

let's talk shop retail claims update



Handle with care

Kari Hansen, a partner in our retail casualty litigation team, gives us some practical suggestions on how to minimise the risks associated with moving bulky produce...

From garden furniture and bicycles to barbecues and crates of beverages; retailers have been stocked high with heavy, bulky goods to help us enjoy the summer weather. These goods might well have been a customer's summer dream, but for retailers they have the potential to be a nightmare: over 40% of retail personal injury claims relate to handling, lifting or carrying.

The law

The Manual Handling Operations Regulations 1992, as amended in 2002, require employers to:

- **avoid** the need for hazardous manual handling, so far as is reasonably practicable;
- **assess** the risk of injury from any hazardous manual handling task that cannot be avoided; and
- **reduce** the risk of injury from hazardous manual handling, so far as is reasonably practicable.

Avoid

It is not possible to completely avoid the need for the handling of bulky goods. However, you can take a number of straightforward steps

to reduce the amount of handling required; for example:

- Deliver the products on pallets directly to their intended location on the sales floor.
- Locate the products close to the till points and exits.
- Use pallet trucks or trolleys to move the goods.

Assess

The identification and implementation of an appropriate risk assessment is the employer's responsibility - but don't forget that employees are often the best source for identifying problem items, storage and display issues.

Employees handling the goods can give insight into assessing handling risks, and discussing their ideas about how to resolve the issues they encounter will add credence to the risk assessment and help minimise personal injury.

Once the risks have been identified, decide on an appropriate way of working to avoid or minimise the risk and ensure that all employees are aware of it.



Reduce

Any risks must be reduced to the lowest level 'reasonably practicable'. This means reducing the risk of a handling-related injury as far as possible until the precautions become disproportionate to the benefits.

What should you do to minimise claims numbers?

During times when heavy and bulky goods are more prevalent, such as in the summer, it is prudent to review handling procedures regularly and ensure that a risk assessment has been carried out in respect of any new items in store. The assessment need not be too detailed and usually may only take a few minutes of observation to ensure that correct procedures are being followed and to identify ways of reducing the risk still further.



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Welcome

It is with great pleasure that we are able to send you this, the summer edition of let's talk shop.

Special mention has to go to Aileen Spencer at Iceland for taking the time to answer our Q&A and for her enlightening insight into successful and rewarding insurance and claims management.

This is our fourth edition of let's talk shop, which completes the first set, so it would be wrong of me not to thank everyone who has contributed to its publication thus far – both our clients and our retail team.

Now that summer is drawing to a close and the kids are on their way back to school, Hill Dickinson's retail team, like everyone else, are not too sure where the time went (or the sun). With this in mind, this edition's freebie is a beach ball, to remind you of the good times summer 2011 had to offer. We hope you make good use of it.

Best wishes,

Andrew
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Introducing Ruth Lawrence

Ruth Lawrence has recently been appointed head of Hill Dickinson's insurance business group. For those who do not already know her, Ruth joined the firm more than 20 years ago and will lead the firm's activities within the insurance and associated markets.

Calling all ladies...

The Insurance Ladies Business Forum will be meeting for a breakfast round table discussion at our Liverpool client suite in the autumn. Join us to discuss challenges and opportunities within the risk and claims arena. For further details contact Paula Leece, head of casualty claims: paula.leece@hilldickinson.com.

Letters to the editors

We would welcome any comments readers may have on the articles in this newsletter, or on any related topic, and would be happy to publish suitable commentary in a subsequent edition.

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It is also worth considering manual handling refresher training, even for the most experienced employees, as well as ensuring that employees seek assistance from co-workers when handling these goods.

Investing in mechanical aids, such as sack trucks and pedestrian fork trucks, can also reduce the physical element of handling the goods.

Our six recommended steps to safe manual handling:

1. Avoid unnecessary handling
2. Assess the risk
3. Evaluate the risk and inform the employees
4. Review the risk regularly
5. Ensure staff are regularly trained
6. Maintain records

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In tough times, we thought we should report some good news. Below is a list of the types of retailers doing well at the moment:



Source: PwC/LDC

Ministry of Justice (MOJ) reforms – A very happy anniversary to you

Nerys Parry, head of motor claims at Hill Dickinson, talks about the positive impact the Ministry of Justice (MOJ) reforms have had on settlement costs and average claim lifecycles.

It is now more than 12 months since the MOJ reforms were brought into force with the intention of streamlining the claims process in lower value, road traffic, personal injury claims arising from road traffic incidents.

You will recall us reporting that the online portal, which had been created to accelerate the claims settlement process, was plagued with problems for many months after the official launch. Some users struggled to gain access at all. But that was at the beginning and many of these issues have now been resolved. This means that the impact of the reforms can now be more accurately assessed.

At Hill Dickinson motor claims solutions, we are now beginning to see some of the promised cost savings materialise, as the more valuable claims make their way through the system.

At the first anniversary of the reforms, we are witnessing the following savings:

- Approximately £147 per claim in relation to the claimant's costs.
- Negotiated savings at stage two of the process in excess of £172 per claim.

A reported saving of over £319 per claim by the end of year one is good news for defendants, and it shouldn't finish there: as the more complex, higher value claims reach settlement, the average settlement value should increase. The structure of the costs calculations mean that costs savings are only made on claims that exceed £2000 (once success fees and VAT are added). Since the claims that settle earliest are generally of lower value, it

follows that we will see savings on the higher value cases as they start to settle over the next six months and beyond.

Claims lifecycles have also been reduced by up to 35%, which has undoubtedly had a positive impact on any claims experience.

So where next?

We maintain handler awareness of emerging strategies used by claimant solicitors, via regular discussions and analysis of the claims. This knowledge is continually used to anticipate strategies and develop solutions, to ensure that we are constantly maintaining the most efficient service for our clients.

We are proud that our dynamic approach has been recognised, with a claims innovation award (Online Claims Initiative, Claims Innovation Awards 2011) for our work in not only staying ahead of the competition, but also helping to shape the evolving MOJ reforms. We will continue to stay at the forefront of efficient and effective claims handling and this time next year, I hope to be reporting even greater savings.

Nerys Parry

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Retail Week Power List 2011

Congratulations to those, especially our clients, included within *Retail Week's* recently updated power list...

Charlie Mayfield	Chairman	John Lewis Partnership	↑
Simon Wolfson	Chief Executive	Next	↑
Philip Clarke	Chief Executive	Tesco	↑
Sir Philip Green	Owner	Arcadia and BHS	↓
Ian Cheshire	Chief Executive	Kingfisher	↑
Justin King	Chief Executive	Sainsburys	—
Marc Bolland	Chief Executive	Marks & Spencer	↓
Nick Robertson	Chief Executive	Asos	↑
Mark Price	Managing Director	Waitrose	↑
Dalton Philips	Chief Executive	Morrisons	↑
George Osborne	Chancellor		★
Jeff Bezos	Founder	Amazon	↑
Andy Clarke	Chief Executive	Asda	↑
Richard Brasher	UK Chief Executive	Tesco	↑
John Browett	Chief Executive	Dixons	—
Alex Gourlay	Chief Executive*	Alliance Boots	↑
Angela Ahrendts	Chief Executive	Burberry	★
Andy Street	Managing Director	John Lewis	↑
Kate Swann	Chief Executive	WHSmith	↓
Tim Steiner	Co-Founder	Ocado	★
Malcolm Walker	Chief Executive	Iceland	↑
Euan Sunderland	Chief Executive	Kingfisher UK & IRELAND	↑
Andrew Harrison	President	Best Buy Europe	★
Paul Marchant	Chief Executive	Primark	↓
David Cameron	Prime Minister		↑

key: up ↑ down ↓ new entry ★ non-mover —

Claims update

In keeping with the seasonal theme of this newsletter, we have included some summer-related claims, from which some lessons can be learned.

Little monkey

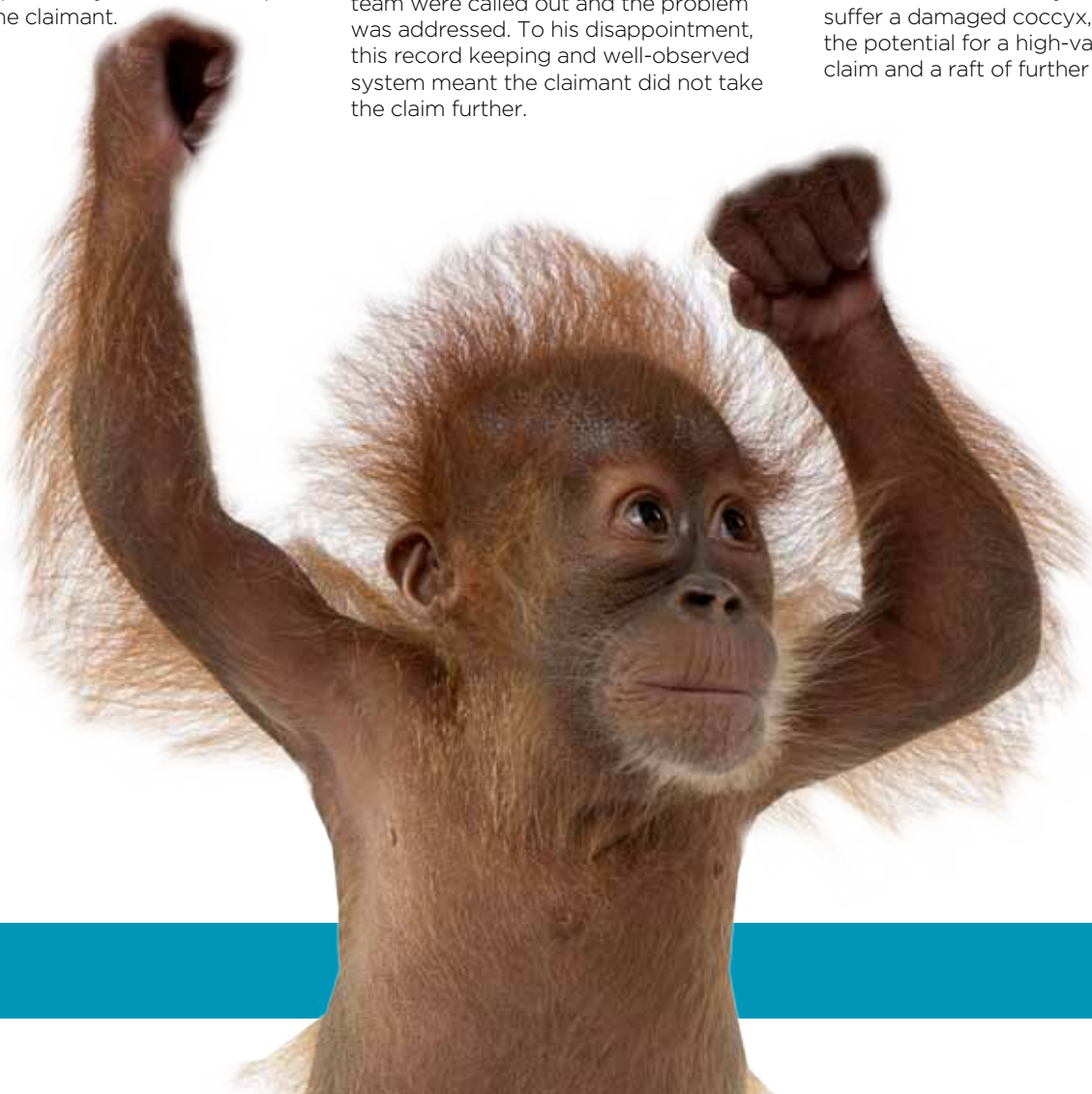
The claimant, a minor, was visiting a store with his parents when he climbed onto a swing which was not secure and fell, sustaining injury. There were signs advising that the swing had been erected as a display model only, but the area was not cordoned off and the claimant argued that it was foreseeable that he would climb onto the swing and use it. In this case, a significant contributory negligence discount was achieved to reflect the parental responsibility to ensure adequate control of the claimant.

Fuming claimant A bum deal

The claimant, an employee, alleged that he sustained breathing difficulties whilst at work due to fumes being pumped out of a vent connected to a waste pipe. He alleged that the smell and fumes became worse in the summer.

Our client had sufficient maintenance records and documentation to demonstrate that following each and every complaint from a member of staff regarding the fumes the maintenance team were called out and the problem was addressed. To his disappointment, this record keeping and well-observed system meant the claimant did not take the claim further.

The claimant, a customer, purchased some deckchairs from one of our retail clients. But when he used them at home, they collapsed. He alleged that the deckchairs were faulty and the quality assurance department, on inspection of the chairs, agreed. Our client had kept all the relevant supply contracts, enabling us to redirect the claim to the manufacturer and their insurers. This case highlights the importance of maintaining documents, as not only did the claimant suffer a damaged coccyx, but there was the potential for a high-value coccydynia claim and a raft of further claims.





Mind your language

Kendrah Graham, an associate in our retail casualty litigation team, discusses your obligation to train non-English speaking employees

There are now large numbers of workers employed by retailers, many with limited grasp of the English language. This means that you must find a way to pass on relevant health and safety information, instruction and training to them. Delivering this solely in English may mean that little, if any of it, will be understood.

What does the law say?

As outlined in section 2(2)(c) of the Health and Safety at Work Act 1974, employers have a legal duty to provide all employees with appropriate health and safety information and training to enable them to carry out their jobs without risk of illness or injury.

Further, regulation 10 of the Management of Health and Safety Regulations 1999 requires employers to provide information to employees which is comprehensible and relevant, i.e. capable of being understood by the person for whom it is intended.

All workers have the same rights and should not be treated any differently.

What should you do?

Employers should take account of difficulties where employees have limited command of English. Where an employee may not understand his training on account of language issues, employers have an arguably enhanced duty to ensure that the information has been fully understood by the employee.

You may need to deliver information through a translator, or use visual, rather than written or oral, delivery of presentations. Some employers are making more use of photographs and diagrams in work instructions. Adequate signage is something else that you may want to consider.

If you have a foreign employee who speaks good English, s/he could be used to deliver training to employees of the same nationality. Using a 'buddy system' - putting experienced workers with new or inexperienced employees who speak the same language - can also streamline the induction and training process.

How to avoid a claim

In order to resist a claim which involves

allegations that the employee did not understand the training, you will need to do more than ask an employee to sign the training document stating s/he has attended the relevant training course. If a translator is utilised then they should also sign the training document as well as the trainer, confirming that, in their view, the employee has fully understood the training.

And finally

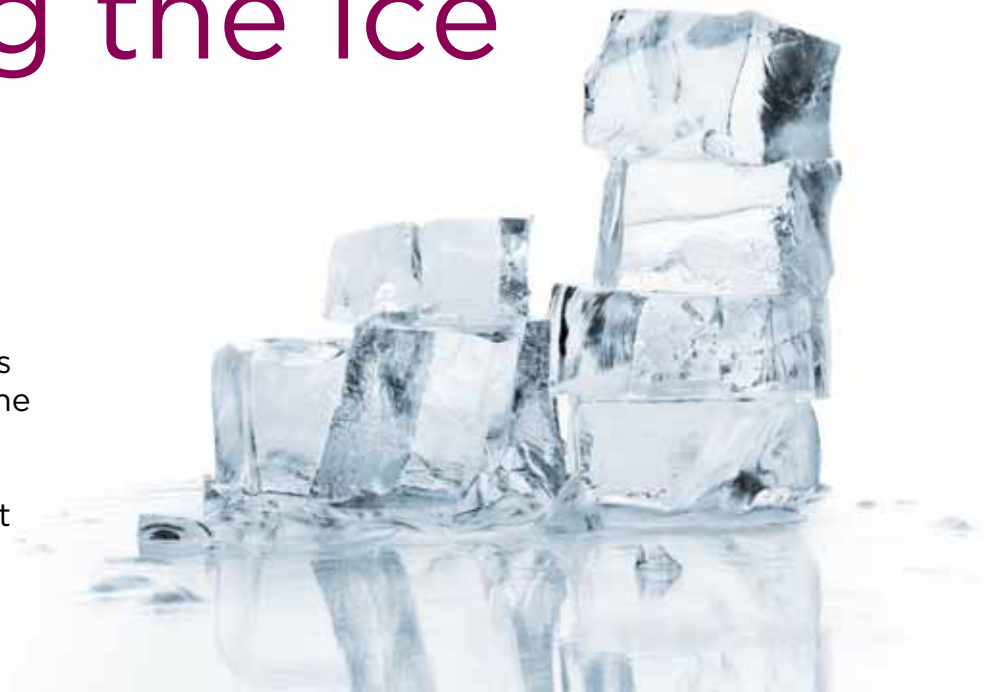
Ensure that all relevant training documentation is retained and your policies regarding training are kept up-to-date.

It is also helpful that the Health and Safety Executive (HSE) has produced translations of a number of their publications in other languages, including Albanian, Arabic, Bengali, Chinese, Czech, French, Greek, Gujarati, Italian, Lithuanian, Pashto, Polish, Portuguese, Punjabi, Romanian, Russian, Slovak, Spanish, Tamil, Turkish, Ukrainian and Urdu. If in doubt, obtain and circulate a copy.

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Breaking the ice

Aileen Spencer, insurance and claims manager at Iceland, tells us about the strangest claim she has ever received, how brand is definitely more important than profit, and how fraudulent claimants should not go to Iceland!



1. Who are you and what do you do?

My name is Aileen Spencer and I am the Insurance and Claims Manager for Iceland Foods. I have three great ladies who work along side me - Sharon, Mandy and Laura - and between us we look after 743 stores. As my title suggests, I deal with a variety of classes of insurance from property to aviation, but I predominantly handle casualty claims. As my team only consists of four, I rely heavily on Hill Dickinson; and over the last four years, a great working relationship has been developed.

2. If you hadn't followed this career path, what would you like to have been and/or have done?

I have absolutely no idea. I think when I was around 16 (approximately ten years ago), working as a prison warden looked good! However, I was one of the lucky ones (depending on how

you look at it!) to fall straight into a job within the insurance industry - and I'm still in it. I complain on the odd occasion about why life isn't easier, but I guess that applies to most people.

3. Do you think that the recession has impacted upon what you do and upon claims in the retail sector generally?

Absolutely. Every company, whether large or small, constantly monitors costs. We have a large deductible and therefore, it is our money. With the amount of stores that we have, you can imagine the claim numbers. We firmly believe fraudulent claims are on the increase, but our stores are fantastic in capturing the majority of incidents on CCTV. People need money and increasingly, one way of raising money appears to be the pursuit of a claim, however minor. What infuriates me is the huge difference between what a claimant receives and what their solicitors receive. Where is the justice

in this? However, we have a great defence rate and will continue to take a robust stance, regardless of the value of the claim.

4. What is more important, profit or brand?

Most definitely brand. Our management team have done a fantastic job and continue to do so. They listen to what the customers want and deliver. What is paramount within the business is quality and service. You either love us or hate us, but everyone knows us. We believe we are the only company to offer free home delivery - something which has seen significant growth over recent months.

5. What do you see as your biggest challenge over the next 12 months?

That's an easy one - to defend all claims successfully. Seriously though, with the economy the way it is, I

think we need to be realistic: The market is going to harden and thus premiums will increase. As the business continues to grow, we cannot afford any surprises and this is why we rely on our service providers to keep us advised of any developments. With regard to casualty claims, I am keeping my fingers crossed that Lord Jackson's reforms will deliver. However, I have already seen an increase in litigation which I am sure will continue for the foreseeable future.

6. With whom would you least like to be stuck in a lift and why?

I thought about this question for quite sometime but the list was endless - I couldn't really include every personal injury solicitor who had brought an action against Iceland which was either vexatious, or whose costs were totally disproportionate to the damages! Before I get myself in trouble, I think I've said enough!

7. What is the strangest claim you have ever received?

One that springs to mind is a lady claiming for her bottom being stung by nettles as we had refused her access to the disabled toilet! However, more recently I have received a claim for a lady who has been kicked by another customer. Apparently we are liable as we allowed a gentleman to be on all fours in our aisle and didn't employ enough staff to ensure that the 'traffic route' was clear. Personal injury solicitors never cease to amaze, especially as they are quoting workplace regulations!

8. It will be Christmas before we know it, so what is going to be the biggest seller this year?

Presumably our party platters, which are great value for money. However, turkeys may come into the equation somewhere!

9. What was your biggest mistake and what did you learn from it?

I don't make mistakes, but if I did, I clearly wouldn't be able to divulge the details. I don't know who may read this!

10 What is your proudest achievement in your career?

Winning my first appeal and having it printed in Lawtel. It felt absolutely wonderful to think that, finally, a claim had been decided in favour of the defendant.

If you would like to know more about our retail claims services, or any other services we provide, then please visit our website or contact:

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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, Sheffield, Piraeus and Singapore. Collectively the firms have more than 1,300 people including 190 partners.

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