



INTERNATIONAL
LAW FIRM





INTERNATIONAL
LAW FIRM

Lawyers and Reserving – Good Servants, Bad Masters

IMCC : 22 Sept – 24 Sept 2010

Simon Todd
Partner

THIS IS IT!

- My Target
- Components of the Reserve
- Reserving Philosophy
- Worked Example

Claims that have “Gone Legal”

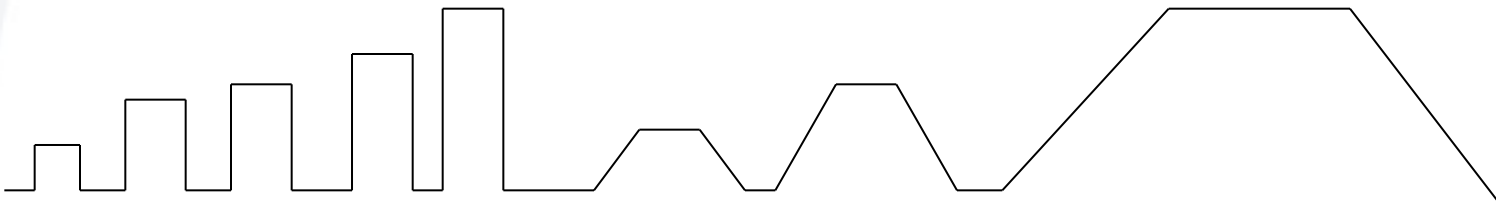
- Get the best from your lawyer - make them work for their money
- Make the best use of their knowledge
- Formulate your question
- **ASK THE DIFFICULT QUESTIONS**

Components of a Reserve

- Principal Value of a Claim
- Time dependent elements

Interest

Costs



Disregarded Factors

- Prospective Recoveries
- Number of Events/Deductibles
- Precedent Risk

Reserving Philosophy - What Test?

- The Worst Case
- Conservative Estimate of Likely Net Outcome if Pursued to Trial
- Reasonable Expectation as to Ultimate Net Claim Inclusive of Interest and Costs
- Reasonable Expectation of Outcome as Pre-CMC Mediation

The Worst Case

- Pros :

You know where you stand

- Cons :

Clumsy and potentially misleading as to “real” exposure

Conservative Estimate of Likely Net Outcome if Pursued to Trial

- Pros :

More flexible than Worst Case Test.
Allows discounting of 'hopeless' claims

- Cons :

Assumes the claim will go to trial.
Only a fraction do.

Reasonable Expectation as to the Net Claim Inclusive of Interest and Costs

- Pros :

Envisages possibility/probability of settlement

- Cons :

Very imprecise.

Difficult to achieve consistency in approach

Reasonable Expectation of Outcome in a Pre-CMC

- Pros :

In practice, significant number of cases settle in mediation.

Is probably the closest to an assessment of the 'real' exposure

- Cons :

May understate exposure.

May add pressure to settle.

Depends on timing in respect of interest

Special Considerations

- Jurisdiction
- Evidential Contingency
- Two Step Reserving for Liability Claims

Conclusion

- Would a more “scientific” approach to claims where litigation is in prospect be worthwhile?
- How “cautious” does the reserve need to be bearing in mind the approach adopted within your organisation?
- Ask your lawyer for a range of estimates so you can apply your expertise in reaching a conclusion as to the appropriate level of the reserve.
- Make your lawyer work!



INTERNATIONAL
LAW FIRM

Lawyers and Reserving – Good Servants, Bad Masters

The Reserve Review

- Current Reserve posted based on informal notice of possible claim is \$2,100,000 (based on estimate of \$1,750,000 for Beacon Repairs and provision of 20% for interest and costs)
 - (i) Would you review?

The Reserve Review

(ii) Would your reserve be :

- (a) \$6,800,000
- (b) \$5,800,000
- (c) \$4,800,000
- (d) \$3,200,000
- (e) \$2,100,000
- (f) \$600,000
- (g) Higher than \$6,800,000
- (j) Less than \$600,000



INTERNATIONAL
LAW FIRM