



Real Case examples from Amicus the Union

Amicus presented this evidence in response to Government Consultation on part of the claims process on 24 August 2006

Department for Constitutional Affairs Question: Is it appropriate to exclude third party capture by liability insurance companies? It would be helpful to have evidence to support any arguments.

Amicus Comments: It is certainly not appropriate to exclude third party capture by liability insurance companies. See Appendix for evidence and case examples.

There is a clear conflict of interest. Under Law Society Rules Solicitors would be rightly prevented from acting for both parties in a similar situation and there should be no bending of such principles for liability insurers.

Liability insurers have financial responsibilities to shareholders and others and the temptation or pressure to fail to advise on all heads of damage or to admit responsibility so as to pay out less, is too great to accept a lack of regulation.

The FSA does not regulate the activities of liability insurers in this area and has no culture of doing so. The FSA does not prevent mis-selling, but may provide a remedy to those who are sophisticated enough to take action when they become aware of the problem.

Liability insurers fail in their responsibility to admit liability as often as they should. They should be encouraged to offer rehabilitation whether a claimant is represented or not.

One leading insurer has stated on more than one occasion that they do not see why they should advise people of the right to seek independent advice and representation and do not intend to do so. Others do not do so as much as they should and cannot be expected to do so without encouragement.

There is also clear evidence of insurers and companies they own seeking significant sums by way of referral fees when they pass on claimants they have “captured”.

Appendix 1

Appendix to Amicus response to consultation over regulation under Part 2 of the Compensation Act 2006

Evidence - case examples for Question 4

The consultation paper states: “A number of interested parties have identified the position of liability insurers who seek to capture a person injured by their policy holder... it is not fully regulated by the FSA ... [but] There is a strong case for exempting liability insurers in respect of this activity. *There is no*

evidence of consumers receiving poor service from liability insurers in this respect.”

This is not our experience. The following are just 10 examples which form a very small proportion of recent cases where the insurers have behaved in a way that they are incited to behave as a result of their obligations in conflict with the prompt payment of appropriate levels of damages to claimants (whether represented or not). Inevitably the examples are not all cases captured by liability insurers in respect of persons injured by their policy holder. They are examples provided (all but one) by two law firms used by Amicus.

Nevertheless, even those cases where the claimant was always represented by the union demonstrate clearly how those who are unrepresented will suffer. Many such unrepresented people are never even aware of the extent to which they are short changed or deprived of their entitlement to compensation.

1. Mrs F's case. She slipped on a mushroom on the floor at a Tesco Store on 9 January 2005. She wrote to Tesco's on the 5 May 2005 initiating a claim for damages. They asked her for more information. On the 8 June 2005 Tesco wrote to her denying liability. In the denial they state “the issue of floor cleanliness has been dealt with in the English courts and it has been established that a ratio of less than one accident to 214,000 customers is the cut off for proof that a good cleaning regime is in operation. At [the store involved in the accident] the ratio is almost 1:300000 therefore we have no offer to make you.”

Most would have given up, but Mrs F then sought assistance through Amicus, as her husband is a member. Our lawyers elicited a response from Tesco's liability insurers on 15 August stating that they saw no reason to alter the decision on liability. Questions were raised on an issue which had arisen from disclosure that no janitor was on duty at the time of the accident. Tesco were pressed to reveal documents they possessed relating to research they had conducted regarding the reduction of slipping injury when sealed packaging was used. On the 4 October 2005 the insurer wrote admitting liability.

2. Mr C died in September 2004 from bronchopneumonia with the presence of asbestosis. The Coroner on 20 October 2004 confirmed his employment in a naval dockyard from 1941 to 1987 would have brought him into contact with asbestos dust and the verdict was death by industrial disease.

The family initiated a claim without legal representation. On the 7 July 2005 the insurer wrote that they were unable to confirm their position in relation to legal liability as it was unclear. They also said they had instructed a doctor to prepare a medical report. The family heard nothing of significance after that. Luckily a relative of Mr C was a union member and the union provided initial advice which led to expert lawyers being instructed.

They wrote a formal disease protocol letter on 15 February 2006. The claim was not acknowledged and the lawyer called the insurers on the 7 March. At that time, he was told the file could not be located. The lawyers wrote again on the 7 March and made a further telephone call on the 13 March. The letter and telephone call were not returned. And so it went on until the 11 May 2006, the first letter was received from the insurers which stated that “we can confirm that our file of papers has now been found and we are currently waiting for medical evidence.” A gap of 10 months between correspondence from the insurers where it appears the file had been lost and nothing done to advance the claim.

That these examples involve unions is not the key point in this context.

3. Mr G worked as a picker with the ACC Distribution and developed a work related upper limb disorder. His picking rate is monitored and he had a target, but the insurers reported that the documents had been lost. An application was made for pre action disclosure, which was contested. The claimant's representatives were successful. The response was a witness statement from the insurance representative saying that all of the documents had been lost. Her status was questioned as she did not work for the employers and had not carried out the searches herself. Meanwhile a disillusioned manager suspecting that the employer was holding back documents gave the claimant details of his picking rates. An application has now been made to debar the employers from defending the actual claim.

4. Unfortunately Mr G's experience is not unique. **Mr H** worked in the booths of the ferry terminal. Several folders of documents were disclosed through the liability insurers. Mistakenly there was an email within the documents passing between the defendants in-house insurance manager and the HR officer where they clearly appear to be conspiring to withhold various documents and make various documents privileged when they may not have been. An application to the court was made. The documents subsequently disclosed contained an ergonomist reports on the booths out of which the claimant worked and details of an employee who had problems on the booths prior to the claimant.

5. Mr M sat on a chair which collapsed beneath him. The chair was work equipment and liability is absolute. A long letter of claim was written by union lawyers. The response, after a month was to say that the letter of claim was not compliant with protocol. After nearly 4 months the another letter said that the precedent case of Stark v Post Office was not relevant, but after 6 months the Defendants finally wrote saying that they case handler had changed and that they agreed that the letter of claim was compliant and that Stark was relevant. They said to disregard the previous letters. It took 15 months, however, before liability was admitted.

6. Mr J also injured himself when liability is strict. He caught his hand in a circular saw as the guard did not come down far enough. The accident documents make it clear that Mr J missed a "working safely presentation", there was no safe working practice for the saw, the training was inadequate and that consideration was being given to fitting a second guard. An offer of a 50/50 split on liability has now been met with exasperated solicitors commencing proceedings.

7. Ms O, made a claim through her union lawyers in August 2005 after injuring her leg, when she fell down stairs due to the dangerous position of a photocopier which was moved to another location after the accident. Liability was always in dispute. The insurer refused to meet and discuss the case.

A medical report was sent to the insurer in November 2005 and there was an offer made in March 2006 based on an assessment on full liability - of £500. There was a later Part 36 offer, with the incumbent threat of costs consequences to the claimant, of £1,500, after court proceeding were issued. There was a payment into court on 17 July 2006 of £3,000 Part 36. The claim settled at the end of July 2006 for £3,250, with a trial date on the horizon and liability still in dispute.

And this case is one of many that demonstrates one of the fundamental weaknesses in the Frontier Economic/ABI report manipulating figures by using a banding approach and failing to compare like with like in any event.

8. Ms R's is another such case. She works for Lever Faberge and suffered a number of injuries including to her thumb, teeth, nose, chest and knees. The Insurance Company initially offered £3,595.00. After 15% contributory negligence they finally agreed that the claimant was in fact due £8,372.50.

9. Mr B claimed for his upper limb RSI. Liability remained in issue, but the insurers initially offered £6,000.00. They increased to £7,500.00 and then to £12,000.00. Eventually after further negotiation the insurers agreed to pay £20,000.00 plus CRU.

10. In Mr D's it is also inconceivable that the liability insurers would have offered him what he was entitled to if he had been unrepresented. An important aspect of his case was a Smith v Manchester claim. Mr D works for Jaguar Cars and he suffered a back injury due to slipping on water on steps.

The day before the Hearing the Defendants offered £4,000 damages which was promptly rejected. The District Judge awarded £4,500 in respect of the "Smith" head of claim alone. General damages were awarded at £7,500 and with special damages and interest the total award was £13,797. 18.

There are any number of other case examples. Further details and additional evidence can be supplied.