



COVERNOTES

Spring 2013

'NO WIN NO FEE' REFORMS

In December 2009, Lord Justice Jackson delivered his long anticipated review of civil litigation costs. It was designed to tackle those areas where the legal costs of settling claims had become 'disproportionate'. Just how disproportionate was illustrated by the Association of British Insurers (ABI) who surveyed over 50,000 low-value motor accident claims in 2009 and 2010, and found that for every pound paid in compensation, 87p was paid in legal costs.

From 1 April 2013 the Legal Aid, Sentencing and Punishment of Offenders Act and new Civil Procedure Rules will bring the Jackson reforms into effect. They look to restore the balance by ensuring that the costs of civil litigation are shared more proportionately between claimants and defendants.

MOST SIGNIFICANT CHANGE FOR A GENERATION

The Chartered Insurance Institute calls the Jackson reforms the most significant changes to civil litigation and claims handling for 'nearly a generation'.

The reforms include:

- Litigants who have entered into a conditional fee agreement (CFA) - more commonly known as a 'no win no fee' - with their lawyer will no longer be able to recover the success fee when they win their case.
- Litigants taking out After the Event (ATE) insurance will no longer be able to recover their premiums from the losing side.
- A cap on the payment that the claimant lawyer can take from damages awarded in personal injury cases, of 25% of the final damages award.

- Application of Qualified One Way Cost Shifting means that claimants conducting their case properly will not have to pay towards the defendant's costs if the claim fails. However, protection will be lost if the claim is found to be fraudulent, if the claimant fails to beat a Part 36 offer at trial or where it is struck out by reason of being an abuse of the court's process.
- Introduction of Damages Based Agreements in civil litigation - another type of 'no win no fee' arrangement for claimants but where the lawyer's fee is related to the level of damages awarded rather than the amount of work done by the lawyer.
- Increased sanctions to encourage early settlement.
- New mandatory cost and case management rules include the requirement for parties to set share and agree budgets at the beginning of the court process.

IMPACT ON BUSINESSES

The Government will be extending the existing electronic Road Traffic Accident Claims Portal. Originally set up to cover low value motor claims up to the value of £10,000, it will now be known as the Claims Portal and will include employers' and public liability claims. It will also deal with claims up to the value of £25,000. For businesses this represents a radical change. It will lead to shorter response times, condensed negotiation and the need for stringent controls when it comes to claims management in order to benefit from the potential cost savings. This element of the reforms has now been delayed until after 1 April 2013.

FAST ACCURATE REPORTING ESSENTIAL

All parties involved will need to have robust processes in place to hit the strict deadlines and fast and accurate reporting will be vital. A greater front-loading of evidence will help identify valid claims and companies will need to decide on their claims strategy (whether they are going to admit liability or not) from an early stage.

Via Covernotes, we will keep you updated on the new timetable of implementation, however if you would like to learn more please visit www.justice.gov/civil-justice-reforms. If you would like to talk through how these changes could affect your business, please call us.



TEMPS - A QUICK FIX OR A RISK?

From June to August 2012, Britain's businesses took on an additional 1.6 million temporary workers. Employed across a range of sectors from agriculture to hospitality, the use of temporary or seasonal workers has become a year round feature of the British employment landscape. Many businesses rely on the short notice availability and flexibility of temporary staff as a key part of their business strategy. Those using temporary workers however, should beware of cutting corners in both health and safety, and in the recruitment process.

TEMPORARY WORKERS HAVE RIGHTS TOO

The Health and Safety Executive (HSE) has laid down clear guidelines regarding the rights of temporary workers when it comes to their health and safety. It is important businesses observe these rights as well as ensuring that their recruitment process does not expose them to unwittingly employing staff with no legal right to work in the U.K. Poor recruitment can also lead to increased theft/incidents of fraud where employees have not had the appropriate background screening.

REDUCE YOUR RISKS

There are a number of steps you can take to reduce the risks such as:

- Make sure you have appropriate health and safety training in place (typically temporary employees may have no experience in the trade/environment and so need more supervision).
- Carry out your own background screening of temporary staff.
- Plan in advance for busy periods and have a pre-screened workforce ready to call up at short notice.

Also, make sure you check your recruitment agency contract to ascertain your contractual liabilities. Your employers' liability policy should cover your legal liabilities in the event of a temporary worker sustaining an injury but as always, prevention is better than a cure.

VIOLENCE IN THE WORKPLACE: A GROWING THREAT

When three British managers arrived at their firm's French factory to deliver bad news on the factory's future, the Guardian newspaper reported that the disgruntled workforce decided to take matters into their own hands by holding the managers hostage overnight. While this particular incident of 'boss napping' ended peacefully, it is a high profile example of a recent growth in workplace related violence which more commonly sees employees suffering from verbal or physical abuse.

ASSAULTS AND THREATS

The U.K.'s British Crime Survey 2010-11 states that 1.5% of working adults fell victim to one or more violent incidents at work, which is equal to 331,000 workers; a rise of 4% on 2009-10 figures. Of the recorded 654,000 incidents, roughly half were actual assaults with threats making up the remainder. Workplace violence can come from customers, clients, or patients receiving goods or services, or can take the form of harassment (bullying or mobbing), most often perpetrated by an employee, or group of employees.

YOUR RESPONSIBILITIES

From an employers' perspective, the Health and Safety at Work Act 1974 lays down a clear legal duty to ensure the health, safety and welfare of their employees. The Management of Health and Safety at Work Regulations 1999 also place specific requirements on employers to protect employees from exposure to reasonably foreseeable violence at work - both physical attacks and verbal abuse.

To reduce instances which may give rise to violence at work, you should ensure appropriate preventative measures and procedures are built in to your risk management process. In addition, be sure to check you have adequate employers' liability insurance in place - as an employer you could be held liable for the actions of your employees, including any sub-contractors you may employ.

For more guidance on how to protect your business from the risk of workplace violence go to www.hse.gov.uk or contact us.



ARE YOUR GOODS FULLY INSURED FOR TRAVEL?



All companies buying or selling goods that need to be shifted by road, rail, sea or air, have some degree of what, in the insurance business, is known as ‘marine cargo transit exposure’. Businesses often assume that this is covered when their hauliers or suppliers insure the goods. Unfortunately this is not always the case and goods may end up under-insured.

SUFFERING A £40,000 LOSS

Here is an example of a recent claim that involved a haulier delivering £50,000 worth of machinery to a U.K. customer: The driver caused an accident en route and the equipment was destroyed. Unfortunately, the haulier’s liability was limited to £1,300 per tonne (a standard limit imposed under the U.K. Road Haulage Association ‘RHA Conditions of Carriage’) and because the machinery weighed two tonnes, the machinery supplier was paid just £2,600, leaving them with a £47,400 uninsured loss.

Problems can occur even if your customers are insuring the goods. Say for ex works sales (where the buyer is responsible for removing the goods from your premises), if your exported goods arrive damaged or are lost in transit – will your customer accept and pay for them? Similarly, you may encounter problems when insurance is arranged by your suppliers:

- How much are they charging you?
- How quickly is the claim ‘time barred’ by the suppliers’ insurance? This could be as little as three days for you to discover and act on a claim.

SCOPE OF COVER AVAILABLE

A potential solution is to purchase your own marine cargo insurance, which can offer cover for a single cargo transit, or on an annual basis. Goods can be covered for all stages of the transportation process including removal from your warehouse prior to transit, and while being stored elsewhere incidental to transit. It can also be arranged on an ‘all risks’ basis or for selected perils, including collision, overturning or derailment of the carriage vehicle, pilferage, jettison, fumigation, concealed damage etc.

If you transport goods either in the U.K. or abroad, feel free to call us to discuss how you can protect your goods with marine cargo insurance.

HARNESSING THE WIND

In late January, the U.K. and Ireland governments announced a joint deal to install some of the world’s largest onshore wind turbines in Ireland’s midlands and export the power back to the U.K.’s National Grid. These 180m giants represent the latest development in the rapid growth of renewable technologies, as governments look for ways to deliver on international commitments to reduce their CO₂ emissions.

POWERING MY BUSINESS

It’s not just governments that are looking at the possible benefits of wind energy. Increasingly businesses – large and small – are considering wind as a way of reducing their own carbon footprint while cutting down on growing energy costs. This, in turn, has created a wide range of unique risk and insurance considerations for those businesses that see wind as the answer to their energy demands.

Wind turbine loss statistics, gathered by HSB Engineering Insurance, show the diverse nature of the types of losses associated with wind turbines. According to HSB, the top five reasons for wind turbine insurance claims were:

- Mechanical breakdown
- Electrical breakdown
- Lightning strike
- Storm damage
- Fire

The most likely component to go wrong was the turbine’s gearbox, followed by blade, generator, electrical cabling and its transformer.



FINDING THE RIGHT INSURANCE COVER

Making sure you have the right insurance cover in place to protect these valuable assets is critical. Not only do you need to protect your wind turbine from material damage, it is also important to ensure that there is cover included for loss of revenue while your turbine stands idle awaiting repair. There are specific covers available which offer All Risks Cover (including Breakdown), Loss of Revenue, Terrorism, and even Inspection Services to comply with regulatory obligations. Call us if you would like more information on insurance cover for your wind turbine.

TERRORISM: A GROWING THREAT TO BUSINESS TRAVELLERS



As the US and its NATO allies begin the slow withdrawal from a ten year campaign in Afghanistan, the military focus of some western powers appears to be switching to North Africa. According to Tim Holt from crisis and risk management consultancy Alert:24 the recent hostage crisis in Algeria, together with the UN-sanctioned French-led offensive against Islamic factions in Mali, points to a new front for Islamic terrorism across the entire Sahel region of Africa.

Well-funded, equipped and sophisticated Al-Qaeda associated groups continue to spread across the Sahel, from Mauritania in the West to the Horn of Africa in the East, bringing with them support from Middle-Eastern and Asian Islamist cells. Osama bin Laden might be gone but the seeds of dissent sown by Al-Qaeda and its franchises continue to foment violence globally.

BUSINESSES AT RISK

Increased globalisation has led to many more businesses and individuals, who might be working as contractors for example, travelling to some of the world's terrorism hotspots. Unsurprisingly, business installations, locals and foreign nationals operating across regions such as North Africa are a high risk target and the danger from kidnap-for-ransom is extreme. Al-Qaeda affiliated organisations in the Sahel have reportedly raised more than one hundred million dollars in ransoms with foreign nationals tending to be held for longer periods with higher ransoms and more diverse demands.

BE SAFE ABROAD

If you, or anyone from your business is travelling overseas, the first place to turn to for advice on the safety of the destination is the Foreign Office's website www.fco.gov.uk. Travel advice for every country is offered. You should consider:

- Arranging comprehensive travel insurance, that includes terrorism and war risk, you may also want cover for accidental death and dismemberment.
- Getting insurance for Kidnap and Ransom, which would typically cover the perils of kidnap, extortion, wrongful detention, hijacking etc.
- Checking the FCO's country travel advice.
- Researching your destination – know the local laws and customs.
- Researching the health risk on the NHS travel health information page as soon as possible before travelling, and if necessary visit your GP.
- Checking your passport is valid and you have all necessary visas.
- Making copies of important travel documents and/or store them online using a secure data storage site.

Talk to us for advice on suitable business travel insurance cover.

<https://alert-24.com>

REAL PROFESSIONAL INDEMNITY INSURANCE CLAIMS

Any business that provides professional advice could be liable for a claim of negligence from its clients as the following professional indemnity claims scenarios from the insurer RSA show:

- An advertising agency was instructed to carry out a direct mailing in connection with a new product launch. A large number of addresses proved to be incorrect necessitating a complete re-mail.
Compensation paid £2,500,000
- The insured was asked to provide a computer system for a client but it was inadequate for his needs.
Compensation paid £30,000
- The insured approved safety measures used in the building of a playground. It was later alleged, however, that these measures were inadequate and that extra work was needed.
Compensation paid £60,000
- It was alleged that an estate agency undersold a property. Five months later it was resold for double the previous price.
Compensation paid £200,000

If your business, regardless of its size, experiences a similar problem with an unhappy client, then you could end up paying out similar amounts. For more details about professional indemnity cover, please call us.

This newsletter offers a general overview of its subject matter. It does not necessarily address every aspect of its subject or every product available in the market. It is not intended to be, and should not be, used to replace specific advice relating to individual situations and we do not offer, and this should not be seen as, legal, accounting or tax advice. If you intend to take any action or make any decision on the basis of the content of this publication you should first seek specific advice from an appropriate professional.

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