

# INSURANCE PRACTICE GROUP LEGAL UPDATE

## News

### Change to track limits

From 6 April 2009 the upper-limit of the fast track will be £25,000 (an increase of £10,000 from £15,000). In claims worth more than £15,000 the Court may now award trial costs of £1,650.

### Asbestos test litigation

Hill Dickinson's David Dunne is spearheading test litigation that will decide whether asymptomatic asbestosis gives rise to a compensatable respiratory disability. The litigation follows the House of Lords' decision in Rothwell where it was ruled that compensation was not payable to sufferers of asymptomatic pleural plaques.

### Playing golf can 'damage hearing'

Doctors are now warning that thin-faced titanium drivers cause a sonic boom when they strike the ball and that golfers using such clubs should consider wearing hearing protection. The Ping G10 was recorded to reach 130 decibels by researchers and it is clearly important for litigators to now consider whether playing golf as a hobby has impacted on a noise-induced hearing loss claim.

### Miners compensation scheme solicitor struck off

Jim Beresford and his colleague Douglas Smith of Beresfords Solicitors, the firm reported to have made millions from the coal health compensation scheme, have both been struck off. Mr Beresford is reported to be creating a multi-million pound "legal services supermarket".

## Cases

### [Ferdinand Ammah -v- Kuehne+Nagal Logistics Ltd \(2009\)](#)

Ammah worked in the despatch department of Kuehne where it was his job to get items off shelves. Some shelves were just above the reach of Ammah and, whilst attempting to access an item on one such shelf, Ammah turned a tote box upside down and stood on it. The box moved under him and he fell, breaking his ankle. The Court of Appeal found that an adequate warning or instruction was given, namely to use a "man-riser", portable steps or a forklift truck to access shelves out of reach. This constituted a safe system of work and employees, including Ammah, had also been told not to stand on boxes to reach higher shelves. The claim was dismissed: Ammah took a risk for which only he was responsible.

**Hill Dickinson comment:** Some claimants aver that it is negligent, per se, to store items on high shelves which can only be accessed with equipment. Whilst this does not appear to have been expressly alleged in the instant claim, the Court of Appeal was clearly not troubled by the system of work employed by the Defendant. This is a reassuring and practical decision.

### [Robert Smith \(by his wife & litigation friend Pauline Smith\) \(Claimant/Part 20 Defendant\) -v- Michael Finch \(Defendant/Part 20 Claimant\) \(2009\)](#)

Smith sustained serious head injuries when his bicycle collided with Finch's motorcycle. Finch averred that Smith's injuries had been sustained wholly or in part because of Smith's failure to wear a cycle helmet. Mr Justice Williams held that despite there being no legal compulsion for cyclists to wear safety helmets, there could be no doubt that the failure to wear a helmet might expose the cyclist to greater risk of injury, like the failure of a car-user to wear a seatbelt.

**Hill Dickinson comment:** Because of the mechanisms of the accident and location of Smith's injuries, the failure to wear a cycle helmet was not causative of the injury in the instant claim.

However, it is clear that the Court will now entertain allegations of contributory negligence founded upon a failure to wear a cycle helmet. It remains to be seen if the Court will adopt a prescriptive approach to apportionment or whether this will be determined on a case by case basis.

### [Hall -v- Holder Estate Co Ltd \(2008\)](#)

Hall had been playing football with his son at a caravan park owned and operated by Holker, using a portable tubular goal frame supplied by the caravan park. As Hall retrieved the ball from the net he caught his foot in the net and fell to the ground. The goal then tilted and fell on top of Hall and the crossbar struck him in the face. The Judge found that there was no evidence that the goal was routinely checked to ensure it was sufficiently secured and that the goal had not been pegged down. The Court of Appeal held that once the Judge had found that the accident was caused by a want of safety at the time (namely a failure to peg the goal) and the Defendants had accepted a duty of inspection to check that pegs were in place, the claim would succeed if it was established that a properly performed daily inspection (which the safety inspector regarded as necessary) would have detected the absence of pegging and caused the pegs to be replaced.

**Hill Dickinson comment:** This case reiterates principles enunciated in [Ward -v- Tesco](#) and, importantly, the Court has emphasised that only a causative system failure will result in liability attaching.

### [Goodwin -v- Bennetts UK Ltd \(2008\)](#)

Goodwin worked as an insurance advisor for Bennetts and wrote letters to customers inviting them to renew their policies in addition to carrying out a number of other administrative functions. Goodwin developed a pain in her wrists around the same time as she had a car accident and was diagnosed by her doctor as having tenosynovitis, a condition where posture, repetition and lack of rest were important factors in development. The Judge rejected the diagnosis of tenosynovitis but found that the pain in Goodwin's wrists was aggravated by her keyboard work. Whilst the amount of typing Goodwin did each day was not such as to cause a reasonable employer to foresee a risk of personal injury, once Bennetts had been alerted to the pain in Goodwin's wrists which appeared to be related to her keyboard work, it was under an obligation to provide proper training and information and reduce Goodwin's keyboard work to stop a recurrence of her symptoms.

**Hill Dickinson comment:** The duty of care owed by Goodwin's employer was measured by the knowledge it had at the material time. All employers should take measures to ensure that their employees are safe at work taking into account their individual frailties.

### [TCD -v- \(1\) Harrow London Borough Council \(2\) Worcestershire County Council \(3\) Birmingham City Council \(2008\)](#)

T brought a claim for historic child abuse that began 34 years earlier and the Court was required to determine whether her claim was statute barred. It was found that on reaching the age of majority T had sufficient information to investigate whether she had a claim against any of the relevant local authorities. Following [A -v- Hoare \(2008\)](#) the Court held that not everyone bringing a late claim for damages, however genuine their complaint might be, could reasonably expect the Court to exercise its discretion in their favour to allow the claim to continue. There were found to be significant gaps in the local authorities' documentation and witnesses who were untraceable. After so long, a fair trial of the issues would not be possible and the Court would not exercise its discretion to permit any of the claims to continue.

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**Hill Dickinson comment:** The Court stressed that whilst its discretion under section 33 of the Limitation Act 1980 was unfettered, it had to be addressed in light of all the circumstances and the Court should never lose sight of the public interest in legal certainty and finality, especially not out of sympathy. Hill Dickinson's Jason Spencer and Kathy Perrin drove the [A -v- Hoare](#) litigation and should be contacted by anyone needing further guidance on the impact of this decision.

[Winifred Rice \(Executrix of the estate of Edward Rice, deceased\) -v- \(1\) Secretary of State for Business Enterprise & Regulatory Reform \(2\) Stuntbrand Line Ltd : Robert Francis Thompson v \(1\) Secretary of State for Business Enterprise & Regulatory Reform \(2\) Stuntbrand Line Ltd \(2008\)](#)

Damages for personal injury were claimed on behalf of dock workers (Rice and Thompson) who had suffered from asbestos-related diseases which had been contracted during their employment with the National Dock Labour Board. The Court determined as a preliminary issue that the National Dock Labour Board had a duty of care to take positive steps so as to prevent or reduce the dock worker's exposure to asbestos dust; the workers had been regularly exposed to and covered by heavy concentrations of asbestos dust in the course of their employment whilst unloading asbestos packed in either unlined Hessian or paper sacks or from damaged lined sacks. They had not been given any information or warning that exposure to asbestos would give rise to a risk of injury, nor had they been trained on how to handle asbestos cargo and avoid exposure to asbestos dust. The Court held that there was an obligation to warn that even transient contact with asbestos dust could cause mesothelioma and pulmonary cancer and the National Dock Labour Board should have trained the workers about the risks of such contact and advised them to use respirators when they came into contact with asbestos dust.

**Hill Dickinson comment:** More claims are likely to follow this case and Hill Dickinson's dedicated asbestos team should be contacted for guidance on their investigation and conduct: [David Dunne](#) or [Lisa Grey](#)

## Hill Dickinson Successes

[Jenkins -v- Hill Dickinson Client](#)

Jenkins was employed as a price integrity assistant and sustained injury whilst proceeding through the staff canteen. She issued proceedings naming both her employer and contract cleaners as Defendants.

Prior to the handling of this claim by Hill Dickinson, liability had been admitted by the Claimant's employers. Notwithstanding this Hill

Dickinson's Jason Spencer and Sarah Venn were able to resile from the admission and secure a full indemnity from the contract cleaners.

**Hill Dickinson contact:** [Jason Spencer](#)

[Ellington -v- Hill Dickinson Client](#)

The Claimant was injured when she slipped and fell on the Defendant's premises. Claiming she was unable to work as a result of her injuries she sought £182,000 in damages for lost earnings. Hill Dickinson obtained video surveillance evidence which indicated that the Claimant had a better range of movement and function than she had given the medical experts to believe during examination. Hill Dickinson maintained a robust stance and the Claimant settled days before trial for a total of £7,000 in damages. Hill Dickinson also recovered for the client £45,000 in recoverable benefits paid to the Claimant.

**Hill Dickinson contact:** [Kathy Perrin](#)

[Wakely -v- Hill Dickinson Client](#)

A collision occurred between the Claimant's vehicle and a vehicle being driven by an employee of the Defendant. The Claimant had moved from the inside lane of a dual carriageway and performed a U-turn across the path of the Defendant. The Defendant contended that the Claimant had performed this manoeuvre without giving any indication of her impending action. The Defendant's driver and passenger both failed to attend the trial but, despite this, following cross examination of the Claimant by Hill Dickinson's Head of In-House Counsel, Sarah Venn, the claim was dismissed on the basis that the Claimant had failed to prove that the Defendant's driver had been negligent and the Claimant recovered nothing.

**Hill Dickinson contact:** [Lorraine Joy](#) and [Sarah Venn](#)

[Monaghan -v- Hill Dickinson Client](#)

The Claimant contended that the Defendant's driver had sped through a red light and collided with his vehicle which was turning right. The Claimant's contentions were supported by an independent witness. Hill Dickinson's Head of In-House Counsel, Sarah Venn, represented the Defendant at trial and following cross examination of both of the Claimant's witnesses and an analysis of the evidence was able to convince the judge to dismiss the Claim and award the Defendant its full costs.

**Hill Dickinson contact:** [Lorraine Joy](#) and [Sarah Venn](#)

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