

Spring 2008

HILL DICKINSON



Transport Update

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LIVERPOOL

OFFICIAL LAWYERS
EUROPEAN CAPITAL OF CULTURE

Welcome

The first half of 2008 has seen the start of an exciting new chapter for Hill Dickinson. 550 of the firm's Liverpool complement of partners and staff have now moved from four separate sites across the city to the iconic St Paul's Square development.

Tony Wilson, senior partner at Hill Dickinson, said: "This is indeed a truly historic development for Hill Dickinson. We were fast outgrowing our former premises and needed to bring everyone together under one roof for the benefit of the firm, our staff and most importantly, our clients. This dynamic and inspiring building can not only accommodate our existing staff and client needs but gives us space and flexibility in which to expand further.

"St Paul's Square demonstrates that Liverpool is continually moving forward commercially, financially and architecturally and that local successful firms such as Hill Dickinson are fully committed to the city."

Our new Liverpool address and switchboard number can be found on the back page of this newsletter. Please do contact us should you have any queries.



Contents

Page no.

Transport Focus

Fleet Operators use of Agency Drivers	3
New CPC Requirement for Drivers	3

Litigation Focus

Loss of Earnings Claims	4
Case Updates	4

Hill Dickinson Focus

Dedicated in-house costs specialists	5
Newsflash...	5

STOP PRESS...

HILL DICKINSON LAUNCHES IN-HOUSE COUNSEL TEAM

Hill Dickinson has appointed Sarah Venn, Barrister, formerly of Halliwells LLP, to head up an in-house Counsel and advocacy service, expanding the range of services offered to clients.

The recently launched team at Hill Dickinson, which draws its experience from leading Chambers and experienced in-house Counsel, provides all the services of the independent bar, within the environment of a top 40 law firm, offering the provision of seamless and comprehensive legal services to clients.

Sarah Venn said: "The team has a great breadth of experience and is able to provide a knowledgeable and cost-effective solution tailored to each of our individual client's needs. Our in-house team and senior solicitor advocates have rights of audience in all Courts in England and Wales and represent our clients nationally at a range of hearings, including inquests and local authority tribunals."

Jason Spencer, head of the insurance practice group at Hill Dickinson, said: "Sarah is an accomplished advocate with significant Court, Tribunal and Inquest experience. Our Counsel remain independent practising barristers and operate in the spirit of the independent bar. Our aim is to provide our clients with a more bespoke and dedicated legal service and I see this as a particularly important part of our growth strategy, particularly given the anticipated time pressures which are likely to arise from the imminent Ministry of Justice (MOJ) proposals."

Prior to being called to the Bar, Sarah worked as research assistant to Lord Justice Carnwath and for the Law Commission's company and commercial law team. She then undertook pupillage at leading London Chambers Erskine Chambers and Pump Court Tax Chambers, where she was involved with a wide range of revenue, company and commercial litigation, before moving in-house where she expanded her practice into insurance litigation work.

Fleet Operators Use of Agency Drivers

It is a fact of life for fleet managers that they must use the services of agencies on occasions and this raises queries regarding the quality of the drivers that will be supplied. Whilst the fleet manager can ensure that his own drivers are well trained and monitored and indeed given shift patterns, breaks etc that allow them to turn up for work in a fit state, it is difficult to do this with the unknown quantity of an agency driver who may be arranged at the last minute.

When an agency driver is working for you, you are responsible for his actions to include if he negligently causes an accident. Whilst the driver's wages may be paid by the agency company, you as fleet operator will be doing no more than paying a fee to the agency company, which is likely to be a condition of the contract of supply of the agency driver that you, the hirer, will be responsible for the driver. In consequence, you take on any liabilities arising from any negligent act of the driver to include liabilities under the Road Traffic Act.

The arrangements between agency and hirer are common and are accepted as industry standard but recent cases such as the Selby rail accident highlight the problems which arise when an agency provides a driver who is not capable in all the necessary respects of doing his job properly for the hirer.

This is an area where the agency does have some control and even if it is not included in the contract between the agency and the hirer, it is an implied term of the contract that the agency will provide a driver who is suitable in all respects. If for example the agency has not ensured that the driver has sufficient rest following previous assignments or has failed to ensure he is medically fit to drive then there may be a case for arguing that the agency has failed in its duty to supply a suitable and competent driver. If that is the case, there may be scope to involve the agency in any claim arising out of that driver's negligence.

Not least because of the impact it would have on the employment industry generally, any such claim would be resisted strongly by the agency and arguments entering on the fitness of the driver provided are probably best kept to cases which involve significant amounts and where the cost involved in investigating the operation of the agency and the checks they make with regard to suitability of drivers and in particular the rest periods they have taken etc would be worth undertaking.

Another useful line of enquiry with any agency supplying a driver would be to ensure that they had carried out all the reasonable checks upon the driver such as making sure that licences etc supplied were correct and up to date (and included all relevant endorsements!) Another check that could reasonably be expected of an agency is to ensure that drivers who are not of UK origin have the necessary qualifications to drive in this jurisdiction.

Workers from outside this jurisdiction providing good quality forged documents in order to secure employment is an issue which is becoming of increasing significance. The argument to be raised would be fairly simple – that a driver's lack of skill or training had contributed to the circumstances of the accident and that the agency had failed to satisfy themselves that the driver they had provided to the hirer had the pre-requisite skill or training. A useful parallel can be drawn with the Construction Plant Association Conditions of Hire which state that any operator of machinery supplied with the machinery to a hirer must be indemnified by the hirer in respect of any negligent act apart from in the circumstances where the driver or operator is grossly negligent.

To summarise, those handling claims for fleet operators should always consider the points above from the outset of any claim in order that questions can be asked of agencies at a very early stage so as to prepare the ground for more detailed enquiries if necessary. It is also essential, from a preservation of evidence perspective, that agency drivers be interviewed as soon as possible after any accident.

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New CPC requirement for Drivers

New regulations implementing an EU directive which come into force this September (in relation to PCV licences) and September next year (for LGV licences) have significant implications for all public transport and haulage operators.

Whilst the regulations only make it a requirement for new PCV/LGV drivers to obtain the new Driver CPC qualification at the relevant date, all PCV and LGV drivers will be required to undertake at least 35 hours training every 5 years. This, coupled with the widely recognised shortfall in PCV / LGV drivers, will place a significant burden on all operators both in the training of new drivers and the ongoing training of the existing 600,000* or so active PCV / LGV licence holders.

In addition, the new regulations have new pitfalls – it will be an offence to fail to carry proof of the new CPC qualification and also to fail to produce evidence of it if so required. Further, a failure to carry proof of qualification may also void insurance cover.

*600,000 figure taken from ROSPA response to consultation on Driver CPC





LOSS OF EARNINGS CLAIMS

Hill Dickinson solicitor Julian Norris presents a brief revision exercise in dealing with claims for loss of earnings in today's web enabled environment.

The traditional position

- When a claimant suffers a loss of earnings as a result of injury occasioned as a result of somebody else's negligence he or she is entitled to recover that loss from the negligent party ("the defendant").
- The loss is calculated by looking at what the claimant would have earned, but for the absence from work caused as a direct result of the negligent act.
- The defendant should ask the claimant's employer to provide earnings information to cover a period of 13 weeks prior to the date of absence, the period of absence itself and for 6 weeks after the claimant returns to work. Longer periods may be appropriate where the nature of the claimant's employment leads to fluctuation in pay, the provision of bonuses or where the claimant complains that he could only work reduced hours after returning to work. If the claimant is self-employed, books, accounts and tax returns will be required for review.
- The Data Protection Act 1998 allows a data controller to release this personal information for the purposes of, or in contemplation of, litigation (s35).

The problem

- Online companies are providing "made to measure" payslips and P60's for a fee of as little as £10.00.
- These are being used to make fraudulent loan applications. Lenders have found it impossible to verify a borrower's true income.
- In the context of personal injury claims where the claimant says that they were prevented from working and therefore unable to command their usual income a further problem may arise. If these false documents were accepted as proof of a claimant's pre-accident income, the claimant may succeed in advancing an entirely fraudulent or exaggerated claim for loss of earnings.

The solution

- Always insist on the claimant providing details of their employer or accountant and tax office.
- Write to the employer or tax office and accountant directly asking for earnings information to cover the appropriate period (discussed above).
- The employer (or if self employed, the claimant's GP) should also be asked to disclose copies of sickness certificates (MED 3's) in order that the defendant may satisfy himself that the absence was caused as a direct result of the negligent act and not for some alternative reason.
- Also be alert to the possibility that the claimant's absence could have been due to a holiday, during which the claimant enjoyed full health. A claimant may however, properly be compensated for a holiday which was compromised or that he was unable to enjoy fully due to his ongoing injuries.

Hill Dickinson has a team of 25 experienced counter fraud lawyers. Supported by Netfoil, Hill Dickinson's market leading counter fraud database, they are able to provide advice to insurers and corporate clients to assist in defeating fraudulent claims, to implement fraud prevention and detection initiatives and, where appropriate, to recover assets and payments made to fraudsters.

Key contacts:

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CASE UPDATES

Graham Morris Leesmith -v- Gordon Evans (2008)

A Claimant injured in a road traffic accident had a number of different career prospects. It was not possible to make exact assessments as to the rates which would be earned at specific periods of time and the Court held that rather than apportion the multiplier, a broad view should be taken and the multiplicand should be adjusted to allow for variations over the period of loss.

This is a principle to be born in mind when calculating reserves and making offers of settlement. In such cases it is still appropriate to adjust the multiplier in accordance with the introduction to the Ogden Tables to take account of factors such as education and disability.

Leech -v- D D Heating Limited

The Claimant had been involved in a collision which the Defendant driver described as "very slight", leaving only scratches to both vehicles. The Claimant asserted damage to the exhaust, rear bumper, number plate, tailgate, boot floor and rear panels; he also claimed loss of use and whiplash injury. Primary liability was admitted and the claim was defended on quantum and causation.

Hill Dickinson's investigations revealed that two engineer's reports and two repair invoices had been produced (one dated the day of the accident). Further, closer examination revealed that the vehicle had travelled 6,000 miles between each engineer's inspection. Evidence suggested that the claim had been grossly over-inflated and damage to the vehicle was pre-existing. At trial, the Claimant's claim was dismissed and costs were awarded against the Claimant and paid by his solicitors.

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Hill Dickinson's dedicated in-house costs specialists:

"Some 40% of claim costs paid out by insurers on behalf of industry in the UK goes on legal expenses"

(Risk Managers Conference June 2005)

It is therefore essential that costs are treated as seriously as the claim itself. Hill Dickinson's in-house costs department offers clients a complete costs solution, incorporating both practical and strategic solutions through innovative approaches to challenging and managing unreasonable claims for costs.

The team handles all aspects of costs work including complex multi-party actions, international disputes and valuable clinical negligence matters and commercial litigation with costs ranging from simple RTA cases with costs of less than £5,000 to in excess of £1million.

We have saved £1 million for our clients over the 190 most recent cases conducted - this is an average saving of over £5000 per case

So far for 2008, we have saved clients on average 52% - that is almost £132,000, in just 13 files

The team comprises fully trained and highly motivated costs draftsmen with experience in negotiation, preparing bills and other costs work. The team offers a service and capability superior to simple negotiators through greater technical knowledge and first-hand experience. To maintain consistency of approach, our costs draftsmen are nominated to deal with files on a day-to-day basis.

We provide a fully integrated service in respect of all aspects of costs work from preparing bills, dealing with applications, Points of Dispute and Replies and providing advocacy services in all regional Courts and the Supreme Court Costs Office.

If you would like further details about our costs services, or would like to discuss how the costs team could benefit your organisation, please do get in touch.

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NEWSFLASH

OLS LAUNCHES DYNAMIC WEB REPORTING FUNCTION

OLS has launched a new dynamic web reporting system with access available to all clients. This will offer enhanced report production, providing clients greater control and flexibility with regards to their reporting requirements and is one of the highlights of the new CMS system currently being developed by HD.

Key points of the application will include:

- Template based client reports accessible via the portal.
- For motor clients the following reports will be made available:
 - High level summary
 - Transport summary
 - Claims listing
 - Operational report
 - TP claims report
 - AD & TP claims report
 - ULR/ recovery report
 - Investigation report
 - Movement report
- For casualty clients the following reports will be made available:
 - High level summary
 - Claims listing by category of claim
 - Investigation report
 - Movement report
- Custom-built parameters for filtering the data displayed to enable clients to create their own bespoke reports drilling down into specific and relevant data as required.
- Print, save and export functions.

For clients wishing to utilise the dynamic web reporting function, please email your request to:

Martin Wardle, IT Developer
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About Hill Dickinson

Hill Dickinson offers a comprehensive range of legal services from offices in Liverpool, Manchester, London and Chester, and its associated firm Hill Dickinson International has offices in London and Greece. Collectively the firms have over 150 partners and a complement of more than 1000 staff.

Hill Dickinson is a major force in insurance and is well respected in the company and commercial arena. The firm's marine expertise is internationally renowned and it has one of the largest marine practices in the UK following a merger with Hill Taylor Dickinson on 1 November 2006. The firm has an award winning property practice and is widely regarded as a leader in the fields of commercial litigation, employment, intellectual property, NHS clinical/health related litigation and private client.

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