Single v Staged Premiums

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Single premiums v staged premiums

In the early days following the implementation of the Access to Justice Act 1999 the only ATE premiums on the market were single premiums. But following the encouragement of the Court of Appeal in Callery v Gray and subsequent cases for the profession to move to staged success fees increasing as the risk increases, we saw a staged premium product emerge in the marketplace calculated on a similar basis.

The starting point to understand the arguments between the reasonableness of using a staged premium compared to a single premium is to understand the difference between these two types of policies, and to understand how insurers assess risk and calculate premiums.

A premium is normally made up of four elements: burning costs; risk/profit element; administrative costs; and distribution commission. All four of these elements are recoverable in principle. “Burning costs” are the costs of meeting each claim. In broad terms risk is either individually rated or block rated. Where individually rated the insurer takes the specific case into account. Where block rated the insurer looks at the risk across a book of cases and does not look at the risk on the individual case itself.

The insurer will make underwriting assumptions as to how often they will face a claim, at what stage, and how much they are likely to have to pay out across that book of cases. They assume that all cases will be insured and that there is no adverse selection. If firms cherry pick and only insure the difficult cases, then the assumptions used to set the premiums will prove to be false and the result is likely to be that the premiums are set too low and the insurer’s profit will be affected and may result in a loss.

Once the burning cost has been calculated, to this must be added the admin element for processing sales/claims (including the cost of premises/personnel etc), and the cost of any distributed commissions (including advertising and marketing costs as well as commissions to brokers or intermediaries), and last but not least the required profit element is added.

Having calculated the premium income required across the book, the insurer must then set that premium for each individual case. How this is achieved in practice will be dependent on whether the insurer chooses a single or a staged premium model.

For a single premium block rated product the premium income required is spread evenly across the book of cases. Whereas in a staged premium that same income is spread unevenly across the book. The insurer seeks to match the risk to the premium by taking its historical data and claims history, to set the premium low at the early stages, but rising to significantly higher sums as the claim progresses and the risk increases. As a result defendants who settle early benefit from lower premiums, but if they fight and settle late or lose at trial they are faced with significantly higher premiums.

When applying the principle of “the many pay for the few” this type of policy is considered by many to be a fairer distribution of the cost of providing ATE insurance which currently falls on the defendant insurance industry to meet.

The case law

The Court of Appeal examined recoverability of ATE premiums generally for the first time in **Callery v Gray 2001** (see appendix two)**,** where the court held that it was reasonable to take out a policy of insurance on day one so as to avoid adverse selection. The concept of "the many pay for the few" was approved, with the comment that in any event there is nearly always a risk that justifies the insurance being taken out on day one.

By applying the principle of adverse selection the Court of Appeal for the first time permitted an item of expenditure to be allowable in principle where there may be no reasonable need for it at all in the individual case concerned, and took into account issues outside of the facts and conduct on the specific case. They took into account the wider need to preserve and protect the ATE market so as not to endanger access to justice following the demise of public funding in personal injury cases.

The defendants appealed to the House of Lords. Lord Scott said in his dissenting judgment:

"The question whether the paying party should be required to meet a particular item of expenditure is a case specific question. It is not a question to which the macroeconomics of the ATE insurance market has any relevance. If the expenditure was not reasonably required for the purposes of the claim, it would, in my opinion, be contrary to long-established costs recovery principles to require the paying party to pay it.'

Nevertheless the House of Lords refused to interfere with the Court of Appeal's decision. But despite this it was quite clear from their lordship's comments (see appendix two) that they fully understood and shared the concerns expressed by Defendants, that Claimants had no interest in costs recovery, and the system was open to abuse and could lead to inflated premiums. It is probably for this reason that Lord Bingham and Lord Nicholls in particular were clear to point out that the Court of Appeal need to keep matters under review to ensure this policy did not lead to abuse.

Against this background the courts first had to address recoverability of a staged premium policy in **Tyndall v Battersea Dogs Home [2005] EWHC 90015**. (see appendix two). The Defendants sought to compare a staged premium with a single premium, to demonstrate that the stage two premium was higher than a single premium would have been, and should not be recoverable as a result. Their challenge failed, and the concept of a staged premium and the ability to recover a higher premium in principle should cases proceed towards trial received judicial approval.

The Court of Appeal first examined the use of staged premiums in **Rogers v Merthyr Tydfil County Council [2006] EWCA Civ 1134** (see appendix two). This was a tripping case where the damages were £3,105. The third stage 80e premium was £4,860 +IPT (total £5,103). The evidence produced in that case by all the major ATE providers who intervened, showed that staged products were becoming popular and anecdotal evidence suggested that perhaps they were becoming the norm.

In terms of risk, 80e gave evidence in Rogers that:

- 63% of their cases concluded at stage 1 (pre issue – of which 21% failed)

- 32% of cases settled at stage 2 (post issue but less than 21 days before trial)
- 5% of cases reached stage 3 (post 21 days before trial of which over 50% lost)

The Court of Appeal approved the concept of staged premiums in principle in Rogers, and approved 80e's method of calculating the third stage premium, which is individually assessed and not block rated. The starting point was to identify the "estimated maximum loss" (EML), being the total amount the insurer would have to pay out if the case failed. The Court of Appeal accepted on the evidence in that case that the EML was £6,500. To this must be added operating costs and profit, and the Court of Appeal accepted that 12.5% was realistic for this. They then stated:

"if in two cases insurers face a 50% risk of having to pay out £6,500 (not allowing for overheads and profit) on each. On the one they win they will be able to get their premium paid by the defendant, and this will recompense them for having to pay out £6,500 on the one they lose.""

On this basis the 80e premium was in fact lower than it could have been and the premium was allowed in full.

In an attempt to stem the flow of satellite litigation over what was a reasonable premium, and to further protect the ATE market, Lord Justice Brooke said at para 117 of his judgment:

District judges and costs judges do not, as Lord Hoffmann observed in Callery v Gray (Nos 1 and 2) [2002] UKHL 28 at [44]; [2002] 1 WLR 2000, have the expertise to judge the reasonableness of a premium except in very broad brush terms, and the viability of the ATE market will be imperilled if they regard themselves (without the assistance of expert evidence) as better qualified than the underwriter to rate the financial risk the insurer faces. Although the claimant very often does not have to pay the premium himself, this does not mean that there are no competitive or other pressures at all in the market. As the evidence before this court shows, it is not in an insurer's interest to fix a premium at a level which will attract frequent challenges.

As a result of Rogers challenges to premiums became harder, and we have seen far fewer attempts to do so, although some have inevitably continued with mixed success:

- **Smith v Interlink Express Parcels (July 2007)** – a stage 1 premium of £750 was challenged, and was reduced by Master Hurst to £450

- **Beasley v St Thomas's Priory Golf Club (August 2008)**. A stage 2 premium increased from £735 to £2,047.50 following service of a defence. It was claimed that the premium was individually rated, but the defence in fact admitted liability. No evidence was called as to how the premium was calculated and it was reduced to £900. HHJ Holman was referred to Rogers, but said:

  "judges are not required to accept premium figures blindly. That would lead to insurers being able to dictate to the court, whereas it is for the court at the end of the day to decide what costs are reasonable and proportionate".

- **Burgess v Breheny Contracts Ltd (January 2009)**. A policy had been taken out after receipt of an admission of liability where the claimant had suffered dust inhalation, and the case settled for £1,500. The premium was £2,730. Notwithstanding the admission Master Howarth held that there were still risks that it was reasonable to insure against. Although the premium looked high, in the absence of evidence of cheaper policies he allowed the premium in full and relied on Rogers.

Low value RTA claims

The issue as to whether a single premium or a staged premium should be used has now surfaced once again, this time in the RTA arena and the new RTA process.

On 30 April 2010 a new and innovative scheme was introduced for the processing of low value straightforward RTA claims valued at under £10,000. Before the implementation of this new process, it was the government's intention to remove the need for ATE insurance completely within the process. In their consultation paper they asked the following question:

"Do you agree that ATE insurance cannot be justified in the circumstances set out above [the proposed new process]? If not please give your reasons."

The Ministry of Justice subsequently published its "Response to Consultations - Case Track Limits and the Claims Process for Personal Injury Claims" on 21 July 2008, and in the light of the responses to the above question they stated at page 36 of their response:

"It was generally recognised that ATE providers would need to increase the costs of some premiums significantly to counteract the losses of the premiums on lower value cases. There were concerns that people would not be able to afford the premiums, or that they could lead to satellite litigation, as defendants might challenge expensive premiums on the ground that they were unreasonable.

The Government has considered the various points made by respondents to the consultation and has concluded that it will not take forward these proposals. This will ensure that the introduction of the new claims process will not damage the ATE market, but will allow it to adapt to the new process."

Has the market adapted to the new process?

In June 2010, shortly after the commencement of the new process, Litigation Funding magazine identified 23 ATE insurers in the market place and 33 scheme providers (who were effectively brokers). Some of the scheme providers did not identify who the ATE insurer was. Furthermore there were additional ATE insurers who offered products but had not provided their details to the magazine. Consequently the true number of ATE insurers in the market was likely to be higher than this.

Nevertheless out of the 33 scheme providers identified in Litigation Funding Magazine in June 2010 offering RTA insurance cover, only 9 offered staged premium products. The rest retained the status quo and continued with single premiums. With the staged premium policies, if the case settled within the new scheme then apart from Accident Line (who set their stage 1 premium at nil) most first stage premiums were in the region of £75 to £95 plus IPT, with the premiums rising sharply if the claim fell out of the scheme, and rising higher again should the case proceed towards trial with many stage 3 premiums being individually assessed.

For those insurers who stuck with single premiums the majority of those premiums remained in the bracket of £350 to £495 plus IPT, which remained the same as prior to the scheme being introduced.

Defendant insurers' reaction to this was to argue that all ATE insurers should have adapted to the new scheme, and should have moved to staged premiums as a result, and refused to pay more than a reasonable first stage premium on cases that settled during stages 1 and 2 of the new process. With the number of single premiums still being used in the market this has inevitably led to a new round of satellite litigation:

Watson v Johnson Wrexham County Court 24 May 2011. This was an RTA case involving an Elite insurance premium of £395 plus IPT (£418.70) which settled in stage 2 of the new process. The Defendants produced a witness statement from the defendant's solicitors, which exhibited staged premium products to demonstrate that these would have been cheaper. The Judge simply applied the test in Rogers, and in the absence of expert evidence to assist allowed the single premium in full.

There have been eight cases heard in Chichester County Court to date:

Kainth v Maynard	**16 August 2011**
Morris v Freekley	**24 October 2011**
Kulawik v Palm	**3 November 2011**
Ismail v Parvaiz ; Choudhey v Parvaiz; Malik v Reddish	**17 November 2011**
Riauka v Burnett; Baltaseviciute v Burnett	**25 November 2011**

These cases all involved a Box Legal premium (Leeward Insurance), with a single premium of £350 plus VAT (£371). The premium was allowed in full in all cases.

In Morris v Freekley, Riauka v Burnett, and Baltaseviciute v Burnett, the Defendants obtained permission to appeal. In Morris v Freekley they obtained permission to leapfrog direct to the Court of Appeal. But in all three cases despite obtaining permission to do so the defendants chose not to appeal.

In Chichester County Court 8 further cases were due to be heard together on 8 February 2012. The defendant's solicitors again made it clear that they would be appealing if they lost. However, a few days before the hearings they capitulated, and indicated that they would proceed solely with an appeal on a further case in Wrexham County Court where the Claimant won and the defendant had apparently lodged notice of appeal. However, the identity of this case was never disclosed and the appeal did not materialize.

One case has been heard to date in the SCCO – **Phillips v Whiddett** 19 **December 2011** in which the premium of £395 plus IPT (£418.70) was again allowed in full. Again the defendants did not appeal.

In Liverpool Regional Costs Judge Smedley identified 14 cases with a range of different single premium products which he ran as test cases, and stayed all other cases pending the outcome. By the time they came on for hearing 7 had settled, but the remaining 7 cases proceeded, and Judge Smedley found in favour of the Claimants. Once again the Defendants decided not to appeal. It is not clear whether the insurance industry has now given up the fight. Nevertheless Claimant lawyers report that notwithstanding all the cases going in favour of the Claimants, and there being no appeals, that some insurers are still refusing to pay more than a first stage premium.

If these issues ever make their way to the Court of Appeal they may well have implications for all cases and not just RTA cases. To understand why it is necessary to consider the issues being raised in these RTA cases.

The issues:

The issues identified in **Phillips v Whiddett** in the SCCO**:**

1. A premium is not recoverable at all as paragraph 7.40 of the Low value RTA protocol only refers to CPR 45.30(2)(a) and does not refer to 45.30(2)(b) which covers the recovery of ATE premiums.

Master Leonard swiftly dealt with that point and rejected it. The CPR is clear and a protocol cannot override the CPR, and a premium clearly remains recoverable in principle.

2. The premium was disproportionate to the damages

The claim settled for £2,310, and although Master Leonard concluded that it was not in any event disproportionate, he referred to Rogers (see appendix 2), and held that where the premium was *necessarily* incurred (and he held that it was as per Callery v Gray) then it is a proportionate expense, and the only issue is one of reasonableness of the premium.

3. The amount of the premium was unreasonable

The Defendant produced a statement that exhibited details of a range of staged premium products to demonstrate that a first stage premium would be significantly cheaper (£78.75 to £99.75). Master Leonard gained no assistance from these policies as the Defendant was not comparing like with like.

They also suggested that there was little or no risk to Claimants where cases settled during stage 2 of the new process justifying only a stage one premium. Master Leonard rejected that suggestion, and held that some risk will be a feature of most, if not all cases, and hindsight cannot be used to take into account what actually happened in the case.

Master Leonard quoted Mr Justice Simon from **Kris Motor Spares Ltd v Fox Williams [2010] EWHC 1008 (QB)** (see appendix two):

> *in a case where the issue is raised as to the size of the premium there is* ***an evidential burden on the paying party to advance at least some material in support of the contention that the premium is unreasonable****. I have reached this conclusion in the*

light of the cases which I have cited, and in particular Rogers v. Merthyr. Despite the doubts about the operation of the Market, the Court of Appeal was satisfied that it was not in the insurer's interest to fix a premium at a level which would attract frequent challenges; and that a Master was not in a better position than the underwriter to rate the financial risk that the insurer faced. Where a real issue was raised the Court envisaged the hearing of expert evidence as to the reasonableness of the charge. If an issue arises, it must be raised by the paying party. This is not to reverse the burden of proof. If, having heard the evidence and the argument, there is still a doubt about the reasonableness of the charge that doubt must be resolved in favour of the paying party.

In the absence of evidence of alternative single premiums to enable the court to compare like with like, he held that the Defendant had failed to produce any meaningful evidence to support any further investigation. Master Leonard also went on to say:

"Single and staged premiums, as Mr Finn points out, simply represent different ways of assessing risk. It is evident from Rogers that neither approach can be characterised as innately unreasonable."

In **Morris v Freekley,** heard in Chichester County Court in October 2011, the Defendant sought to take these arguments further, and made the following submissions and statements in support of their contention that staged premium policies should now be used:

- The Claimant has a duty to mitigate his loss. It is about choice, and the Claimant should choose the least expensive insurance available, which in this case was a staged premium.

- If the court rejects the above submission it will be disagreeing with the House of Lords in Lagdon v O'Conner [2004] 1AC, the case on credit hire, in which it was said:

  "*where there are choices to be made the least expensive route which will achieve mitigation must be selected."*

- The Court should have regard to policy considerations coming into view:

  - Dismissing the defendant's arguments will add "hundreds of pounds to each claim, aggregating to hundreds of thousands of pounds each year, and will defeat one of the aims of the new process to reduce the costs of claims.

  - It is no longer appropriate to worry about imperiling the ATE market, due to the government's decision to abolish recoverability of ATE premiums, as the market is now "on the cusp of extinction."

  - It is public policy to protect the interests of claimants, which matches the interest of defendants, because Claimants have no vested interest now, but will do when recoverability is abolished.

  - ATE insurers will be allowed to receive inflated income and fewer insurers will adapt if allowed to continue to claim high premiums.

    - This litigation "is representative of a class of litigation across the country at present, and marks a watershed in the law of additional liabilities that will shape the next decade much in the way that Callery v Gray did."

- Statistics (collected by the insurer, but not supplied to the court) and "anecdotal evidence" suggest relatively few stage 3 cases have been before the courts. Given that most are settling in stage 1 and 2, and there is no risk in stage 1 or 2 of the process, this now favours a move to staged premiums to keep costs down.

- As some leading ATE insurers have adapted to the process by producing staged policies reflecting the new process, the Claimant's solicitors should have known about them and recommended them to the Claimant.

- "Rogers" approved staged premiums and "marked a shift in the market towards favouring them". It also means any challenge to the staged premiums is unlikely to succeed. "Liability insurers intend to work towards settling the majority of claims within the process. If a claim exits the process, and the stepped premium increases, liability insurers will accept that increase in cases that go on to settle, and seek to do better in the future."

- It is unlikely the solicitor would recommend the ATE product unless there was some incentive for them to do so (commissions?)

The Claimant's response was as follows:

Callery v Gray confirmed it was reasonable to take out a policy on day one as there is always a risk, and that has not changed because of the new process. All the new process has done has reduced the amount at risk in certain limited circumstances where claims stay within the scheme.

A Claimant remains free to choose a single premium or a staged premium, and the Court must compare like with like when assessing the reasonableness of the premium chosen, and save in broad brush terms the court should not seek to decide the reasonableness of the premium without expert evidence.

A statement was filed from Mr Pinner from Box Legal examining the market, which showed that the Box Legal premiums were at the bottom end of the bracket for single premiums, and in fact remained at precisely the same figure that the Court of Appeal held in **Callery v Gray** in 2001 was not unreasonable.

A statement from the partner in the Claimant's solicitor's firm was filed explaining the reasons why this policy had been chosen for their clients.

Single premiums that are block rated take into account all known risks generally across a book of cases, and are not assessed on the individual risk of any particular case. This follows the principle approved in Callery v Gray that "the many pay for the few".

The generic risks in RTA cases are as follows:

- A claim that starts in the portal might drop out of the new scheme through any one of the sixteen exit routes identified in appendix one.

- A case that drops out of the scheme might proceed to either a full trial where liability is denied, or an assessment of damages hearing where it is not.

- A Claimant might lose the trial.

- A Claimant may fail to beat a Part 36 offer and be exposed to a costs liability due to arguments over quantum or arguments over causation.

- There may be issues over recovery of costs, and disbursements that proceed to a detailed assessment hearing, and as a result a Claimant may be exposed to a costs liability should they fail to beat a Part 47.19 offer.

- Even where the case stays within the new process, the Claimant may potentially be exposed to the following risks:

    - The case proceeds to stage three and the Claimant is exposed to a costs liability for failing to beat a Part 36 offer.

    - There may be a dispute over recovery of disbursements that proceed to assessment, and as a result a Claimant may be exposed to a costs liability should they fail to beat a Part 47.19 offer.

    - Any case that ultimately settles for a sum that would be classed as a small claim may result in Part 8 proceedings being necessary where the Defendant's insurer argues that the claim should not have been commenced within the scheme and refuses to pay costs. A failure to persuade the Court that the Claimant acted reasonably would result in an exposure to a cost liability.

There is no duty to mitigate loss in costs. The Claimant must simply act reasonably. Acting reasonably does not always mean choosing the cheapest option **(*cf* Chappell v De Bora of Exeter No. 3 of 2004 SCCO)**. In any event a staged premium is a potentially more expensive option for a case that drops out of the scheme or stays in and proceeds to stage 3. Consequently whether or not a claimant purchased the cheapest option can only be ascertained by applying hindsight at the end of the case which is not permitted.

No statistical information was available at the time the policy was taken out for ATE insurers to assess the impact of the new process on the market. Furthermore there is still no statistical information available from the portal company today. Consequently it must be reasonable to retain the status quo until the impact of the new process is known. Even when it is known there is no reason in principle why a single premium should still not be used going forward.

In any event there was no evidence before the court to enable the court to conclude that across a book of cases a single premium was more expensive for the defendant insurer than a staged premium. On the contrary because the third stage premium is often at large and assessed on the actual "Estimated Maximum Loss" on each individual case, on balance it is more likely that staged premiums would be more expensive overall.

The Court accepted the Claimant's submissions and allowed the premium in full.

In the Liverpool test cases the Defendants once again raised these same issues. Rather surprisingly, considering these were meant to be test cases, 6 out of the 7 Claimants failed to put any evidence before the Court as to the reasons why the policies had been chosen. This was despite the Court of Appeal saying in Rogers that they should, and despite District Judge Smedley giving directions that they should do so.

In addition to the above arguments the Defendants for the first time argued that it was unreasonable to have taken out a policy at all whilst the case remained within the new process. This argument was rejected. The Court accepted the Claimant's argument that Callery v Gray still applied and it remained reasonable to insure on day one. All that had changed was the process and there was no evidence to suggest that this had changed the risk in any way.

It remains to be seen whether the Court of Appeal feel it is appropriate to review the policy decisions that underlined the decisions in Callery v Gray now ten years on now that the market has matured. Staged policies are now very much a part of the litigation landscape and were not around at the time of Callery v Gray. Will that shape their views?

To what extent will the Jackson reforms influence their decision?

The Jackson reforms and the government's proposals

ATE premiums in support of CFAs entered into after 1 April 2013 will cease to e recoverable inter partes, leaving Claimants to fund premiums from their damages. The concept of qualified one way costs shifting (QWOCS) may well reduce the need for ATE insurance further. But as the intention is that a Claimant will still be exposed to the risk of failing to beat a Part 36 offer, a Claimant may well still need insurance. It remains to be seen what happens to the marketplace when these reforms are introduced. It seems highly likely that some at least of the ATE insurers will leave the market altogether, and it remains to be seen what products those that remain are prepared to offer and at what cost.

If Claimants has to pay the premium from their damages, will they favour single premiums or staged premiums, assuming the market allows them that choice? Will Claimants not seek to use their crystal ball to gauge which they believe might be the cheapest option for them?

If a Claimant believes the claim will settle early they may well favour a staged premium so they only have to lose a stage one premium from their damages. Alternatively they might decide to take the risk and not insure at all. If a claimant thinks the case will fight might they not prefer a single premium given the choice, so that the premium does not increase to a substantial sum at a later date? If Claimant's are left to make these choices and pick and choose, are both models sustainable?

Should Claimants choose not to insure at all, the principle of the many paying for the few is at serious risk. Will block rated policies become a thing of the past as a result? Will all cases have to be individually rated to avoid suffering the affects of adverse selection? Should that happen then premiums will inevitably rise. If premiums rise the take up might fall even further. If this happens will there indeed be enough Claimants willing to insure their cases to make the market viable? Is the ATE market as a result on the "cusp of extinction" as suggested by the defendants in Morris v Freekley?

The ATE market will have some difficult choices to make in the brave new Jackson world.

Conclusion

The RTA premium test cases would have given the Court of Appeal the opportunity to review the ATE market and recoverability six years on from Rogers, and more than years after Callery v Gray, just at the time that the government is abolishing recoverability inter partes. Whilst the main issue for the Court of Appeal would be whether it remains reasonable for a Claimant to choose a single premium, or whether the Claimant is now required to choose a staged premium in relation to RTA cases, the implications could have been felt right across the industry.

Would the Court of Appeal have decided that the time was right to review the underlying principles laid down in Callery v Gray? If so is it still appropriate to take into account the wider issue of protecting the ATE market, or has the time come to return to assessing matters based solely on the issues identified in each individual case? Has the current policy of protecting the ATE market resulted in ATE insurers making excessive profits? Any change in policy would have implications right across the industry and would not be limited to RTA cases.

Even if the Court of Appeal decided to continue with the principles that underlined Callery v Gray, would the existence of staged premiums not available in 2001 impact on what a reasonable Claimant should now do? The Court of Appeal has consistently expressed the view that the profession should consider staged success fees (where they are not fixed) so that the risk increases the further the case proceeds, and is kept at a modest level if the case settles early. Would the Court of Appeal be persuaded that as the market has matured the same should now apply to premiums? Should they take that view it is difficult to see why that should not apply to all cases and not just RTAs.

Bearing in mind the number of ATE insurers who have retained single premiums, a ruling from the Court of Appeal that only a first stage premium is recoverable would have serious implications for those insurers who will inevitably suffer a loss of income as a result, unless the Court of Appeal made it clear that the change in policy should only take effect going forward. If it was to be applied retrospectively ATE insurers would be forced to accept less for the cases that settle early, but would not have the opportunity to collect a higher premium on those cases that proceed to the later stages. If it is only to apply going forward it would be a hollow victory in the light of the government's proposals to abolish recoverability inter partes.

Looking at the uncertainty over the future of the market in a post Jackson world, it seems unlikely to the writer that the Court of Appeal would have taken the opportunity to force the market and Claimants in a particular direction just before the Jackson reforms shake up the market place in any event. Whether or not the market is "on the cusp of extinction", a decision in favour of staged premiums may well have made this prediction more likely to come true, by hastening the exit of some insurers from the market.

But as the Defendant insurers appear to have lost the stomach for the fight, it now seems unlikely that these issue will ever reach the Court of Appeal. We are now simply left waiting to see whether the ATE market will survive post April 2003, and if so what products will remain. Only time will tell….

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