Down clearly indicates the latter are treated as a procedural step in order to obtain a place in the queue, rather than as a true indication that the matter is in a state of readiness for trial. Only in 22% of the sampled matters was a Statement of Particulars filed before or on the same day as a Praecipe/Notice to Set Down was filed (Figure 6).

Figure 6. Lodgement of the Statement of Particulars



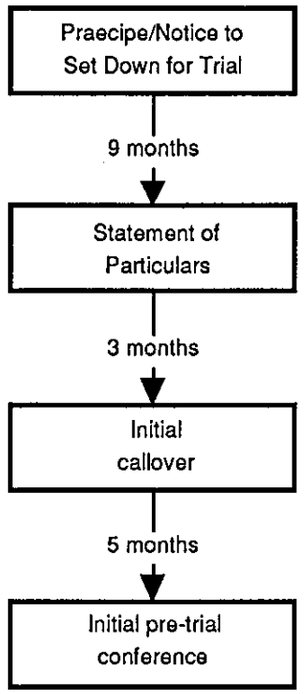
Source: CJRC Sample

3.2 Callover and Pre-trial Conferences

Where sampled matters proceeded to callover, the initial callover was held a median of three months after a Statement of Particulars had been lodged. Initial pre-trial conferences were attended a median of five months after the initial callover (Figure 7).

Where matters reached an initial callover, a Statement of Particulars had yet to be lodged in 19% of the sampled matters, and where matters proceeded to a pre-trial conference, a Statement of Particulars was yet to be lodged in 14% of matters.

Figure 7. Median duration: Initial callover and pre-trial conference



Source: CJRC sample

3.3 Unreadiness

To better understand the problems the parties have in meeting with court procedural requirements, the Department of Courts Administration and the Law Society requested that a record be made of notes on the insurer's files which indicated that matters were stood over or adjourned due to a state of unreadiness by either party. Such data is of a fairly qualitative nature, and in reporting these findings no attempt is made to estimate the degree to which the following examples are representative of matters in general. However, they serve to illustrate the activities of the parties in meeting with court procedural requirements. This information is collected from the 100 matters selected for more detailed follow-up (see Section 1.4 Research Approach).

The most common reason for unreadiness at callover was that information appropriate to the matter had not been supplied. This may have been information specifically requested by a party, or a Court document such as a Statement of Particulars. On one occasion information was faxed on the morning of a callover,

on another, information had been provided but was mislaid. A solicitor was reported as having turned up with the wrong file, and there were many occasions where medicals had not been arranged or reports had not been served.

The analysis also revealed that while a Statement of Particulars was eventually lodged in every case, in 20 of these, the Statement had to be amended at a subsequent date. It was also noted that in 70 of the 100 matters which were called over, 17 were called over twice, 13 three times, and one was called over five times. Pre-trial conferences were attended in 35 of the 100 matters, and in eight of these pre-trial conferences were attended more than once. In two cases parties attended as many as five pre-trial conferences.

At the request of the Department of Courts Administration, a record was made of notes on the files which indicated that there was some doubt about particulars which had been provided to the insurer. Where such notes existed, they usually referred to there being some doubt about the injury claimed for. This may have been because there were conflicting doctors reports, or because the plaintiff introduced further symptoms at a later stage in proceedings. On one occasion only, a claim was noted as being "suspect" due to a suspicious combination of circumstances, and this matter resulted in a verdict for the defendant.

3.4 Conclusion

Delay in meeting with court procedural requirements is largely attributable to the parties. However, the purpose of these requirements must be questioned when it is clear that they are not fulfilling the role for which they were intended. For example, Praecipe/Notice to Set Down is intended to indicate that a matter is in a state of readiness for hearing. In practice, the sampled matters revealed that it is treated more as a procedural step in order to obtain a place in the queue. Likewise, the value of the Statement of Particulars is undermined when it is realised that it is often lodged well after the matter has been set down, and it is often the subject of amendment at a subsequent date.

Unreadiness at callover most commonly occurred because information appropriate to a matter had not been supplied. Delay in the supply of information between the parties will be considered further in Section 5 Delay: Claim Processing.

4

Delay: Claim Characteristics

4.1 Duration

An analysis was undertaken in order to determine whether characteristics of claims can affect their duration. The claim characteristics considered were decided on the basis of a review of previous studies considering delays in the disposal of personal injury matters, where suitable data could be collected from the insurer's files. The characteristics examined were the claimant's age, the type of injury claimed for, the size of any award made, and the apparent liability of the insurer.

4.1.1 Age of Claimant

It has been considered that delay may occur in common law negligence actions involving children as there is a need to wait until they have gained maturity or attempted entry into the workforce in order to assess their employment prospects.[1]

If such an explanation could effectively account for delay in the majority of children's cases, it would be expected that the younger the child at the time of the accident, the longer the duration from accident to settlement would be. On the basis of the total sample of matters, no such relationship between age and duration was found to exist.[2] This means that although longer than average delays can result from the need to wait until a child has gained maturity or attempted entry to the workforce, it appears to be the exception rather than the rule.

A comparison of the median amount of time from accident to disposal revealed a small difference between sampled claims in which the claimant was aged under 18, 50 months, compared to those in which the claimant was aged over 18, 46 months (Table 4.1).[3] One possible explanation for this small difference is that in matters involving children, the parties must obtain judicial approval for settlements before the terms are officially accepted.

Table 4.1. Duration: accident to disposal, by age of claimant

Age (at time of accident)	n	%	Median (months)
Under 18 years	165	17	50
Over 18 years	787	83	46
Total	952 [4]	100	

Source: CJRC sample

4.1.2 Injury Type

An analysis of the effect of injury type on case duration was made by calculating the median time from accident to disposal for each injury type. Injuries were identified on the basis of the most serious injury alleged on the Statement of Claim. Few differences between the injury groups were revealed. Only in circumstances where a death had occurred were claims disposed of significantly more quickly, a median of 15 months.[5]

Claims for death were usually quite simple matters involving small amounts of money, for example, to reimburse funeral expenses. Such claims do not involve damages for pain and suffering experienced by relatives as a result of the death, as in these circumstances a claim would be commenced by the relatives themselves. It would then be classified as being for "psychological" injury (in "other" category), rather than death .

Sampled matters involving sprain and strain injuries were somewhat quicker than those for the other injury categories, a median of 45 months from accident to disposal. Claims for multiple injuries were somewhat slower, a median of 52 months, while claims for all other injury categories took a median of 49 months (Table 4.2). A test of the significance of the differences between these medians revealed that, as they were small, they may not be indicative of real differences between the injury categories.[6]

Table 4.2. Duration: accident to disposal, by injury type

Injury	n	%	Median (months)
Fracture, dislocation	149	15	49
Sprains and strains:	558	56	45
(Neck, back, shoulder	517	52	45)
(Other	41	4	47)
Internal, contusion	101	10	49
Open wound	50	5	49
Multiple injuries	66	7	52
Other injuries	57	6	49
Death	7	1	15
Total	988	100	

Source: CJRC sample

4.1.3 Size of Award

Ross[7] argues that "delay might well be expected to be greater with more serious and costly injuries". This expectation was examined on the basis of the sampled matters by measuring the relationship between the size of the award made in each case, and the duration from the commencement of litigation to disposal. The award was taken to be the total amount agreed at settlement, inclusive of costs, or the amount awarded judicially, plus costs as negotiated.

Only a very small correlation was found between award size and the duration from the commencement of litigation to disposal. Correlation coefficients range from –1.00 to +1.00, where –1 would indicate a perfect negative relationship, +1 would indicate a perfect positive relationship, and 0 would indicate the variables are unrelated. For the sampled matters, the correlation between award size and the duration from commencement to disposal was 0.21. This means that there was only a very weak tendency for matters involving larger awards to take longer overall.

Further examination of the expectation that larger awards are related to longer cases was made by considering the median duration of matters awarded less than $100,000 separately from those awarded more than $100,000. This was done so as to consider District Court matters, where the limit of the jurisdiction is $100,000, separately from those of the Supreme Court.

Table 4.3. Duration: commencement to disposal, by award and jurisdiction

Award ($)	n	%	Median (months)
District Court jurisdiction:			
0 –19,999	425	48	37
20,000 – 39,999	261	29	38
40,000 – 59,999	72	8	42
60,000 – 79,999	34	4	43
80,000 – 99,999	25	3	48
Supreme Court jurisdiction:			
100,000 – 199,999	46	5	43
200,000 – 299,999	18	2	49
> 300,000	10	1	56
Total	891	100	

Source: CJRC sample

Table 4.3 illustrates that for matters which fell in the jurisdiction of the District Court, as the award increased, so did the duration. The same was true for matters filed with the Supreme Court. Despite this finding, matters receiving awards in the lower range of each court's jurisdiction, still take a long time. Matters awarded less than $20,000, in the District Court took a median of 37 months, while those awarded between $100,000 and $200,000 in the Supreme Court, took a median of 43 months.

4.1.4 Liability

It was expected that delay would be least where liability was clear cut[8], and matters in which liability was disputed would take longer. This is because the latter may require more investigation, and there is a greater burden of compromise if settlements are to be achieved. This expectation was considered on the basis of the insurer's recommendation as to liability. Information was recorded from a standard form present in the sampled files, the Report and Recommendation. This form sets out a procedure by which an assessment of the claim is made, including a recommendation as to liability.

Recommendations were classified as to whether liability was clear, questionable, or disputed. It was found that in 65% of the sampled matters liability was recommended to be clear. Liability was considered questionable in 25% of matters, and in 10% of matters it was recommended that liability should be disputed.

Table 4.4 indicates that for the sampled matters, delay was more where liability was disputed.[9] However, disputes over liability cannot be considered a strong cause of delay, as even where liability is clear, matters take a median of 39 months from commencement to disposal.

Table 4.4. Duration: commencement to disposal, by recommended liability

Recommendation	n	%	Median (months)
Clear	390	65	39
Questionable	154	25	38
Disputed	60	10	43
Total	604	100	

Source: CJRC sample

4.1.5 Conclusion

In this section, four characteristics of Third Party matters were examined: age, injury, award and liability. Characteristics which increased the duration of matters were disputed liability, large awards in both jurisdictions, and claimants under 18. Injury type did not affect duration, unless a death had occurred, in which case claims were shorter.

The characteristics considered were able to explain why some matters took longer than was typical, that is, longer than 38 months. However, they did not explain why the majority of tail matters take as long as 38 months in the first place.

4.2 Stage of Disposal

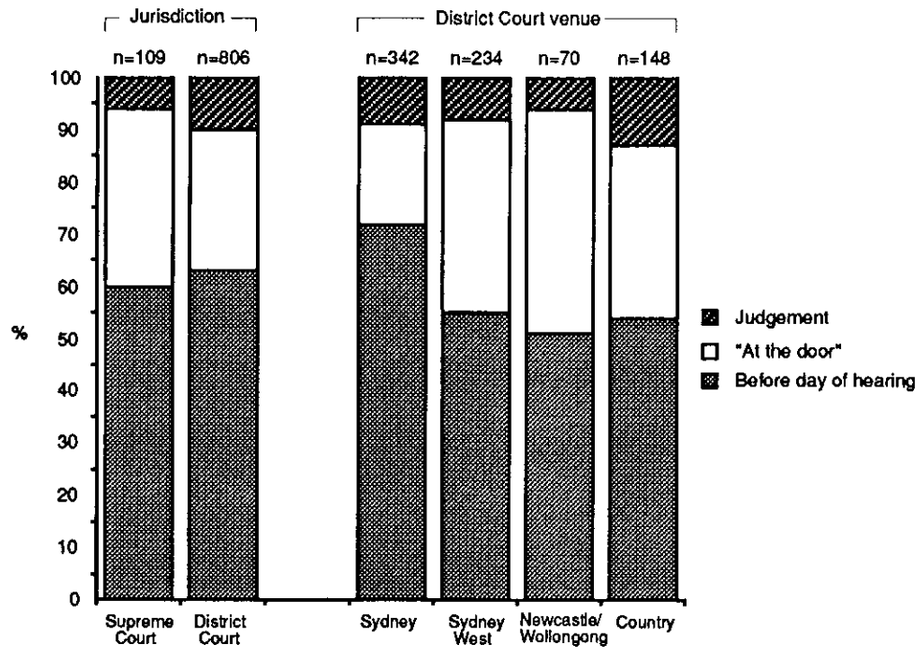
In order to determine whether characteristics of litigated matters can affect the stage of disposal, comparisons were made between claims lodged with either the District Court or the Supreme Court, and between various District Court venues. These comparisons focus particularly on the problem of matters settling at the door of the court.

4.2.1 Jurisdiction

The proportion of the matters which settled at the door of the court was the same in both the District and Supreme Courts. Of the sampled matters lodged with the District Court, 63% were settled before the day of hearing, 27% were settled on the day of hearing or after commencement of the hearing, and 10% proceeded to judicial determination. In the Supreme Court, corresponding figures were 60% settled prior to hearing, 34% settled on the day of hearing or during the hearing, and 6% were determined (Figure 8).

The median time from commencement to disposal for matters lodged in the District Court was 38 months, in the Supreme Court it was 42 months. A test of the significance of this difference between the jurisdictions revealed that, as it was small, it may not be indicative of any real difference between the courts.

Figure 8. Stage of disposal by jurisdiction and District Court venue



Source: CJRC sample

4.2.2 Venue

A comparison of District Court venues was undertaken to determine whether there were differences in the proportion of matters settling at the door of the

court. It was found that sampled matters which had lodged a Statement of Claim at the Sydney venue were more likely to have been settled prior to the day of hearing than those lodged with Sydney West, Newcastle/Wollongong or the country areas.[10] Only 16% of Sydney matters were settled either on the day allocated for hearing or after commencement. This compares to corresponding figures of 37% in Sydney West, 43% in Newcastle/Wollongong, and 32% for country venues (Figure 8).

4.2.3 Conclusion

It has already been mentioned how matters which settle at the door of the court are of great concern to court administrators. In comparing District and Supreme Courts, it would appear that the problem is equally prevalent in both courts. Within the District Court however, matters lodged at the Sydney venue are more likely to settle before reaching this stage than those from other venues.

There are a number of possible explanations for this finding, for example, in the Sydney city area the parties may have better access to each other and to court resources, or there may be a "local legal culture"[11] which favours settlements earlier than at the court's door. Further research would need to be conducted in order to better understand the significance of these explanations.

1 New South Wales Law Reform Commission 1984, *Report on a Transport Accidents Scheme for New South Wales*, Law Reform Commission, Sydney.

2 Age by duration (accident to disposition), correlation coefficient=0.0, r^2=0.0. Median test age groups: 0–5 years, 6–12 years, 12-18 years, by duration (accident to disposition), $p>0.05$.

3 Median test age groups: under 18 years, over 18 years, by duration (accident to disposal), $p<0.05$.

4 This total refers to the number of sampled matters in which it was possible to record the date of accident, the age of the claimant at the time of the accident, and the date of disposal.

5 Median test groups: death, other injuries by duration: accident to disposal, $p<0.05$.

6 Median test injury groups: fracture/dislocation, sprain/strain, internal/contusion, open wound, multiple injuries, other injuries, by duration (accident to disposal), $p>0.05$.

7 Ross, H I, 1970, *Settled Out of Court*, Aldine, Chicago.

8 Ross, *op. cit.*

9 Median test liability groups: clear/questionable, disputed, by duration (commencement of litigation to disposal), $p<0.05$.

10 District Court venues: Sydney, other, chi-square=46.28, df=2, $p<0.05$.

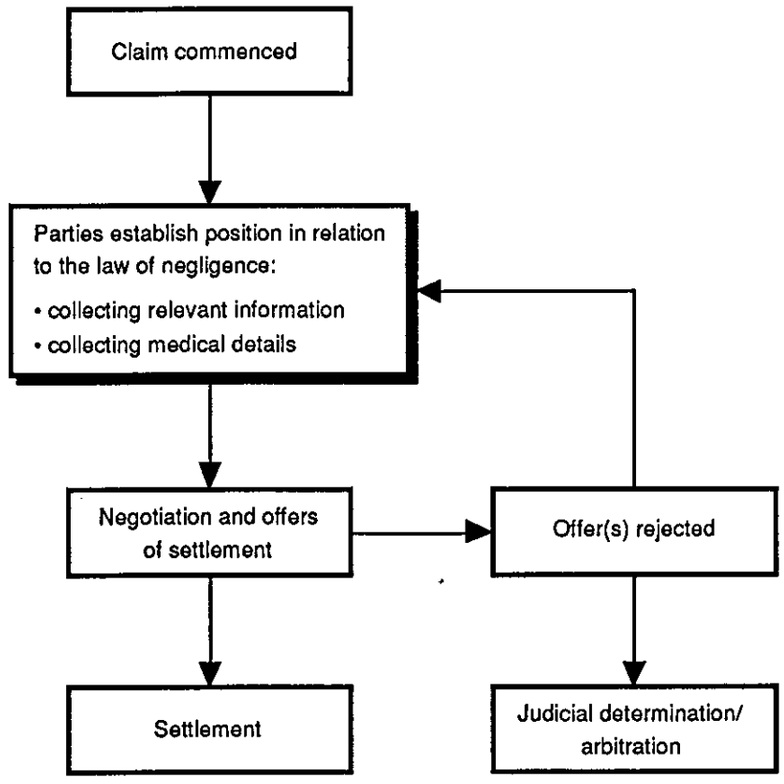
11 "The phenomenon developed from the habitual practices and the patterns of acceptance and expectation assumed by litigants, their lawyers and the courts." In "Court Delays Summit: Conference tackles problems with the legal culture", *Law Society Journal*, April 1990, Law Society of New South Wales, Sydney.

5

Delay: Claim Processing

Having determined that the majority of tail matters experience delays which cannot be ascribed to specified claim characteristics, attention will now focus on aspects of the processing of claims, particularly as they occur in Figure 9. This illustrates key steps in the processing of a tail matter, and the effect that each of these has on the duration of claims will be considered.

Figure 9. Key steps in the processing of a claim



The information presented in this section has been collected from the 100 matters which were identified as taking a "typical" time from commencement to disposal (see Section 1.4 Research Approach). It is intended that these provide an indication of the types of activities which may be associated with the problem of delay, as it is experienced in the majority of cases.

5.1 Establishing a Position in Relation to the Law of Negligence: Collecting Relevant Information

In constructing a Third Party matter, parties must concern themselves with establishing a position in relation to the law of negligence and principles for calculating quantum. Much of this aspect of claims processing involves the requesting and provision of information.

Some information may be provided in meeting with court procedural requirements, for example in a filed Statement of Particulars. Most information must however be collected from a number of sources including the party represented, the opposing party, witnesses, doctors, the police and employers. Where medical details are concerned, these will be considered in Section 5.2.

A review of the 100 selected matters identified 452 requests for information made by either the insurer or the plaintiff. Requests from the plaintiff were identifiable where the request was made to the insurer, or where information provided to the insurer indicated that the plaintiff had made a request to someone else.

The requests for information were divided into groups depending on who the supplier of the information was. The amount of time taken by this supplier to meet with the request was then calculated.

On the basis of the 452 requests identified, the police were found to be the quickest suppliers of information, taking a median of 12 days from the request date until their date of supply. Employers and educational institutions took a median of 19 days, and the government motor transport department, 21 days. In contrast to these relatively short amounts of time, the insurer took a median of 67 days to supply information requested, and the plaintiff a median of 56 days (Table 5.1).[1]

Where information was requested from the insurer, it took the insurer more than six months to supply that information in 28% of cases. The plaintiff took more than six months to supply information in 24% of cases.

The delay in the "other" category, a median of 70 days, was also largely attributable to the parties. Although this group included a number of suppliers, delay was most when information was supplied by the defendant or Counsel representing either party.

Table 5.1. The time taken to supply information requested

Supplier	n	Median (days)
Insurer	58	67
Plaintiff	241	56
Police	52	12
Employer/educational institution	63	19
Government transport department	15	21
Other (counsel, court clerk, coroners clerk, other insurers or agencies)	23	70
Total	452	

Source: CJRC sample, 100 selected matters

These measurements do not illustrate the extent to which the information collection process can delay tail matters overall. However, it is clear that where this process does delay matters, the blame is attributable to the parties themselves. The parties take significantly longer to provide requested information than do other sources, and neither one of the parties is quicker in this respect than the other.

Whether this delay in supplying information results from deliberate procedural tactics, difficulties in meeting with the requests made, or a pervasive "legal culture" which does not expedite matters until they move closer to the courts door, cannot be considered on the basis of the current data. However, it is clearly a factor deserving greater focus, and Section 6 The Pace of Litigation will consider the activities of the parties further.

5.2 Establishing a Position in Relation to the Law of Negligence: Collecting Medical Details

Medical aspects of the processing of claims have often provided the basis for popular explanations of delay. For example, difficulties in obtaining appointments and having them attended, and the need to have injuries stabilise. This section will consider these explanations on an empirical basis, in an attempt to ascertain their effect on the duration of typical tail matters.

5.2.1 Treating Doctors' Reports

The insurer has indicated that it finds the reports of treating doctors to be of great importance in assessing claims, and their timely supply is of much benefit to this procedure. Of the 100 selected matters there were 189 occasions where it was possible to record the date of a treating doctor's report and the date it was provided by the plaintiff to the insurer.

On the basis of these, it was calculated that the plaintiff provides treating doctors' reports to the insurer a median of 15 months after they were provided to the plaintiff by the doctor. In 25% of these occasions treating reports were provided to the insurer more than two years after they were provided to the plaintiff by the doctor.

It has already been established that the supply of information between the parties is a significant source of delay. This finding is reinforced by this measurement of the extent to which plaintiffs' delay in supplying treating doctors' reports to the insurer.

5.2.2 Medical Assessments

Delay is sometimes said to occur because of difficulties in arranging appointments with medical specialists and difficulties in getting specialists to forward reports.[2] The significance of this explanation was considered on the basis of the medical appointments recorded in the files of the 100 selected matters. In total 245 requests for medical assessments were identified. The median amount of time from the date of a request for an appointment until the date of the appointment itself was 55 days. This means that 50% of medical appointments were obtained less than 55 days after they were requested, 50% took longer than this.

Following the conduct of medical assessments, reports were provided by doctors a median of seven days following the appointment. Delay experienced by the majority of tail matters does not therefore result from difficulties in getting doctors to provide reports.

Plaintiffs are sometimes accused as being the authors of delay by their failure to attend medical appointments.[3] Of the 245 medicals requested it was found that in 37 cases the appointment was not attended, however in 13 of these notice was given that the appointment could not be attended prior to the day of the appointment. On six occasions the plaintiff could not be blamed for the delay resulting from non-attendance as notification of the date of the appointment had not been made. Only on 12 occasions was no reason given for the non-attendance, and on one occasion the appointment was not attended due to misfortune on the day. This means that in 5% of the medicals requested by the insurer, the plaintiff could be "accused" as being the author of delay.

5.2.3 Injury Stabilisation

A common explanation for the delay experienced by accident victims in obtaining damages, is that it arises from the need for injury stabilisation. It is necessary to delay until such time as a full assessment of damages can be made.

Although this is likely to impose constraints on some matters, a study conducted in England by Harris[4] showed that the vast majority of plaintiffs had recovered and were back at work before their claims for damages were concluded.

To consider whether injury stabilisation can explain delay in tail matters, the reports of medical examinations requested by the insurer were classified according to whether the report indicated the injury had stabilised or not. Injuries were defined as being stable when there were no symptoms in evidence; or there were clear details of the permanence of any remaining symptoms, but no further treatment was required.

Of the 100 matters, there were 73 in which the reports requested by the insurer indicated that the injury had stabilised. In 19 of the 100 matters, the most recent medical report indicated that the matter had not stabilised. In the remaining eight cases it was not possible to determine whether the injury had stabilised, either because there was conflicting evidence or the issue was not adequately addressed in the file.

If delay arises from the need for injury stabilisation, it would be expected that matters would not settle where the injury was not stable, and matters would settle quickly where the injury was stable. This is particularly so as in many cases the injury would have stabilised long before the initial assessment requested by the insurer.

In considering this expectation it was found that where reports indicated that the injury was not stable, 50% of these matters were disposed of within one year of the latest such assessment. This finding indicates that injury stabilisation provides an unsatisfactory explanation for delay, as it appears that matters can settle even when the full extent of injury prognosis is not known. Presumably a medical specialist's opinion is considered an adequate basis for disposal in such circumstances.

Where reports indicated that the injury had stabilised, the sampled matters took a median of 16 months to be disposed of following the initial assessment of stabilisation, where no later reports contradicted this assessment.

Once again, the use of injury stabilisation as a major explanation for delay is somewhat unsatisfactory. Even where it is clear that injuries have stabilised, disposal still takes a considerable amount of time.

5.3 Negotiation and Offers of Settlement

Once the parties have established a position in relation to the law of negligence, negotiation and offers of settlement may take place. If these are unsuccessful, the parties may need to collect further information to reinforce their position, or they may need to re-establish it. Alternatively, the matter may proceed to determination, either by the judiciary or at arbitration (Figure 9).

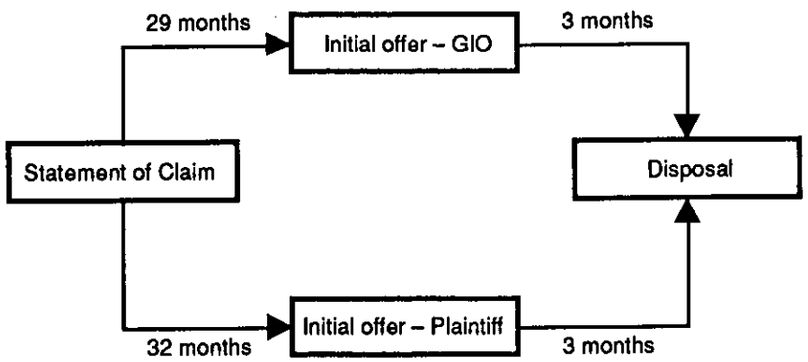
This section will consider at what stage the insurer and the plaintiff are making initial offers, and the time taken following these offers to disposal. The information reported is based on the total sample of 1053 matters.

5.3.1 Initial Offers

In only 74 of the 1053 matters an initial offer was made by the insurer prior to the commencement of litigation by the plaintiff. In 32 of these occasions, a Statement of Claim was subsequently filed.

Where initial offers were made after the commencement of litigation, the insurer gave its initial offer a median 29 months after commencement. Plaintiff's initial offers were found to have been made a median of 32 months after commencement. The median duration from the offers of both the insurer and the plaintiff to disposal was three months (Figure 10).

Figure 10. Duration: Initial offer to key case events



Source: CJRC sample

In 7% of the sampled matters, the insurer's initial offer was recorded as having been made on the day of the hearing, or after the hearing's commencement. This was so for 10% of the plaintiff's initial offers.

The amount of time which elapsed before an initial offer was made was equivalent to approximately 75% of total case duration. This means that the parties spend approximately 75% of total case duration attempting to establish a position by collecting information and medical details. The pace of their activities during this time will be considered further in Section 6 The Pace of Litigation.

5.3.2 Will Sooner Offers Lead to Quicker Settlements?

In December 1989, the Law Society Journal published an article at the request of the insurer outlining a business plan for the management and settlement of its common law tail claims.[5] This plan, endorsed by the NSW Government, aimed to achieve a more cost effective and efficient system for dealing with tail claims.

An important aspect of the insurer's planned approach to negotiation was that a reasonable offer of settlement would be made as soon as possible after receipt of particulars. This would allow matters to settle more quickly, relieving pressure on the court system.

If the insurer's approach of making an initial offer as soon as possible would enable matters to settle sooner, it would be expected that the shorter the duration from commencement to the initial offer, the shorter the overall duration of the case would be. The sampled matters revealed that the correlation between the duration from commencement to the insurer's initial offer with the duration from commencement to disposal was 0.63. This indicates that there is a relationship between quicker initial offers and shorter overall case duration.

A second analysis compared the duration from commencement to initial offer with the duration from initial offer to settlement. It was found that the sooner offers were made after commencement, the longer it took for matters to reach disposal following these offers.[6] It would appear that while quicker offers can lead to shorter cases overall, there are other factors determining the pace of litigation which, despite quicker offers, make the amount of time following these offers extend.

One possible explanation for this concerns the role of court events in providing incentives for settlement negotiations to take place. Regardless of when an initial offer is made, settlements may be delayed until an appropriate court event is attended, such as a pre-trial conference or a hearing. The validity of this explanation will be considered in Section 6 The Pace of Litigation.

5.4 Conclusion

It is clear that a substantial proportion of the duration of matters is spent prior to the initial offer being made. This is where the parties attempt to establish a position in relation to the law of negligence and principles for calculating quantum. Much

of this lengthy process involves the collection of information and medical details relevant to the claim. In considering why it is that this aspect of the processing of claims is so lengthy, it was found that the parties take significantly longer to provide requested information to each other than do other sources

The force of a number of often provided explanations for delay has been shown to be somewhat insignificant. Delay in typical tail matters does not result from difficulties in getting medical specialists to forward reports or the need for injury stabilisation. Medical appointments can take some time to arrange, and the plaintiff can be accused of non-attendance in 5% of appointments arranged.

1 Median test groups: insurer/plaintiff, others, by duration (request to supply), $p<0.05$.

2 New South Wales Law Reform Commission, *op.cit.*

3 Cranston et al, *op. cit.*

4 Harris, D, Maclean, M, Genn, H, Lloyd-Bostock, S, Fenn, P, Corfield, P, Brittan, Y, 1984, *Compensation and Support for Illness and Injury*, Clarendon, Oxford.

5 Gosper, J, *op. cit.*

6 Duration: commencement to initial offer (insurer) by duration: initial offer (insurer) to disposal=–0.47

6

The Pace of Litigation

This report has so far considered relationships between case characteristics and the duration of cases, and the role played by the processing of claims. To enable a better understanding of the pace with which litigation is conducted by the parties, this section will consider their activities further. This information is based on the follow-up of 100 matters which took a "typical" time from commencement to disposal (see Section 1.4 Research Approach).

Where the insurer's files indicated that either party had conducted some "activity" the nature of that activity and the date of its occurrence were recorded. An "activity", used in this context may refer to: a request for information, investigation or a medical appointment, supply of information, an offer, briefing of counsel or the lodgement of a court form. Where notes in the file indicated that an internal assessment or recommendation had been made, these were classified as "internal initiatives". Activities relating to attempts to settle the matter, for example, by requesting a counter offer, were classified as "settlement initiatives". The only activities which were not recorded at this stage were those relating to the payment of accounts (see Appendix 5 for the data collection instrument).

As many activities may have occurred on the plaintiff's side which the insurer's files could not have indicated, only insurer activities will be considered in detail here. It is expected that a follow-up study of plaintiff's files will allow a later report to focus on the activities of both parties together, and also allow a more detailed exploration of the average amount of "active" or "passive" time per matter.

Of the 100 matters considered, five cases are used here to illustrate the pace with which litigation was conducted. Of those selected there are two which illustrate an average amount of insurer activity, one each of the lowest and highest activities, and one which required judicial determination.

6.1 Case One: Average Activity

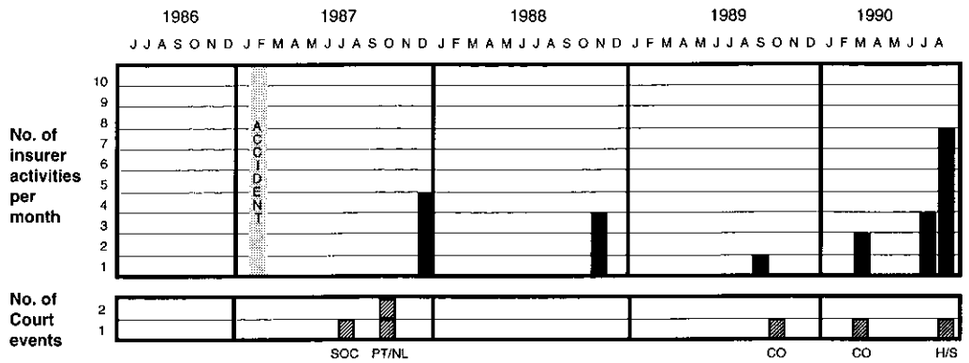
Figure 11 illustrates a matter in which an average number of activities were undertaken by the insurer. Each block in the diagram indicates an activity made by the insurer in the month shown, and the list below each month describes the type

of activity. This matter involved a claim for a sprained ankle, cuts and bruising, which occurred as the result of a motor cycle accident. The claim was commenced in the Penrith District Court in July 1987, and was settled over three years later, on the day allocated for hearing.

The first activities recorded as having been undertaken by the insurer were made in December 1987, five months after the Statement of Claim was filed. The insurer made a request for particulars to the plaintiff, arranged a medical appointment, issued instructions to the defendant, and lodged a Notice of Grounds of Defence.

The insurer's request for particulars required that the plaintiff provide details of the injuries claimed for and any treatments undertaken, details of continuing disability and details of employment or economic loss where these were relevant to the claim. It took the plaintiff until November 1988, exactly one year later, to respond to this request for particulars.

Figure 11. Insurer activities in Third Party litigation: average activity



List of insurer activities per month

1987

DEC
- requests information
- requests medical
- letter/phone
- Notice of Grounds of Defence

1988

NOV
- requests information
- requests medical
- letter/phone

1989

SEP
- requests information

1990

MAR
- requests investigation
- internal initiative

JUL
- internal initiative
- internal initiative
- internal initiative

AUG
- requests investigation
- requests medical
- provides information
- letter/phone
- offer
- subpoenas issued
- Offer of Compromise

ABBREVIATIONS

SOC	Statement of Claim	CO	Callover
PT	Praecipe for Trial	H/S	Settlement at hearing
NL	Notice of Listing		

It is hard to understand why this delay occurred, the claim did not involve economic loss, and the details of the injury now supplied to the insurer were not different from those alleged on the Statement of Claim. The injury could not have required stabilisation, as the cuts and bruises had healed and all details of scarring were known at time the Statement of Claim was lodged. The plaintiff was working as a labourer and playing football, so it is unlikely the sprained ankle required stabilisation.

While the insurer was waiting for particulars to be supplied by the plaintiff, no further activities were recorded as having been undertaken. Following receipt of these particulars in November 1988 the insurer requested the treating doctor's reports from the plaintiff and arranged another medical appointment. Also, the insurer again tried to contact the defendant, the first attempt one year previously having been unsuccessful.

Despite the fact that a callover was held in October 1989, the plaintiff did not provide any medical reports to the insurer until February 1990, well over a year after they were requested, and two and a half years after the treating doctor provided them to the plaintiff. No explanation for this delay was evident from the file.

In March 1990, the insurer requested that an investigation officer again attempt to find the defendant, and two days prior to attending a callover, the first assessment of the value of the claim was made.

At the callover, March 1990, the matter was allocated a hearing date in August of the same year. No further activity was recorded as being undertaken by the insurer until the month prior to the hearing, when a further assessment of the case was made.

Three weeks prior to the day allocated for the hearing, the insurer again requested that an investigation officer attempt to locate the defendant, another medical appointment was arranged (the report from this did not arrive until the day of the hearing), medical reports were served on the plaintiff (the plaintiff had requested these three months earlier), and an Offer of Compromise was made. The matter settled on the day of the hearing: "at the door of the court".

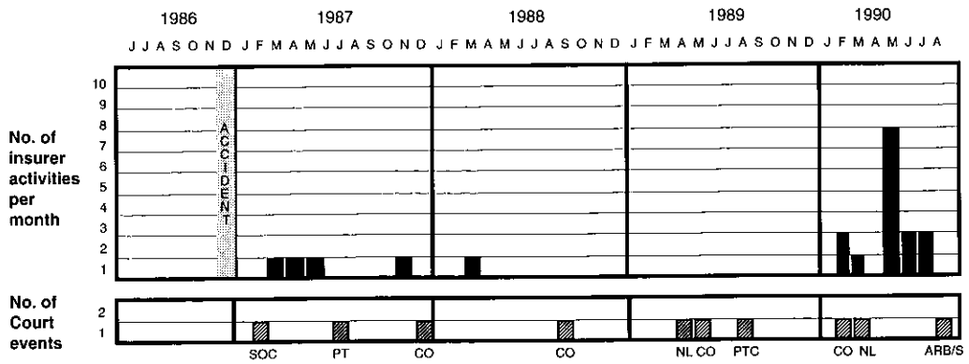
The degree to which this matter illustrates the normal pace of Third Party litigation cannot be estimated. However, it does illustrate the pace of litigation in a matter which took a typical duration, and an average number of insurer activities. The reason why this case took as long as it did, only reaching settlement at the "door of the court", cannot be explained in terms of the characteristics of the case. Clearly, delay was due to the pace with which litigation was conducted by the parties, and the incentive to settle which was provided by the door of the court.

6.2 Case Two: Average Activity

Another matter in which an average number of activities were undertaken by the insurer is illustrated in Figure 12. This claim was for a whiplash injury, and it was commenced in the Parramatta District Court in February 1987.

Following commencement, the insurer issued a request for particulars, lodged a Notice of Grounds of Defence, and arranged a medical assessment. This assessment was held in July 1987, and it was clear that the injury had stabilised. The plaintiff did not provide the particulars requested until one year later, in February 1988.

Figure 12. Insurer activities in Third Party litigation: average activity



List of insurer activities per month

1987

MAR
- requests information

APR
- Notice of Grounds of Defence

MAY
- requests medical

NOV
- internal initiative

1988

MAR
- requests information

1990

FEB
- requests investigation
- requests medical

MAR
- requests information

MAY
- internal initiative
- internal initiative
- internal initiative
- offer
- letter/phone
- provides information
- requests information

JUN
- internal initiative
- subpoenas issued

JUL
- internal initiative
- offer

ABBREVIATIONS

SOC	Statement of Claim	NL	Notice of Listing
PT	Praecipe for Trial	PTC	Pre-trial conference
CO	Callover	ARB/S	Settlement at arbitration

In March 1988, the insurer requested that the plaintiff provide medical reports. This was done two years later, in February 1990. No insurer activities were recorded between March 1988 and February 1990, although a callover and a pre-trial conference were attended. The insurer repeated its request for medical reports at both of these.

At a callover in February 1990, the matter was considered suitable for arbitration, and a date was allocated in August 1990. A large number of insurer activities occurred in the months prior to the arbitration hearing, and the matter settled on the day allocated for this hearing.

How a court event can affect the pace of litigation is clearly illustrated in this matter. After a passive period of two years, the allocation of an arbitration date provided the necessary incentive for the parties to commence negotiation and offers of settlement.

6.3 Case Three: Low Activity

Figure 13 illustrates a matter in which very few activities, only eight, were undertaken by the insurer. The injuries claimed for were a bruised leg and chest, the latter being caused by a seat-belt.

Less than a month after the plaintiff lodged a Statement of Claim with the Sydney District Court, the insurer issued instructions to the defendant and made a request for particulars. These particulars were provided by the plaintiff in May 1987, four months after they were requested. Although this is not as long a delay as has been reported previously, the particulars provided were only the same as had already been provided in the Statement of Claim, in which case four months could be considered quite a delay.

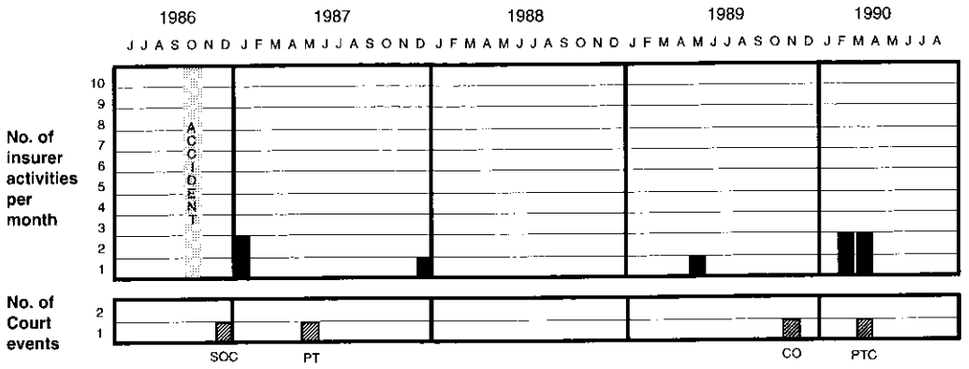
Following a request by the plaintiff in October 1987, the insurer lodged a Notice of Grounds of Defence in December 1987. No further activities were then recorded as having been made by the insurer until a request was made a year and a half later, in May 1989, for the plaintiff to attend a medical assessment. This assessment was held in September 1989, and the doctor's report indicated that the plaintiff had no residual symptoms.

Medical reports were served by the plaintiff in October 1989, and a callover was attended in November 1989. The insurer requested an investigation officer interview the defendant in February 1990, and in March 1990, an initial assessment of the value of the claim was made and liability admitted. The matter settled at a pre-trial conference the next day.

It is difficult to explain why such a matter took three and a half years to reach a settlement following the commencement of litigation. Injury stabilisation did not appear to be an issue, and there was a period of well over a year when no activities

were recorded as having been made by the insurer. Once again, delay appears to be attributable to the pace with which litigation was conducted by the parties. Also, it appears that a court event, in this case a pre-trial conference, provided the incentive for the matter to settle when it did.

Figure 13. Insurer activities in Third Party litigation: low activity



ABBREVIATIONS

SOC	Statement of Claim	CO	Callover
PT	Praecipe for Trial	PTC	Pre-trial conference

6.4 Case Four: High Activity

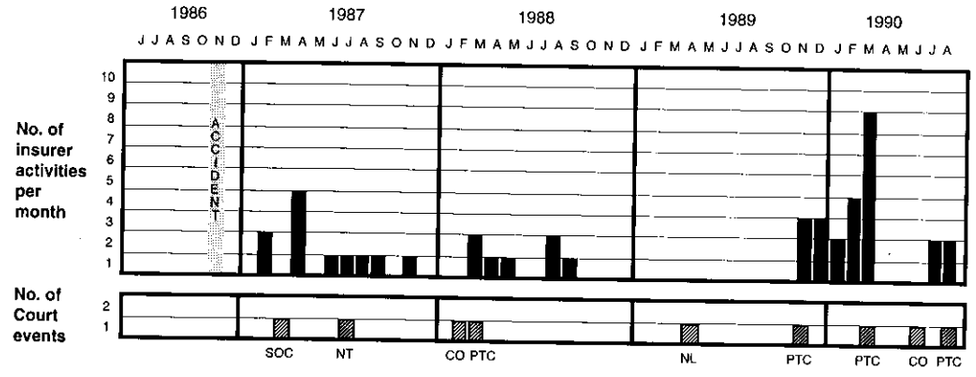
Figure 14 illustrates a matter very different from the previous three, it is the case which involved the highest number of insurer activities. The claim was commenced in the Sydney Supreme Court, and was for multiple injuries, including fractures and a head injury. This claim was complicated by an economic loss component concerning whether the claimant could resume work as a bar attendant, given the level of residual pain. Doctors' reports conducted by the insurer and the plaintiff conflicted strongly on this issue.

All the requests for information made in this matter were met within three months, regardless of who the supplier of the information was. Where medical reports were served by the plaintiff, these were also served within three months of

their having been provided by the doctor. Medical assessments conducted by the insurer were served just over two years after they were provided by the doctor.

Even though this matter involved a large number of insurer activities, there is still a period of one year when no activities were recorded. This delay cannot be attributed to injury stabilisation, as doctors reports received as early as May 1988 indicated the injuries had stabilised, although there was residual pain this was expected to be permanent.

Figure 14. Insurer activities in Third Party litigation: high activity



ABBREVIATIONS

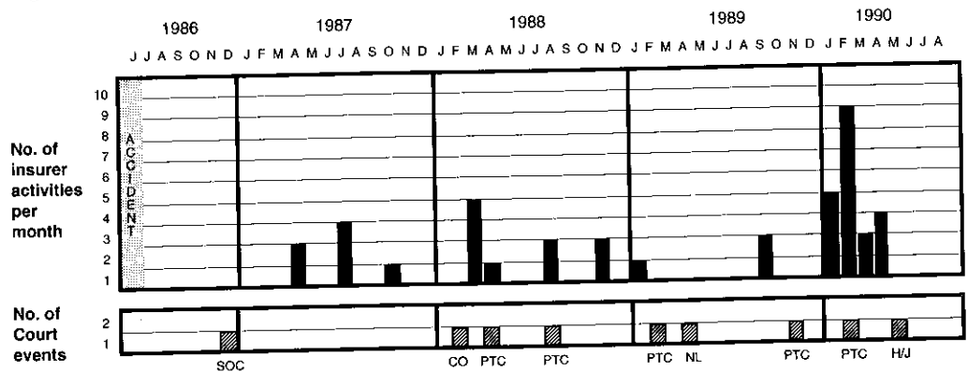
SOC	Statement of Claim	PTC	Pre-trial conference
NT	Notice to Set Down	NL	Notice of Listing
CO	Callover		

In August 1990, 41 months after commencement, the insurer requested that an investigation officer film the plaintiff, and on the basis of this evidence the insurer agreed to pay a significant economic loss component.

6.5 Case Five: Judicial Determination

Figure 15 illustrates a matter which proceeded to judicial determination in the Supreme Court. The claim was for a whiplash injury, and it involved an economic loss component.

Figure 15. Insurer activities in Third Party litigation: judicial determination



List of insurer activities per month

1987

APR
- requests information
- requests medical

JUL
- requests information
- letter/phone
- requests information

OCT
- internal initiative

1988

MAR
- requests information
- requests medical
- internal initiative
- internal initiative

APR
- internal initiative

AUG
- internal initiative
- internal initiative

NOV
- internal initiative
- internal initiative

1989

JAN
- requests information

SEP
- requests information
- Notice of Grounds of Defence

1990

JAN
- requests medical
- subpoenas issued
- subpoenas issued
- requests information

FEB
- provides information
- provides information
- requests information
- requests investigation
- internal initiative
- admit/non-admit liability
- offer
- letter/phone

MAR
- subpoenas issued
- requests investigation

APR
- requests investigation
- Counsel
- internal initiative

ABBREVIATIONS

SOC	Statement of Claim	NL	Notice of Listing
CO	Callover	H/J	Hearing to judgement
PTC	Pre-trial conference		

Following commencement in December 1986, the insurer sent instructions to the defendant and requested particulars from the plaintiff, April 1987. Both of these were repeated twice in July 1987, and the plaintiff responded to these later in the month.

A callover was held in February 1988, and following this the insurer arranged a medical assessment and requested details of previous accidents involving the plaintiff. These were supplied 6 weeks later.

Notes in the insurer's file made during 1988 indicated that there were doubts about the size of this claim, given that it had been lodged in the Supreme Court, and doubts about the economic loss component.

In 1989, two requests were made to the plaintiff's employer to supply details of his employment, and the insurer lodged a Notice of Grounds of Defence. A pre-trial conference in December was adjourned and the plaintiff noted that the insurer had not requested the information necessary to support its case.

In 1990, following the allocation of a hearing date, the insurer's activities increased dramatically. Information was requested, medicals and investigations arranged, and negotiations entered into.

The matter did not settle, but a judgement for the plaintiff was given in May 1990.

6.6 Conclusion

The five cases illustrated all took just over three years from commencement to disposal. This is the typical duration of tail matters. Despite the common length of these cases, there are striking differences between them in terms of the number of activities undertaken by the insurer. Why then is disposal delayed for over three years in each of these matters?

Injury stabilisation was not an issue in any of the five cases, yet in each, there were lengthy periods when no insurer activities were undertaken. These were as long as a year in all but the last case. Often, periods of inactivity occurred because the plaintiff did not supply information requested by the insurer. Rarely was information supplied in less than three months, and sometimes it took as long as a year. It would appear that the insurer has little incentive to act during periods when the plaintiff does not supply information as requested.

In the latter two cases, claims were complicated by an economic loss component. In both of these, a higher number of insurer activities were recorded. It would appear that where a case is complicated, the parties can adjust their pace accordingly, as delay in providing information did not occur to the extent it had in the previous matters.

Although insurance companies have been criticised for employing deliberate delaying tactics[1], the five cases illustrate that plaintiffs too are responsible for delay. It would appear that delay is due to the pace at which the parties conduct litigation, and neither one is more to blame in this respect than the other.

Although most Third Party matters do not actually require "their day in court", the five cases illustrate that court events provide a significant incentive for negotiations and settlements to take place. The current backlog of matters in the courts must therefore be considered a significant component of delay, as it appears to create a level of expectation as to when productive negotiations might be pursued.

1 Interviews with lawyers reported in Genn, H, 1987, *Hard Bargaining: Out of Court Settlement in Personal Injury Actions*, Clarendon Press, Oxford.

7

Conclusion

The CJRC recognised that there was a need for a more systematic approach to the study of delay in civil litigation. This would allow at least some of the disagreements about the causes of delay to be considered on an empirical basis, while identifying issues requiring further research and policy consideration. Specifically, empirical data was required which would assist in answering the following questions:

- When do matters settle?
- What characteristics of claims affect their duration?
- What aspects of the processing of claims can lead to delay?
- Can the behaviour of participants in the civil litigation system lead to delay?

This section provides a summary of the answers which the tail was able to provide to these questions.

When do matters settle?

The typical tail matter is resolved through litigation and takes 47 months from the date of the accident, 38 months from the commencement of the claim.

The sample showed that the majority of Third Party matters are litigated, yet only a small proportion of these require judicial determination. A high proportion of the sampled matters were settled either on the day allocated for hearing, or after commencement of hearing. These matters are of particular concern to court administrators, as resources are allocated unnecessarily.

The sample also revealed that litigation significantly increased the amount of time claimants had to wait to obtain damages. This was the case regardless of the stage of disposal. Even when settlements occurred during the early stages of litigation, matters were considerably longer than those which were unlitigated.

What characteristics of claims affect their duration?

The effect of age, injury, award and liability on the duration of tail matters was examined. Characteristics which increased the duration of matters were disputed liability, large awards in both jurisdictions, and claimants under 18.

Although these characteristics have previously been linked with delay, this study reveals that their value in understanding the pace of litigation overall, is minimal. The characteristics were only able to explain why some matters took longer than was typical, that is, longer than 38 months. They did not explain why the majority of tail matters take as long as 38 months in the first place.

Delay in the majority of tail matters cannot be ascribed to case characteristics. Further explanations must be sought and likewise evaluated.

What aspects of the processing of claims can lead to delay?

A substantial proportion of the duration of tail matters occurs prior to an initial offer being made. The parties spend this time collecting information and medical details relevant to the claim.

In considering why this aspect of claims processing was so lengthy, it was found that the parties took significantly longer to provide information to each other than did other sources.

Typically, delay did not result from difficulties in getting medical specialists to forward reports or the need for injury stabilisation, both common explanations for delay. Medical appointments can take some time to arrange however, and the plaintiff can be accused of non-attendance in 5% of appointments arranged.

Can the behaviour of participants in the civil litigation system lead to delay?

To better understand the pace at which litigation is conducted by the parties, a detailed analysis of five cases taking a "typical" time from commencement to disposal was undertaken.

This small number of cases could not be used to estimate the pace of litigation in general, however they provide an understanding of why it is that typical tail matters take as long as they do. Delay in these cases was found to be attributable to the parties themselves, and neither one was more to blame in this respect than the other.

Although most Third Party matters do not actually require their day in court, the five cases illustrated that court events can provide a significant incentive for

negotiations and settlements to take place. The current backlog of matters in the courts is therefore a significant component of delay, as it appears to create a level of expectation as to when productive negotiations might be conducted.

Lessons from the tail

The common law tail has certainly provided some valuable lessons on the workings of the civil litigation system, the behaviour of its participants, and when and why delays occur. Importantly, a number of commonly given explanations for delay have been shown to be somewhat insignificant.

These explanations have been largely anecdotal, based on the experiences of lawyers and administrators involved in the daily routine of resolving claims. While they may be perfectly valid in that they describe why some cases take longer than others, they do not explain the incidence of delay in the system as a whole. The need for the systematic analysis of empirical data is emphasised if a better understanding of the pace of litigation is to be had.

In considering the problem of delay in the settlement of tail matters, the focus is narrowed to a consideration of the pace of litigation, as it is conducted by the parties. Particularly, the supply of information which must take place between the parties. The lack of effective enforcement of pre-hearing procedure, and the waiting period caused by the current backlog of matters, has left the pace of litigation in the hands of the parties themselves.

It is hoped that these findings will be of use to policy makers and administrators, and will provide the foundation upon which further research and policy consideration can be built. It is anticipated that further work will be conducted by the CJRC in the following areas:

- A follow-up study of plaintiffs' files will allow a later report to focus more specifically on the activities of the parties, allowing more detailed exploration of the pace with which they conduct litigation.
- Further consideration of the negotiation and settlement of claims is anticipated, particularly in relation to a comparison of offers and final awards.
- A comparison of matters which either settle, settle at the door, or are determined is intended in order to highlight significant aspects of each of these.

APPENDIX 1
Glossary

Arbitration	A less formal means of dispute settlement. Matters are determined by a legal practitioner who holds an appointment as an Arbitrator.
Callover	A review of matters on the court's calendar. Both sides attend and inform the court of their progress and invite direction from the court. A pre-trial conference may be arranged and the suitability of the matter for Arbitration ascertained.
Defendant	The insurance company or person at fault in causing the accident.
Disposal	The claim is settled, withdrawn, discontinued, arbitrated or determined by the judiciary.
Finalisation	Matters are finalised when there are no further outstanding concerns relating to a claim, and all accounts have been paid.
General Damages	Compensation for loss, pain or suffering as a result of the accident.
Listing	The matter enters the list of matters waiting to be heard.
Notice to Set Down	A Supreme Court document filed to indicate the readiness of a matter for trial.
Particulars	Details of the claim in order to let the other side know what case they have to meet. In Part 12 Rule 4A of the District Court Rules and Part 33 Rule 8A of the Supreme Court Rules, particulars must be formally lodged with the court before the matter can be set down for hearing.
Plaintiff	The injured person, the claimant or his solicitor.
Praecipe for Trial	A District Court document indicating the readiness of a matter for trial.
Pre-trial conference	The court registrar requires both parties to attend a conference to discuss the case.
Statement of Claim	The process of originating civil proceedings. The plaintiff sets out the facts which will be relied upon in the claim against the defendant, together with the relief sought.

APPENDIX 2

Data Coding Sheet: Full Sample

Checked:_____

A STUDY OF DELAYS IN THIRD PARTY MATTERS — Data Coding Sheet

ID Number:

Data collection information

1	Coder	Initials	
2	Date coded	(dd-mm-yy)	

File label

3	File number		
4	Date of Accident (DOA)	(dd-mm-yy)	

Court History - Official Forms

5	Notice of Claim	(dd-mm-yy)	
6	Statement of Claim	(dd-mm-yy)	
7	Court jurisdiction	1 = District 2 = Supreme	
8	Venue	Use code	
9	Court number		of 19
10	Statement of Particulars	(dd-mm-yy)	
11	Praecipe for Trial	(dd-mm-yy)	

Injury (as alleged in Statement of Claim)

12	Nature of injury	Use code	
13	Body part	Use code	

Report of Traffic Collission / Traffic Accident Report

14	Age at date of accident		
15	Sex	1 = male 2 = female	
16	Residential town/suburb	Postcode	

Correspondance

17	GIO regional office	Use code	

Court History

18	Callover (first)		(dd-mm-yy)	
19	Pre-trial conference (first)		(dd-mm-yy)	
20	Arbitration		(dd-mm-yy)	
21	a) Hearing	Date	(dd-mm-yy)	
	b) How fought in court?	Did the GIO accept liability	1 = yes 2 = no	

Settlement Negotiation

22	Report and Recommendation	a) Date	(dd-mm-yy)	
	1 = clear 2 = probably clear 3 = liability doubtful 4 = disputed	b) Stage	Use code	
		c) Liability Qu 6		
23	Initial Offer - GIO	a) Amount		$
		b) Date	(dd-mm-yy)	
		c) Stage	Use code	
24	Initial Offer - Plaintiff	a) Amount		$
		b) Date	(dd-mm-yy)	
		c) Stage	Use code	
25	Offer of Compromise	a) Amount		$
		b) Date	(dd-mm-yy)	
		c) Stage		
		d) Who by	1 = Plaintiff 2 = GIO	
26	Colossus Assessment of general damages	a) Amount		$
		b) Date	(dd-mm-yy)	
		c) Stage		
27	Date of settlement			
28	Stage of settlement			
29	Amount of settlement	a) Total award		$
		b) General damages component		$
		c) Costs component		$

APPENDIX 3

Full Sample Data Set

1 FILE NUMBER

2 CASE HISTORY: Dates of following events:

Accident
Notice of Claim
Statement of Claim
Statement of Particulars
Praecipe for Trial/Notice of Set Down for Trial
Initial callover
Initial formal conference
Arbitration
Initial offer (GIO), date and stage
Initial offer (plaintiff's solicitor), date and stage
Report and recommendation, date and stage
Offer of Compromise, date and stage
Colossus assessment, date and stage
Settlement, date and stage
Hearing

3 INJURY DETAILS: (As alleged in Statement of Claim)

Nature of injury
Body part

4 PLAINTIFF DETAILS: (At time of accident)

Age
Sex
Residence (postcode)

5 CLAIM DETAILS:

Litigated/unlitigated
GIO regional office

6 COURT DETAILS:

Jurisdiction
Venue
Number

7 SETTLEMENT:

Initial Offer (GIO) $
Initial Offer (Plaintiff) $
Final payout (inclusive) $
Colossus assessment of general damages $
Final payout (general damages) $
Stage settled
Offer of Compromise $, who by
If determined, liability vs quantum
Recommended liability

APPENDIX 4

Data Coding Sheet: 100 Selected Matters

GIO THIRD PARTY FOLLOW UP

File Number: _____

Plaintiff Details: Name: _____

Address: _____

_____

Plaintiff Solicitor: Co Name: _____

_____

Address: _____

_____

Solicitor: _____

Ref No: _____

Phone: _____

Change of Solicitor: Date: _____

Co Name: _____

_____

Address: _____

_____

Solicitor: _____

Ref No: _____

PARTICULARS & OTHER INFORMATION:

(a) Detail dates of requests for information and replies to requests.
(b) Note any correspondence/file notes indicating doubt about information supplied, including medical information.
(c) Note any significant changes in information supplied. Eg: Plaintiff's injuries, GIO's acceptance/non acceptance of liability.

GIO REQUESTS FOR INFORMATION:

Item requested _____ _____ _____

From whom _____ _____ _____

Date of request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Second request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Date of Service ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Comments: _____

_____

Item requested _____ _____ _____

From whom _____ _____ _____

Date of request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Second request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Date of Service ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Comments: _____

_____

Item requested _____ _____ _____

From whom _____ _____ _____

Date of request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Second request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Date of Service ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Comments: _____

_____

Item requested _____ _____ _____

From whom _____ _____ _____

Date of request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Second request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Date of Service ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Comments: _____

_____

P/SOL REQUESTS FOR INFORMATION:

Item requested _____ _____ _____

From whom _____ _____ _____

Date of request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Second request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Date of Service ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Comments: _____

_____

Item requested _____ _____ _____

From whom _____ _____ _____

Date of request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Second request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Date of Service ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Comments: _____

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Item requested _____ _____ _____

From whom _____ _____ _____

Date of request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Second request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Date of Service ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Comments: _____

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Item requested _____ _____ _____

From whom _____ _____ _____

Date of request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Second request ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Date of Service ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Comments: _____

_____

GIO: MEDICAL EXAMINATIONS

Name of Doctor

Date of request

Date of appointment

Attendance — 1-Yes; 2-No

Date of report

Stability of Injury — 1 Stabilised; 2 Temp. Instability; 3 Unstable

Date of service

Comments:

Name of Doctor

Date of request

Date of appointment

Attendance — 1-Yes; 2-No

Date of report

Stability of injury — 1 Stabilised; 2 Temp. Instability; 3 Unsteble

Date of service

Comments:

Name of Doctor

Date of request

Date of appointment

Attendance — 1-Yes; 2-No

Date of report

Stability of injury — 1 Stabilised; 2 Temp. Instability; 3 Unstable

Date of service

Comments:

PLAINTIFF: MEDICAL EXAMINATIONS

Name of Doctor

Date of request

Date of appointment

Treatment / Assessment — 1; 2

Date of report

Stability of injury — 1 Stabilised; 2 Temp. Instability; 3 Unstable

Date of service

Comments:

Name of Doctor

Date of request

Date of appointment

Treatment / Assessment — 1; 2

Date of report

Stability of injury — 1 Stabilised; 2 Temp. Instability; 3 Unstable

Date of service

Comments:

Name of Doctor

Date of request

Date of appointment

Treatment / Assessment — 1; 2

Date of report

Stability of injury — 1 Stabilised; 2 Temp. Instability; 3 Unstable

Date of service

Comments:

GIO: REQUESTS FOR MEDICAL REPORTS

GIO REQUEST(S)

P/SOL SERVICE

GIO REQUEST(S)

P/SOL SERVICE

GIO REQUEST(S)

P/SOL SERVICE

P/SOL REQUESTS FOR MEDICAL REPORTS:

P/SOL REQUESTS

GIO SERVICE

P/SOL REQUESTS

GIO SERVICE

P/SOL REQUESTS

GIO SERVICE

PARTICULARS:

Is there any correspondence/file notes indicating doubt about particulars supplied. Were they considered incomplete, false or inadequate?

1 Yes
2 No

If Yes, specify (using quotes where appropriate).

CALL-OVERS/PTCS/HEARING:

Are there any notes regarding standing over or adjournment due to state of unreadiness by either party? *1 Yes 2 No* ☐

If Yes, specify.

COUNSEL: *Was counsel briefed by the GIO?* *1 Yes 2 No* ☐

If Yes,

(a) Was Counsel's advice sought in relation to offers made or received? (give details)

(b) Did Counsel's advice on quantum differ from internal assessment? (give details)

INVESTIGATIONS:

Were investigations conducted? *Yes - 1 No - 2* ☐

Date requested ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Date supplied ☐☐☐☐☐☐ ☐☐☐☐☐☐ ☐☐☐☐☐☐

Comments on investigations:

APPENDIX 5

Data Coding Sheet: Participant Activities, 100 Selected Matters

YEAR:	FILE NUMBER:								D.O.A.:				
GIO ACTIONS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOT
Requests Information													
Requests Investigation													
Requests Medical Assessment													
Provides Information													
Admit/Non-Admit Liability													
Initiative - Internal													
Settlement Initiative - External													
Other correspondence/phone													
Offers													
Counsel													
Subpoenas Issued													
Other Court Forms													
Other													
PLAINTIFF ACTIONS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOT
Requests Information													
Requests Medical													
Serves Information													
Requests position on Liability													
Initiatives													
Other correspondence phone													
Offers													
Statement of Claim													
Statement of Particulars													
Other Court Forms													
Other													
COURT EVENTS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOT
Callover													
PTC													
Arbitration													
Hearing													
Settlement													
Informal Conference													
Other													
TOTAL													

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