Market update

1 October 2013: D Day

Insurers and employers will feel the impact of new regulations after years of imposing an unreasonable standard of care at the defendant's door when facing claims for breaches in health and safety legislation.

Now with a new position enabled by Section 69 of the Enterprise and Regulatory Reform Act, and the switchover from old to new regimes for accidents occurring on or after 1 October, the benefits of putting up a strong defence could begin to emerge on your bottom line.

Amidst almost constant noise from advisers on the likely outcome of reforms enacted by the Ministry of Justice during 2013, it is arguable that one simple section of the Enterprise & Regulatory Reform Act could trump every other attempt to curb rampant claims inflation across the UK.

Next month, section 69 of the Act will come into effect for accidents occurring on or after 1 October 2013. Until that time, any alleged breach of health and safety legislation is actionable in civil law unless the regulations provide otherwise; a statutory right which has arguably contributed to quick settlement in favour of detailed investigation.

The new section reverses this position, imposing a burden upon claimants to prove negligence, even against employers, thereby potentially opening up to insurers more potent defence arguments with regard to primary liability and most likely with regard to increased contributory negligence percentage reductions, more commonly associated with common law cases.
"The obligations in place under the previous statutory framework were very onerous and a breach would be laid out clearly in the majority of cases," explains John Buckle, Managing Director, Liability. "This resulted in a greater acceptance of desktop claims handling by insurers to triage decisions. Now, with the opportunities presented by s69, it is perfectly possible to benefit from a technical investigation, particularly on claims valued between £10 000 and £25 000.

"From 1 October 2013, s69 will create an environment much more akin to common law negligence, with contributory factors back on the table," continues John. "There is much greater potential for insurers to contain leakage. If you consider the fact that more than 75% of employers' liability cases are settled early, there are objective reasons to consider these defences in more detail from now on.

The Crawford & Company Delta Claims System

Crawford operates a central intake hub, which ensures cases are triaged and allocated at source. Fast track claims are then fed into the correct geographical location and uploaded onto the adjuster's Delta tablet. This enables the adjuster to conduct a prompt and detailed investigation, within the timescales laid down by the MOJ reforms process.

Watch this space...

s69 applies to regulations enacted under the HSW Act 1974. Certain claims may require the unravelling of older statutes not revoked by the six pack regulations – for example the Mines & Quarries Act. This potentially leaves a peculiar situation in respect of "emanations of the State" (effectively local government / authority workers). The purpose of the "six pack" was to enact a series of EU Directives. Technically, employees of public bodies could sue for a breach of the relevant Directive whereas a private sector worker cannot. The government is alive to this but has yet to intervene. The Employers' Liability (Defective Equipment) Act 1969 is also likely to be back on claimants' agendas, albeit "fault against someone" in the chain must still be proven.

Contact John Buckle, on 0121 200 4397 or john.buckle@slscrawco.co.uk or Matthew Mannion on 01661 835 267 or matthew.mannon@slscraw.co.uk to find out how your operation can benefit from the Delta Claims System and start reducing leakage.

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