

insurance update

news ...the latest in insurance law



Ministry of Justice changes in low value road traffic accident claims

Broad details of the new scheme for road traffic accident personal injury claims valued between £1,000 and £10,000 have now been agreed. Fixed costs will apply at three stages:

Stage 1 £400

Claimant's solicitor completes the claim notification form and sends it to the insurer who may admit/deny liability.

Stage 2 £800

Where liability is admitted, the claimant obtains a medical report and the process continues with offers and negotiation of a settlement to a strict timetable.

Stage 3 £250

Paper hearing

£500

Oral hearing where the parties cannot agree a settlement and the case goes to court.

Draft rules are being prepared with a view to implementation in April 2010.

Insurance industry working group reports

The insurance industry working group, set up in 2008 to look at challenges and opportunities facing the UK industry, published its report into the medium and long-term challenges facing the insurance industry on 27 July 2009. The report suggests that there should be greater cooperation between the government and the insurance industry to reduce the cost of welfare provision to the taxpayer.

Corby Council to appeal

Corby Council has voted to appeal against a High Court ruling which found it liable in negligence to parents of children born with deformed hands and feet resulting from the way the council reclaimed land at the site of a former British Steel plant between 1985 and 1999. The claimants complained that the dangers posed by toxic dust on the wheels of the lorries removing waste to a quarry north of the site gave rise to a foreseeable risk of injury by exposing expectant mothers to an "atmospheric soup of toxic materials".

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Welcome

Welcome to the December edition of the Hill Dickinson IPG update.

If you have queries related to the issues discussed, please contact the relevant article author. Alternatively, contact me with any other queries you may have, or suggestions for future articles you would find of interest.

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Marsden -v- Bourne Leisure Limited

Occupiers' Liability Act 1957; standard of duty of care

Matthew Marsden, aged 2½, drowned in a pond whilst on holiday at a caravan park operated by the defendant. The pond was surrounded by wooden horizontal rails, approximately two feet high, several feet from the edge of the water and fenced with wire mesh below the rails. It was alleged that an effective barrier should have conformed to ROSPA guidelines for domestic ponds (there was no policy governing ponds on holiday sites) and that in the absence of such a fence, the defendant ought to have done more to warn the parents of the danger of the pond and how it was accessed.

Both allegations failed. The Court of Appeal held that sometimes these cases are "bedevilled with the quest for attaching blame either to the parent or the occupier" and that there seemed to be no basis upon which it could be said that in the exercise of reasonable care, occupiers should underline or emphasis obvious dangers. Lord Justice Stanley Burnton emphasised that accidents may and do happen to children without anyone being at fault.

Hill Dickinson comment

The successful appeal was conducted by Hill Dickinson's David Scott, who can be contacted for further information:
david.scott@hilldickinson.com.

Cases

Malcolm Williams Green -v- (1) Sunset & Vine Productions Ltd (2) British Automobile Racing Club Ltd (3) Goodwood Road Racing Co Ltd

Negligence: organisation of motorsport

Green claimed damages for personal injury following an accident which occurred during a car race. Green was an experienced driver of historic racing cars and had been racing at Goodwood circuit. Sunset was contracted to produce outside broadcasts for the race meeting and used a 'kerb cam'. Green's car clipped a corner where a kerb cam was mounted and, upon clipping the kerb cam, spun out of control, causing him severe leg injuries. The court held that the principal cause of the accident was Green's driving and, noting that Green would not have refused to race if he had known of the kerb cam, dismissed his claim.

Hill Dickinson comment

Some form of accident was an inevitable consequence of the claimant's driving. Substantial expert evidence supported the defendants' contentions that the kerb cam was not placed in a dangerous position and that it had not created an undue hazard. The claim therefore failed.



S&D Property Investments Ltd -v- Christian Nisbet & Stephen French

Protection from Harassment Act 1997; vicarious liability

French, a director of S&D Property, had made a number of loans to Nisbet. When some of Nisbet's companies went into liquidation, Nisbet was deprived of assets out of which he had hoped to repay the loans. French suggested to Nisbet that he should sell a property to cover his liabilities and repeated that suggestion in a number of emails, texts and phone messages, also making a number of alternative suggestions for repayment of the loans. French became increasingly anxious for the loans to be repaid and sent an email stating "the temptation to beat you to within an inch of your life I have rose above". Upon sending this email French's conduct became oppressive and unacceptable.

Liability under the Protection from Harassment Act 1997 was "plainly established"; French ought to have known that his conduct amounted to harassment. Nisbet was awarded £7,000 for the anxiety he had suffered. Because French was acting as an agent for S&D for the purposes of taking steps to recover the debt, S&D was vicariously liable for French's actions.

Hill Dickinson comment

Hill Dickinson has seen an increasing number of claims brought pursuant to the Protection of Harassment Act 1997 and organisations should ensure that they are familiar with its application and effect. Lisa Fletcher specialises in such claims and can be contacted for further advice and assistance:
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Terence Charles Abraham -v- (1) G Ireson & Son (Properties) Ltd (2) Stanley Reynolds (T/A Reynolds & Spademan (A Firm))

Mesothelioma; foreseeability; negligence; exposure in mid-1960s

Abraham claimed damages for mesothelioma allegedly caused by exposure to asbestos whilst in the course of his employment with the defendant companies between 1956 and 1965. It was found that Abraham's exposure to asbestos had been very light and intermittent, but could have been avoided altogether by use of alternative asbestos-free materials which were available at the time. However, it was unlikely that during the period of Abraham's employments that the defendants would have believed, on reading the relevant literature available at the time, that Abraham was or might be exposed to the risk of asbestos-related injury. Neither defendant had any special degree of knowledge or personal experience which would or should have alerted them to the risk of Abraham developing asbestos-related disease. As they did not know and could not reasonably have been expected to have known of the risk of injury arising from Abraham's exposure to asbestos dust, it could not have been reasonably practicable for them to take steps to protect him from it.

Hill Dickinson comment

The extent of a claimant's exposure and the knowledge of his employer should always be investigated in an asbestos-related injury claim. The date of knowledge of risk of harm varies between industries and employers and, as appears from this case, can extend into the mid-1960s. For further information contact Hill Dickinson's David Dunne: david.dunne@hilldickinson.com.



Diane Willmore -v- Knowsley Metropolitan Borough Council (2009)

Mesothelioma; foreseeability; negligence; exposure in school premises

Willmore claimed damages for mesothelioma allegedly caused by exposure to asbestos whilst she was a pupil at a secondary school under the responsibility of Knowsley Metropolitan Borough Council. Willmore was a pupil between 1972 and 1979 and was diagnosed with mesothelioma in 2007. Asbestos had been prevalent throughout the school building and Willmore alleged exposure when workmen had removed ceiling tiles in a corridor to work on wiring behind them, when ceiling tiles in the toilets had been disturbed as a result of pupils' misbehaviour and when damaged tiles had been stored in the toilets.

The court held that it was sufficient for Willmore to show that her exposure materially contributed to the risk of her contracting mesothelioma and all three situations had exposed her to risks which were not minimal and did materially increase the risk of contracting mesothelioma much later in life. No specific measurement of the duration of exposure was necessary to establish liability as exposure was not de minimis. Further, the local authority knew or ought to have known

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that anymore than minimal exposure to asbestos dust was foreseeably hazardous. There was no evidence that the works were urgent or that the corridor could not have been isolated whilst the work was done. There must also have been other places to store the tiles and the tiles being vandalised should have been replaced with safe material. Consequently, the defendant was liable.

Hill Dickinson comment

Most insurers are accustomed to detailing with historic claims where exposure is alleged to have occurred in heavy industry. There is increasing awareness of exposure occurring in a wide range of environments and more claims of this nature are likely to be encountered.

(1) AB (2) JPM (3) JB
(4) DVB -v- Nugent Care
Society; GR -v- Wirral
Metropolitan Borough
Council

Correct approach to application of Limitation Act 1980

The Court of Appeal reviewed the application of recent decisions on the operation and effect of sections 11, 14 and 33 of the Limitation Act 1980 and liability for abuse in care. It held that to establish liability for abuse in care, a claimant only had to show (a) that the alleged abuse had occurred; (b) that the defendant was vicariously liable for it; (c) that it caused the alleged psychological or physical damage; (d) quantum. It further noted that the exercise under section 33 was significantly different now. The question whether the claimant, taking into account his psychological state in consequence of the injury, could reasonably have been expected to

institute proceedings was now to be considered under section 33, whereas before that consideration was not treated as relevant to the exercise of discretion. In undertaking the exercise under section 33, the judge must consider all the circumstances, including any prejudice to the defendant, considering what evidence might have been available to the defendant if a trial had taken place earlier or if the defendant had learned of the claim earlier.

Hill Dickinson comment

Hill Dickinson represented the defendants in this case, Kathy Perrin and Alastair Gillespie can be contacted for further information and assistance: kathy.perrin@hilldickinson.com, alastair.gillespie@hilldickinson.com.

Success stories

Williams -v- Hill Dickinson client

The claimant alleged that she sustained a scalding injury after the bottom of a food container collapsed, exposing her to its contents, as she removed it from her microwave oven. Hill Dickinson obtained evidence of the extensive testing the product's packaging was subjected to and successfully persuaded the court at trial that it was improbable that the packaging was defective and more likely that the product had slipped through the claimant's fingers as she had attempted to remove it from the microwave by balancing it on her fingertips.

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Hudson -v- Hill Dickinson client

The claimant claimed damages of £500,000 for an accident where liability was not disputed. He asserted that a soft tissue injury to his knee had caused him to develop complex regional pain syndrome and that he was left housebound and unable to work. Surveillance evidence was obtained which showed that the claimant was capable of more than he had suggested to the medical experts. The case proceeded to trial and the judge accepted orthopaedic evidence obtained by the defendant which opined that the claimant had only suffered a minor impact injury to his knee. The claimant was also found to have grossly exaggerated symptoms for the purpose of obtaining damages and benefits and was awarded only £500 in damages. Hill Dickinson was awarded its costs in full.

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Chopra -v- Hill Dickinson client

The claimant, a part-time sales assistant, slipped on a floor that had just been cleaned by a cleaning contractor. The claim was valued in excess of £100,000 and Hill Dickinson was able to persuade the cleaning contractors to take over the claim in full, presenting a significant saving to the client.

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St Clair -v- Hill Dickinson client

The claimant suffered an injury to her neck as a result of an accident at work. Her medical expert opined that her injuries would resolve within six months of the accident and damages were agreed at a low sum. The Compensation Recovery Unit (CRU) attributed £12,500 of benefits to the index accident and, following a review instigated by Hill Dickinson, the CRU certificate was reduced to nil.

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About Hill Dickinson

The Hill Dickinson Group offers a comprehensive range of legal services from offices in Liverpool, Manchester, London, Chester, Piraeus and Singapore. Collectively the firms have more than 1,100 people including 60 partners.

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