

Risk Managers Forum Liability Update for Employers

16th May 2006

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Agenda

- Legislation
 - Compensation Bill
 - Legal Services Bill
 - Corporate Manslaughter
- Claims process – beauty parade?
- Case law impact
- Bulletin board

Legislation



QBE

European
Operations

Legislation - Compensation Bill

- “Negligence” – definition (and breach of statutory duty)
 - 1) A court... may, in determining whether the defendant should have taken particular steps to meet the standard of care...have regard to whether a requirement to take those steps might :
 - (a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or
 - (b) discourage persons from undertaking functions in connection with a desirable activity

Compensation Bill

- Negligence/breach of statutory duty restatement
 - Apology not an admission
 - No cover of regulatory breach
 - Little impact on employers – discuss...
- Claims management companies
 - A regulatory regime
 - Standards of competence/quality control
 - Transparency of charges
 - Regulator? – Trading Standards
 - Longer term : FSA?

Contrast Australia

Australia: New South Wales

Tort reform – Civil Liability Act 2002

- “Negligence” restatement
- Exclusions - intoxication
- General damages “adjustment” and exclusion
- Zero rating – nil damages
- Exceptionality



Legislation – Legal Services Bill



- Draft expected mid May 2006
- Implement *Clementi* reforms – structure and oversight
 - Lawyers ownership and management structure
 - External ownership
 - Majority of lawyers on board
- Claims as financial service provision
- Commodification
- Change in claimant relationships
- Defendants – adjusters/solicitors
 - Legal service units?
- Impact 2007 onwards...



Corporate Manslaughter



- The legal problem
 - The ingredients of the offence
 - The controlling mind
 - High profile case failures
 - The problems
- Law Commission report 237 (1996)
 - Corporate killing
 - Offence trip wires
 - Systems/management failings
- Legislative false starts

The Draft Bill



- May 2005 - Draft Corporate Manslaughter Bill
 - The controlling mind redefined
 - Workers/non employees
 - Death from ill health exposures
 - Senior manager test
 - Duty of care test
 - Collective guilt
 - Sanctions - fines
- Critics – “Manslaughter lite”

The Draft Bill



- Select committee criticism – December 2005
 - Too slow
 - The wrong offence : revert to management failings
 - Need new offence of Corporate Grievous Bodily Harm
 - Need ability to prosecute Managers and Directors for gross negligence manslaughter
 - Sanctions:
 - Fines insufficient
 - Percentage of turnover?

Where Next?



- Govt response – March 2006
 - Criticism digested
 - Further reading – Summer 2006
 - Dilemma: Major change v Press ahead
- Insurers?
 - Cover for legal expense representation
 - With prior agreement
 - Corporate level
 - Managers/employees – on request
 - Directors – D&O cover check?

“New Regulation” Survey



- *Work at Height Regs – April 2005*
- *Control of Vibration and Work Regs – July 2005*
- *Control of Noise at Work Regs – April 2006*
- *Smoking bans – Scotland 26th March*
- *CDM Regs – April 2007*
- *Asbestos Regs – October 2006?*
- *Fire Act - October 2006?*

Claims Process - Beauty Parade



Dept of Constitutional Affairs



- Communication
- Risk management and insurance
- Rehabilitation
- Regulation of claims management
- Advertising
- Claims process...

Beauty Parade Contestants



- InterResolve
- ClaimsSense (RJW)
- TUC
- Association of personal injury lawyers
- ABI – Care and Compensation
 - Rehabilitation
 - Representation : where it adds value
 - Timescales, fixed costs
 - http://www.abi.org.uk/Bookshop/default.asp#Liability_&_Compensation
- **Department of Constitutional Affairs**

DCA Output



- Aim – autumn consultation document
- Feedback – 11th May event
 - Early notification, admissions, offers
 - Eliminate duplication
- Shape?
 - Pre “pre action protocol” – costs savings
 - Fit with rehabilitation
 - Standardised documents/brief medicals
 - Tariff damages
 - Dispute resolution mechanisms
 - Structured costs, success fees, ATE insurance
 - Incentives for positive behaviour

The Future?

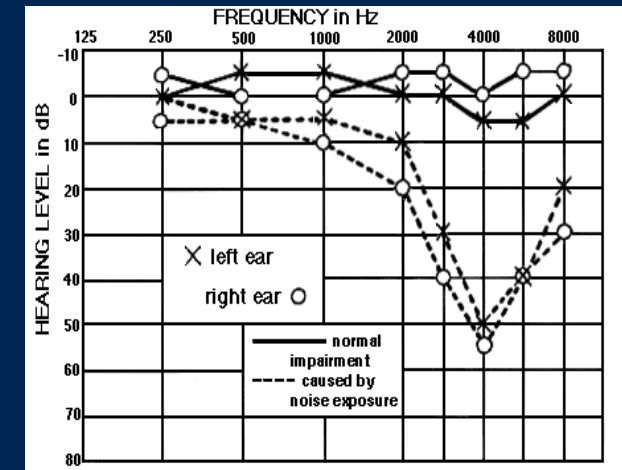


- Volume claims producers
- Higher claim take up rates - conversion
- Ease of notification and funding – claimants
- New reporting/information pressures - employers
- Simplified models for resolution
- Option outcomes with dispute resolution procedures
 - Quicker throughput times
 - Tariffs
- **Cost?**

Case Law

Case Law

- **Asbestos**
 - Barker v Corus
 - Mesothelioma, divisibility of injury and discounting
 - ELIB?
 - Grieves & others v British Uralite and others
 - Plaques, compensation status
- **Deafness litigation**
 - Textile workers
 - 85dba
 - Date of knowledge
 - Tinnitus
 - Damages levels
 - 7000 plus claims



Case Law



- **Vicarious liability**
 - Hawley v Luminar – Assaults, who is vicariously liable? Employer or controller?
 - Viasystems v Thermal Transfer & others
 - Shared liability
- **Upper limb disorder**
 - Denton Hall v Fifield – interpretation of medical records

Case Law



- **Stress**
- HSE – good practice standards
 - Outreach, focus groups, survey, risk assessment
 - Developments?
- Majrowski v Guy's and St Thomas's NHS Trust
 - Vicarious liability for harassment at work

III Health Trends



Barking dogs

- Deafness
- Vibration – HAVS and related
- Psychiatric injury – stress/harassment/bullying
- Asbestos – late exposures
- Beat Knee – one to watch

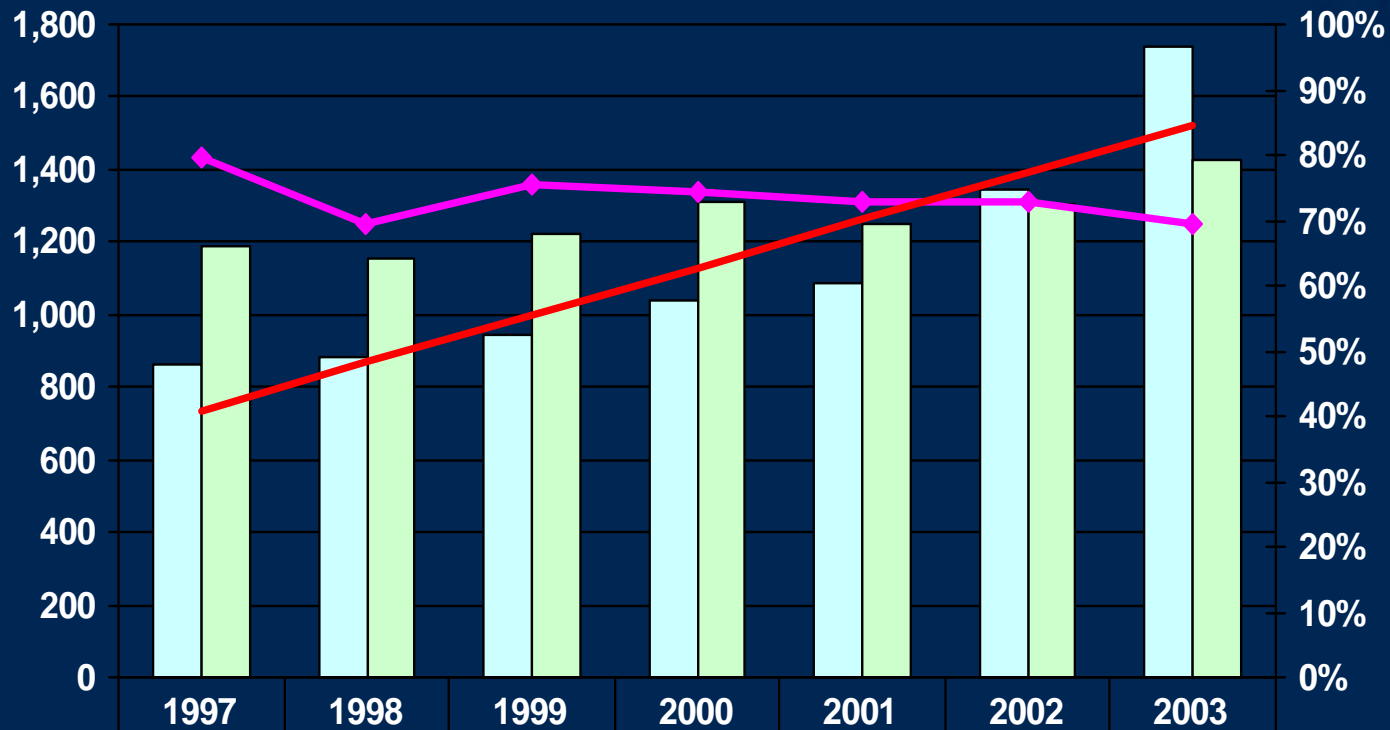
Non-barking dogs

- Stress – overwork
- Magnetic fields – phones/power lines
- Food and alcohol abuse – US only
- Bronchitis / Emphysema
- Silicosis



Bulletin Board

Costs - Breakdown – EL low value



Avg Costs	864.27	886.34	946.19	1,037.58	1,083.92	1,345.46	1,738.60
Avg Damages	1,189.20	1,157.95	1,225.10	1,308.21	1,252.42	1,303.91	1,429.25
% Damages Paid	79.57%	69.46%	75.54%	74.34%	72.92%	72.84%	69.38%

Costs



- New Conditional Fee Agreements regime 1/11/05
- “BTE” funding search – *Samonini*
- “ATE” process
- ATE litigation

Costs - Small Claims Track

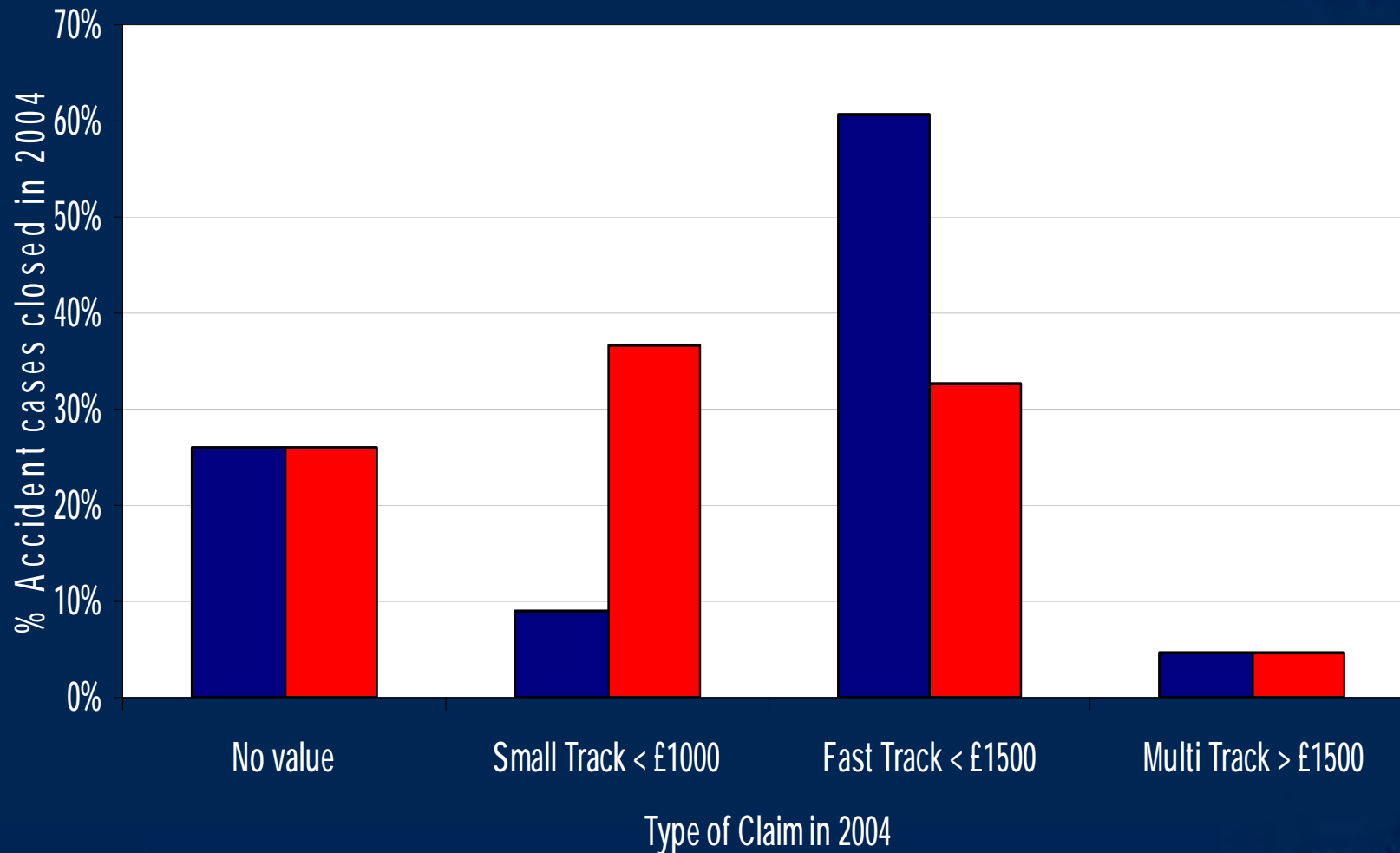


- England and Wales – no costs
 - ABI £5,000 limit : claims support
 - Civil Justice Council – reform but £1,000
 - TUC/APIL - £1,000
 - Parliamentary select committee £2,500
- Consultation expected soon
- Potential for change if we provide:
 - Access to justice, consumer protection, transparency

Change in Limits to £5,000 EL Impact



■ Current Small Track Value ■ Proposed Small Track Value



Damages Inflation

- NHS Treatment Fees - effective October 2006
 - All prospective accidents
 - Ambulance fees : £150/£180
 - Out patient : £505
 - In patient : £620 per night – cap £37,100
- The Employment Equality (Age) Regulations – effective October 2006
 - Duty to consider request not to retire
 - Immediate impact – future loss claims
- Ogden working party review – underway
 - Discount rate, longevity – increase in multipliers
- JSB guidelines – increased tariff Autumn 2006

Round Up



- Rehabilitation
 - Pre action protocol : duty to consider
 - Increased support requests
 - Credit rehab
- “Rebuilding Lives – Supporting Victims of Crime”
 - Employers liable for injury assaults/battery

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