QBE European Operations

Technical claims brief

Monthly update | November 2014

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Reform

The Deregulation Bill

The Deregulation Bill is a significant piece of legislation, which will reform many different areas of law and includes changes for self-employed workers and for the motor insurance market. The central aim is to remove or reduce regulatory burdens for individuals and businesses. The Bill is part of the Government's 'red-tape challenge' and is currently making its way through the House of Lords under a special procedure for Law Commission bills, which enjoy a 'broad consensus of support'.

Clause 1 of the Bill intends to cut through regulatory red-tape by scrapping health and safety rules for self-employed workers in low risk occupations, which would exempt some 800,000 people. Presently, section 3 of the Health & Safety at Work Act 1974, places a duty on every self-employed person to "conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not his employees) who may be affected thereby are not thereby exposed to risks to their health and safety". Clause 1 of the Bill would amend this provision so that it only applied to self-employed workers who conduct an "undertaking of a prescribed description" (or a high-risk activity). Approximately 2/3 of all self-employed workers would be exempt.

The Institution of Occupational Safety and Health (IOSH) strongly opposes the amendment and has expressed their concern that an exemption could lead to confusion, lower standards and increase the risk of injury and illness at work. They are also concerned that an exemption could encourage the growth of 'bogus' self-employed workers. Some of these concerns have been raised in the House of Lords and the Health and Safety Executive has launched an online consultation on the clause.

Clause 67 of the Bill gives HMRC the power to disclose information in fatal claims without the need for a court order. This measure is designed to improve the process of dealing with mesothelioma claims, by accelerating claim quantification and should also help to reduce litigation, along with the associated costs.

Finally, Clause 9 of the Bill amends section 147 of the Road Traffic Act 1988, in that delivery of a certificate of insurance/security is no longer required for a policy to be effective and will remove the requirement for motorists to surrender their certificate upon mid-term cancellation. The amendment will also mean that an insurer will no longer be required to retrieve the certificate, or to seek a Declaration, in order to end their liability after cancellation (to avoid the risk of having to pay a third party claim when the certificate is not returned). It is important to note that there will still be a requirement for insurers to issue certificates for certain types of policies, such as for fleets where individual vehicles are not entered on Motor Insurers Database (MID).

The likely knock-on effect will be an increase in the number of uninsured claims being submitted to the Motor Insurers' Bureau (MIB). The MIB will have to recoup the money and with a resultant increased levy for insurers. Whether that cost will be passed on to policyholders may depend on whether an insurer sees a similar cost impact due to fewer claims post-cancellation.

It should be noted that Clause 10, which sought to change the law relating to the use of private hire vehicles (PHV), has now been dropped. The intended change was to relax who is allowed to drive PHVs and remove the offence for a non-licence holder to drive a PHV, if it is not being used for PHV purposes. There was a perceived danger that individuals would drive a PHV when they were not insured to do so and add to confusion for the general public.

The Bill is expected to receive Royal Assent before the end of the current Parliament and should then come into force within 18 months from the date of enactment.

> Whilst the government's desire to cut through unnecessary health & safety red-tape is positive in principle, there is a risk that work place accidents, and claims, will increase. From a claims defensibility perspective, whilst an insured might be exempt from health and safety regulation, they could still be found negligent at common law and a claim against them would fall to be met by their insurance policy. With regard to the amendment to the Road Traffic Act, Motor Underwriters will need to ensure that their processes for adding and removing vehicles from MID are delivering very high levels of accuracy.

House of Lords appoint Special Committee on Insurance Bill

Following the second reading of the Bill in the House of Lords, they have now established a Special Public Bill Committee on the long-awaited Insurance Bill. The Bill will make new provision about insurance contracts and to amend the Third Parties (Rights against Insurers) Act 2010 in relation to the insured and connected persons to whom the act applies. This marks the first attempt to reform commercial insurance law since the Marine Insurance Act 1906 and is designed to modernise contracts between insurers and their clients.

Lord Woolf has been appointed to chair the Committee, who will now take written and oral evidence, before reporting back to the House of Lords with any amendments. The call for evidence was issued, with any written responses to be submitted by 27 November 2014. The Committee will then take oral evidence from 2nd to 15th December.

Commenting, Lord Woolf said:

The Insurance Bill will make significant changes to the law governing insurance so it is important that we get the details right. Our Committee will consider all the evidence we receive and look at the Bill in great detail to ensure it is going to achieve what is intended.

This Bill is the product of recommendations made to the government by the Law Commission and the Scottish Law Commission following eight years of consultation with businesses and insurers. A number of insurers (including QBE) are already embracing the proposed changes to insurance contracts, which should aid a smooth transition when the Bill makes it into the Statute book.

Procedure

Deafness & Limitation – *Platt v BRB (Residuary) Ltd* [2014]

The claimant had worked for the defendant from 1953 to 1988 (save for a two year break). He first complained to his General Practitioner (GP) about his hearing in 1982 and thereafter he consulted various doctors about ear problems on 12 separate occasions, until 2011. In 1997, he complained to his GP about tinnitus and hearing loss in his right ear, and was referred to a specialist ear, nose and throat (ENT) registrar. He was asked by the registrar whether he had worked in a noisy environment, to which he replied that he had. However, the claimant did not ask him on that occasion whether his problems were noise induced and the doctor did not volunteer that information.

It was not until 2011 that he was expressly told that part of his hearing loss was noise induced. In October 2011, the claimant issued proceedings and the defendant raised a limitation defence. At first instance, the judge decided that the claimant did not have actual knowledge that there was a real possibility that his hearing loss was noise induced until he read a newspaper article in 2010 (less than three years before he issued proceedings). Further, the judge concluded that the claimant was not impacted by constructive knowledge and that, in all the circumstances, it was not reasonable to have expected him to specifically ask the ENT registrar about the cause of the tinnitus and deafness in 1997. The defendant appealed.

The Court of Appeal had to determine whether the claimant had been fixed with constructive knowledge in 1997, based on the fact that his tinnitus and hearing loss were attributable in part to acts or omissions which had been alleged to amount to the defendant's negligence. Applying the appropriate test in section 14(3) of the Limitation Act, it had been reasonable to expect the claimant to ask the ENT registrar what had caused his hearing loss. It was not disputed that, had he done so, it was likely that he would have been informed that his tinnitus and hearing loss had been noise related.

Section 14(3) for the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire –

a. from facts observable or ascertainable by him; or

b. from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek;

The Court did not accept that the fact that the claimant had been retired for nine years, or that he had had multiple ear and hearing problems over the previous years, had made it unreasonable to expect him to be curious about the cause of those unpleasant conditions. It had been a natural and appropriate question to ask. The purpose of section 14(3) of the Act was not to protect those who had not acted reasonably, in their own interests, to obtain and act upon expert advice. The appeal was successful and the claim was statute barred.

> The case is a useful reminder of the correct application of the Limitation Act with regard to date of knowledge and the degree of responsibility which rests with a claimant to bring his claim in a timely fashion. The Court of Appeal took this opportunity to send a message that the lower Courts should be careful, and critical, before exercising their discretion to disapply the statutory 3 year limitation period.

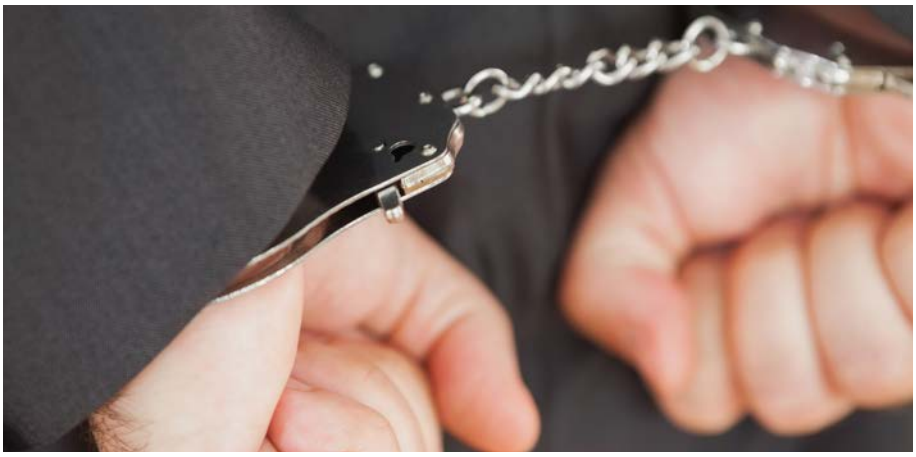
Fraud

Coach 'Crash-for-Cash' fraudsters sentenced for £150k personal injury insurance fraud

A vehicle operated by a QBE policyholder was involved in a staged accident on 5th February 2011. Three friends from Liverpool who deliberately caused the crash (involving a coach and a car) in a bid to fraudulently claim £150,000 for personal injuries, have now been sentenced. All parties involved in the accident, from the bus driver, conductor, passengers and third party driver, were complicit in the fraud.

Following detailed enquiries the Insurance Fraud Enforcement Department (IFED) made multiple arrests and a Liam Gray was sentenced to 14 months in prison, while his friends Ben Carberry and Kevin Hamilton were handed 11 months and 4 months prison sentences at Southwark Crown Court on Friday 31 October 2014.

The driver of the coach had told insurers that he was made to pull-over at a roundabout, after passengers had said the coach had been hit from behind by a Renault Megane, even though he had felt no impact. The driver reported that there was only superficial damage to both vehicles, but that the passengers decided to cancel their trip saying they felt unwell and had asked to be taken back to The Mons pub in Bootle, where they had been picked up. Before leaving the coach the entire group claimed that they had been injured and gave him their details. He then watched as they ran across a dual carriageway and into the pub.



Insurers' investigations later established, through a social networking site, that Gray, Carberry and Hamilton, knew each other and had attended football matches together. IFED detectives travelled to Liverpool twice in 2012, arresting Gray and Carberry in June, and Hamilton and another man, Joe Hindley, a month later. They identified that Hamilton had driven the Renault at a very low speed into the back of the coach and that Carberry was Gray's contact on the coach.

In November 2012, Gray was charged with two counts of conspiracy to defraud, while Carberry and Hamilton were each charged with one count. All three men pleaded guilty.

Detective Sargent Mark Forster, who led IFED's investigation, said:

"This was a carefully planned crime by a group of friends who decided that a coach trip to the dog track was the perfect vehicle to commit insurance fraud on a large scale. The fact they were putting lives at risk by causing a crash on a busy motorway did not hold them back. They wanted an insurer's money and were prepared to go the distance to get it.

Dominic Clayden, QBE EO Claims Director said: "This is a great result after a complex investigation with officers at IFED. The targeting of public service vehicles to obtain money through personal injury compensation claims is becoming more and more apparent. We are committed to identifying and pursuing fraudulent claims that are made against our clients. We believe this case and the sentences handed down will send a stark message that there are severe penalties for those who attempt to fraudulently make claims at the expense of our policyholders and the insurance sector in general."

Completed 29 November 2014 – written by QBE EO Claims. Copy judgments and/or source material for the above available from Tim Hayward (contact no: 0113 290 6790, e-mail: tim.hayward@uk.qbe.com).

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