

**The Administration's Response –  
Miscellaneous Issues Concerning Relief Payment**

**Introduction**

This paper provides information requested by members of the Bills Committee at the meeting held on 14 May 2002 on the following miscellaneous issues concerning relief payment –

- (a) items of damages awarded to the three large common law cases assisted by the Employees Compensation Assistance Fund Board (the Board);
- (b) eligibility of siblings of an injured employee to relief payment upon the death of the employee; and
- (c) whether a maintenance payee can apply to the Court for attaching the relief payment payable to an injured employee for the purpose of effecting maintenance payment.

**(A) Items of damages awarded to the three large common law cases assisted by the Board**

2. Since the inception of the Employees Compensation Assistance Scheme in 1991, the Board has assisted three large common law cases involving uninsured employers with damages exceeding \$10 million. The injury sustained by the three employees in these three cases was serious in nature, resulting in paraplegia of different degree. The total amount of damages involved ranged from \$14.3 million to \$15.4 million per case. The amount of damages with breakdown of the items are set out in the Appendix.

**(B) Eligibility of siblings of an injured employee to relief payment upon the death of the latter**

3. Under the new section 20A(1) of the Employees Compensation Assistance (Amendment) Bill 2002 (Amendment Bill), an eligible person who is unable to recover from an employer payment of damages for which the employer is liable may apply to the Board for a relief payment. For a non-fatal work injury, the relief payment shall be payable to the injured employee who is the eligible person as defined in the Amendment Bill.

4. If the injured employee dies before the outstanding balance of relief payment has been exhausted, the relief payment shall continue to be payable to his / her surviving spouse or cohabitee and surviving child(ren) under the age of 21 at the time of the death of the injured employee. Where the injured employee is not survived by a spouse / cohabitee and any child under the age of 21, then the relief payment shall be payable to the surviving parents.

5. We consider that the present proposal, which aims to provide assistance to the injured employee and his/her immediate family members, is reasonable. In a survey of 85 fatal personal accidents conducted in 2001, it was found that in none of the cases the deceased persons were survived by siblings only without leaving any spouse/cohabitee, child or parent. Therefore, we do not support any proposal to further expand the scope of eligible persons for entitlement to relief payment in non-fatal accidents.

**(C) Whether a maintenance payee can apply to the Court for attaching the relief payment payable to an injured employee for the purpose of effecting maintenance payment**

6. Where a maintenance order has been made against a maintenance payer, the maintenance payee may, in the event of a default in maintenance payment by the maintenance payer, apply to the court for an order to attach the income of the payer to recover the arrears of maintenance and future maintenance payments. Under the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16) and the Matrimonial Proceedings and Property Ordinance (Cap. 192), the court may issue an attachment of income order (AIO) where the payer has failed, without reasonable excuse, to make any payment in compliance with a maintenance order and the payer has any income capable of being attached (attachable income).

7. "Income" is not defined under the above-mentioned Ordinances. Literally, income has a broad meaning. Apart from salary and wages, it

may also include rental receipts, company dividends, directors' emoluments and various kinds of income. However, an "attachable income" must have an identifiable income source, for example, a person, company or institution. The income source should deduct a specified amount from the income and pay the amount to the maintenance payee direct as maintenance payment pursuant to the court order.

8. In the case where a maintenance payee fails to receive maintenance payment pursuant to the maintenance order from the maintenance payer who is an injured employee receiving relief payment from the Board, the maintenance payee may apply to the court for an order to attach the relief payment or a part thereof for his / her maintenance payment. If the court is satisfied that the injured employee defaults in maintenance payment without reasonable excuse and the relief payment which the employee is receiving from the Board is considered as income capable of being attached, then the court may make an AIO and require the Board to deduct an amount from the relief payment and pay to the maintenance payee direct.

9. The provisions of the Employees Compensation Assistance Ordinance will not prohibit the Board from complying with the order of the Court in making such payments to the maintenance payee. However, it should be noted that upon the death of the injured employee, the payment of outstanding relief payment, if any, shall be made in accordance with the provisions of the Ordinance.

Labour Department

May 2002

**Three large common law cases assisted by the Board  
(Breakdown of damages)**

	<b>Case A</b>	<b>Case B</b>	<b>Case C</b>
<b>Physical condition after injury</b>	Incomplete paraplegia <i>(with limited movement of lower limbs)</i>	Paraplegia	Paraplegia
<b>Awards</b>			
<i>Pain, suffering and loss of amenities</i>	\$1,500,000	\$1,500,000	\$1,000,000
<i>Pre-trial loss of earnings</i>	\$1,687,500	\$868,188	\$2,500,000
<i>Loss of future earnings</i>	\$2,880,000	\$2,911,658	\$6,000,000
<i>Loss of retirement benefit</i>	---	\$145,583	---
<b>Future expenses to be incurred</b>			
- <i>Cost of future medical care, nursing and helper</i>	\$1,456,200	\$5,145,215	\$3,297,150
- <i>Future transport costs</i>	\$546,000	\$572,000	\$20,400
- <i>Costs of special future needs and equipment</i>	\$435,300	\$1,378,233	\$627,880
- <i>Future costs of medical consumables</i>	\$206,340	\$582,264	\$372,300
- <i>Removal, adaptation &amp; accommodation expenses</i>	\$4,570,405	\$1,500,000	\$200,000
- <i>Future miscellaneous costs</i>	\$425,120	224,608	\$163,914

	<b>Case A</b>	<b>Case B</b>	<b>Case C</b>
<b><i>Expenses incurred before trial</i></b>			
– <i>Medical expenses</i>	\$176,311	\$109,071	\$134,698
– <i>Transport costs</i>	\$18,610		\$29,604
– <i>Cost of tonic food</i>	\$10,000		---
– <i>Cost of care and attention rendered by families or Home for the Aged</i>	\$396,281	\$366,468	\$642,240
– <i>Other expenses</i>	---	---	\$401,492
<b>Total *</b>	\$14,308,067	\$15,303,288	\$15,389,678

Notes :

- \* The total amount of damages represents the sum of the amount of each compensation item as awarded by the court / offered by the Board (excluding interests) without deducting the amount of employees' compensation under the Employees' Compensation Ordinance already received by the injured employee. Therefore, it does not necessarily represent the actual amount of damages assisted by the Board.