

Corporate Manslaughter

Death and dishonour, but who ultimately pays?

Corporate Manslaughter

- Introduction
 - Why should I be concerned?
- Background to the Corporate Manslaughter & Corporate Homicide Act 2007
- What the Act says and does
- Insurance implications
- Legal Expenses Regulations
- Practical implications

Why should I be concerned?

- ❑ Cost
 - No firm data yet, but estimates for typical defence costs are between £1m and £4m

- ❑ Cover
 - How does it fit with current wordings?
 - Legal Expenses Regulations - the insurer may not control the costs

- ❑ High value but low frequency

Background to the 2007 Act



Lord Chancellor, Baron Thurlow (1731 – 1806)

**"Corporations have no soul to damn and no body to kick,
they therefore do as they like."**

Background to the 2007 Act

- ❑ What are we talking about?
- ❑ Blunt instrument of common law to deal with a wide variety of situations



- ❑ CMCHA since 2007 – how did we get there?

Background to the 2007 Act

- ❑ Zebrugge 1990



Background to the 2007 Act

Series of rail disasters:

- Clapham (1988)
- Southall (1997)
- Paddington (1999)
- Hatfield (2000)
- Potters Bar (2002)



Background to the 2007 Act

Various construction incidents:



Background to the 2007 Act

- ❑ Only one successful prosecution: Lyme Bay (1994) involved a one man band.
- ❑ Mounting pressure for change.

**Corporate killers will
be brought to justice**

**Judge declares end to 11-year
search for Hillsborough blame**

**Rail chiefs are getting
away with murder, say
Paddington bereaved**

**Anger as rail chief is
'let off' over Hatfield**

Corporate Manslaughter and Corporate Homicide Act (2007)

ELIZABETH II

c. 19



Corporate Manslaughter and Corporate Homicide Act 2007

2007 CHAPTER 19

An Act to create a new offence that, in England and Wales or Northern Ireland, is to be called corporate manslaughter and, in Scotland, is to be called corporate homicide; and to make provision in connection with that offence.
[26th July 2007]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Corporate Manslaughter and Corporate Homicide Act (2007)

- ❑ Lowering of test for "senior management failure"
- ❑ Increased likelihood of prosecutions and of successful prosecutions
- ❑ Intended to complement existing health & safety offences
- ❑ Corporates only: individuals (including directors) covered by common law offence of gross negligence manslaughter and existing health and safety legislation
- ❑ Corporate v individual

Corporate Manslaughter and Corporate Homicide Act (2007)

- ❑ Costs and practical implications:

- Defence costs
- Prosecution Costs Orders
- Fines (unlimited)

Buncefield Prosecutions	Fine	Prosecution Costs
Total UK Ltd	£3.6m	£2.6m
Bertfordshire Oil Storage Ltd	£1.4m	£1.0m
British Pipeline Agency Ltd	£300k	£480k
TAV Engineering Ltd	£1k	£0.5k
Motherwell Control Systems Ltd	£1k	£0.5k

- ❑ Experience so far:

- Cotswold Geotechnical
- Lion Steel

Sentencing Guidelines: "Fines for companies and organisations found guilty of corporate manslaughter may be millions of pounds and should seldom be below £500,000. For other health and safety offences that cause death, fines from £100,000 up to hundreds of thousands of pounds should be imposed. In deciding the level of fine, account must be taken of the financial circumstances of the offending organisation."

Conclusions first.....

- ❑ Due to time constraints
- ❑ Explanations afterwards
- ❑ If we don't get round to a particular point, it is in the IUA paper on Corporate Manslaughter

Practical implications

- ❑ Insurers need an "interest" to provide Legal Expenses cover without following the requirements of the 1990 Regulations
 - When does that interest cease?
 - What happens then?
- ❑ To write Legal Expenses insurance (even as an extension to a liability policy) you probably need a licence for Class 17 business
 - Discussed in detail in the IUA paper
- ❑ How much could it cost me?
 - Defence costs estimates vary between £1m and £4m
 - May be substantially more than the civil liability claim
 - Firms are not likely to want to plead guilty because of huge fines and reputational damage
 - Not expecting many prosecutions each year so low frequency but high impact
- ❑ What claims control do I have?
 - OK while an interest exists
 - Otherwise, do wordings control choice of lawyer, appeals, when to plead guilty?

Back to Basics - Insurance Implications

- ❑ There is always a dead body, so generally there will be an insurance policy to pay for defence costs

- ❑ Main covers which might be involved:
 - Employers Liability

 - Public Liability

 - Motor

How most policies work

- ❑ Policies which cover death or injury of others usually have three cover components:
 - Compensation for legal liability for the death or injury
 - Claimant's costs and expenses
 - Own defence costs, including representation at associated criminal proceedings

- ❑ Corporate Manslaughter defence costs will fall in the last category

Employers' Liability



Employers' Liability

- Legal defence costs usually **included** within overall policy indemnity limit
- High defence costs could threaten or erode the overall indemnity limit
- How does £5m statutory minimum limit work in such cases?

- One or two insurers are applying a specific limit (typically £1m) for Corporate Manslaughter defence costs
- Protects the statutory limit
- Protects the insurer

Public Liability

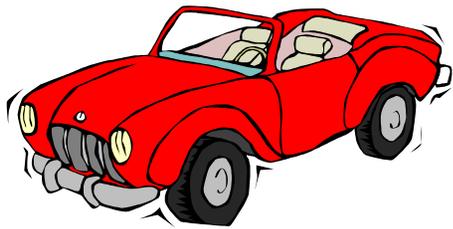


Public Liability

- ❑ Legal defence costs usually **additional** to overall policy indemnity limit
- ❑ High defence costs are at the insurer's risk

- ❑ One or two insurers are applying a specific limit (typically £1m) for Corporate Manslaughter defence costs
- ❑ Protects the insurer

Motor



Motor

- ❑ No common trends
- ❑ Some insurers provide unlimited legal costs
- ❑ Others are applying limits, typically £1m/£5m

Licensing

- ❑ Criminal Prosecution Defence Costs cover, even as an extension, needs a Class 17 (Legal Expenses) licence

- ❑ Discussed in detail in the IUA paper on Corporate Manslaughter

Legal Expenses Regulations

- ❑ Insurance Companies (Legal Expenses Insurance) Regulations 1990
- ❑ Designed to control and regulate the Legal Expenses insurance market
- ❑ Regulations require:
 - Legal Expenses must be a separate section of a policy
 - Separate claims handling department
 - Insured has the right to select their own legal representation

- ❑ Exemption from the Regulations: where the defence is also in the interests of an insurer providing civil liability cover

- ❑ So no need to comply with Legal Expenses Regulations if an insurer also has an interest in a civil liability claim

- ❑ But what is an "interest".....?

Holding an interest.....

- ❑ Definitely exists when there is a criminal prosecution relating to an event which will trigger an indemnity payment
- ❑ Corporate Manslaughter always involves death, so there will be a civil action

- ❑ But what if the interest ceases
 - When the claim is settled?
 - If the policy limit is exhausted?

- ❑ Should the insurer stop paying for defence costs mid-prosecution?
 - Is this Treating the Customer Fairly?

- ❑ Should cover conform to Legal Expenses Regulations?
 - Separate claims handling, choice of representation, etc.?

- ❑ Does the policy wording retain control for the insurer, or has he handed a blank cheque to the policyholder?

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Possible Options for Insurers

- ❑ Make no wording changes
 - Lose control of claim costs when “Interest” ceases
 - In some cases, unlimited “Costs in Addition” cover
 - Regulatory issues - breach of Legal Expenses Regulations

- ❑ Apply a full Legal Expenses extension with all the words and procedures to comply with Legal Expenses Insurance Regulations
 - Overkill?
 - Will the extension be longer than the policy?

- ❑ Something in-between?
 - Probably the biggest issue to deal with is what happens if the Insurer loses his “Interest”