

### GENERAL

#### Order 22 RSC

**WHO** By party against who a debt or damages is brought to 'entice' the other party to accept the sum in satisfaction of the claim.

**WHAT** An offer to dispose of the claim on terms.

**WHEN** Anytime after entry of Appearance **O22 R1(1)**

**WHY** To put pressure on the other party to bring action to an end.

**HOW** Serve Notice on other party. Send letter to Registrar enclosing cheque and state what it is for.

**Types of Claims** Debts or Damages

**Effect of acceptance of Payment In** Action is settled as if payment under a compromise.

**Does not imply an admission on merits of the case**

**AMOUNT** Should be between the minimum and maximum to entice the Plaintiff.

### TENDER

The performance of one party to an agreement of his obligation to pay money or deliver goods and the refusal of the other party to accept money or goods.

**TENDER** arises where the contract cannot be completely performed.

Can be raised as **Defence** if the party seeking to perform the contract through his payment/delivery makes a payment in court before he files the Defence.

**WHEN** Can only be raised as **Defence** if he paid the same amount into Court that he said he tendered.

### COSTS

**Acceptance of Payment In** P entitled to costs up to time of acceptance of payment in.

**Taxation of Costs** Taxed on standard basis and paid by D up to time that he is served with notice of acceptance.

#### Non Acceptance

Case goes to trial and liability of costs will follow the usual course.

**Judgment is less than Payment In** Usual for Court to make a **split order** for costs. P will have his costs taxed up to time of payment in but thereafter liable to D's costs.

**Split Cost** Even though P had right of action and won some award, he acted **unreasonably** by not accepting a proper offer.

**Judgment is same as Payment In** D is entitled to costs after Payment In.

### PROCEDURE

1. Letter to Registrar of Supreme Court enclosing cheque. State what it is for.
2. File **Notice** and serve on Plaintiff.
3. Plaintiff has **3 days** to acknowledge receipt in writing.

### NON DISCLOSURE

Payment In should **NOT** be disclosed to the Judge. He must remain neutral and unbiased.

If disclosed by application (because trial going bad for P) or by inadvertence, Judge has **discretion** to continue to hear case or refer it.

If liability has been decided but not quantum, any party may disclose to the Payment In but **not the quantum** of the Payment In.

### EMBARRASSMENT

It must be possible to determine what the payment applies to.



### WITHDRAWAL OF PAYMENT IN

#### Leave Required - O22 R1(3)

At the **Judicial Discretion** of the Court whether to allow and on what terms.

#### Leave may be granted if:

1. The D can show good reason (new facts);
2. New Judicial Decision;
3. Mistaken meaning of statement of claim
4. Character of litigation has changed (eg. increase of a counterclaim)

### INTEREST UNDER RSC

Payment In **SHOULD** include interest in accordance with *Civil Procedure (Award of Interest) Act*

### ACCEPTANCE OF PAYMENT IN

**Time** Within **21 days** of receipt of Notice of Payment In **BUT before** trial **O22 R3(1)**

Where trial has begun P may accept within **2 days** of receipt of Notice if before Judge begins giving Judgment or Summing Up **O22 R3(2)**.

**Fee** Small payment to Bahamas Treasury Department

### ORDER FOR PAYMENT OUT

#### Order Required When:

1. Money was paid in by some but not all D's sued jointly
2. There is a Defence of Tender before action
3. In satisfaction of a action under Fatal Accidents Act or where more than 1 person is entitled to the money.

**REMEMBER** Where the person is under a disability (Patient/Minor) an Order for payment out must be obtained.

### LATE ACCEPTANCE

After the time has passed for acceptance, the Court will only allow late acceptance if no substantial alteration in the risk of the litigation.

### EFFECT OF PAYMENT

