

WESTERN AUSTRALIA continued

Interest on past gratuitous services	Interest is payable on past gratuitous care at the same rate as special damages.	
Future care	See past care above for restrictions. 6% Table of Multipliers applies.	
<i>Fox v Wood</i>	Only applicable in situation where there is a workers compensation refund.	Applicable. That is, tax withheld on weekly benefits is claimable as damages.
Future medical & like expenses	Common law applies with use of 6% Table of Multipliers.	
		As per motor vehicle.

WINDMILLS OF MY MIND

The ever escalating costs of prosthetics

By Andrew Stone

One of the consequences of the global financial crisis is a falling inflation rate. However, one area where inflation continues to run rampant is with medical costs. Nowhere is this more pronounced than with prosthetics.

Consider the above-the-knee amputee. Twelve years ago, a prosthetic leg would cost no more than \$35,000 (including knee joint, limb and foot). Then along came the C-Leg, manufactured by Otto Bock in Austria. It has a microprocessor in the knee joint, which allows the artificial leg to adjust as the amputee walks at varying speeds. Until the recent decline in the Aussie dollar, the total cost of a C-Leg package was approximately \$75,000, a quantum leap above previous prosthetic costs.

The next state-of-the-art prosthetic on the market will be the Ossur Power

Knee, currently available only to US service personnel wounded in Iraq. This bionic-powered knee provides some mechanical input into knee movement while synchronising the motion of the artificial leg, allowing for longer walking without fatigue. The presence of mechanical power generated through the knee also improves foot-over-foot stair ascent, avoiding the awkward swinging gait usually associated with above-knee amputees. When demand from the US army abates, the Power Knee package is anticipated to cost upwards of \$200,000.

Given the escalating costs of future technological developments, compensation awards for amputees based on current technology will prove hopelessly inadequate.

Take the 40-year-old above-knee amputee whose case was settled or judicially determined in 2008. Allowing for a new C-Leg package every five years,

as well as a recreational leg, stump socks, service and maintenance and so on, the future prosthetics component of the damages would have been in the order of \$350,000. Over the next 40 years, this amputee will not be able to afford more than one Power Knee (when it becomes available).

Prosthetists continue to fit outdated and outmoded prosthetics with cruder technology, simply because compensation recipients who settled their claims many years ago cannot afford the modern prosthesis.

Our experience with most technology is that, over time, costs come down (for example, mobile phones, DVD players, MP3s or flat-screen TVs). Unfortunately, without the benefit of a mass market, prosthetic technology has not followed suit. The price of a C-Leg has not dropped substantially in the 10 years it has been on the market.



What should a lawyer do when claiming for future prosthetic costs? What I have tried and recommend is obtaining expert evidence from the treating prosthetist about the ever-escalating costs of prosthetics. Make an additional claim for future out-of-pocket expenses – the unspecified but predictable cost of future technological developments. I cannot say I have ever persuaded a court of the merits of this new head of damages, but an insurer has paid my amputee client an extra \$100,000 towards future prosthetic expenses when presented with such a claim backed by expert evidence. ■

Andrew Stone is a barrister from Sir James Martin Chambers in Sydney.
PHONE (02) 9223 8088
EMAIL stone@sirjamesmartin.com