

# ADVISER

## HOW MUCH LIABILITY INSURANCE IS ENOUGH?

Financial liability for causing death, injury, or damage to someone else's property is potentially unlimited but insurance cover is not; therefore, determining the right level of insurance to purchase (the "limit of indemnity") is challenging. This Adviser sets out some of the issues to consider and shares details of some claims that are in the public domain.

Business-related fires, motor accidents, faulty products, and other incidents causing serious injury or death are frequently in the news. While many of these events are so recent that liability at law – and any associated compensation payments – has yet to be established, they highlight that major incidents do occur and their possible cost needs to be considered when deciding the level of insurance to purchase.

### INJURY CLAIMS

Damages for personal injury claims have increased significantly in recent years. For example, in the case of *JDF v Hampshire County Council*, 2017, an award with a capitalised equivalent value of GBP28 million was made to a child suffering profound disability after a road accident. (This consisted of a GBP9,113,074 lump sum plus a variable periodic payment order to cover future care and case management.)

The case highlights the substantial payments that can be awarded following a life-changing injury, whether on the road, in the workplace, or elsewhere, and the need to review the amount of liability insurance you purchase.

It's important to note that on 20 March 2017 the Personal Injury Discount Rate – a calculation used to determine lump sum compensation to claimants who have suffered life-changing injuries – was changed. Our calculations indicate the cost for such claims could increase by 1.5-3 times under the new regime, meaning previous decisions about levels of insurance to purchase should be reviewed. In the above example, the lump sum was increased from GBP4.9 million specifically because of the discount rate change.

### NEW TECHNOLOGIES

When assessing damages, courts are required to put the injured party in the same, or close to the same, position they would have been before the accident and it is difficult for an insurer to deny a claimant the benefit of the latest technology if it can improve their quality of life. Recent years have seen advances in the prosthetics and "bionic eyes" available to claimants which could dramatically increase claims costs.

### DAMAGE CLAIMS

The issue is not limited to death or injury – a spreading fire or the supply of a defective product could result in you being found liable for third-party property damage. For example, a claim where a manufacturer supplied a machine which caught fire, resulting in the complete destruction of the customer's factory, settled at more than GBP80 million.<sup>1</sup> In another case, a painting contractor burning off paint with a blowtorch set fire to premises, resulting in a claim for GBP23.5 million.<sup>1</sup>

### WHAT COULD HAPPEN IF A CLAIM EXCEEDS THE LIMIT YOU HAVE PURCHASED?

Insurers generally have a provision in the insurance contract which states that they can pay the policyholder a sum equal to the limit of indemnity and leave the policyholder to continue to deal with the claim and any payment required above that limit.

The policyholder is then in a situation of having to appoint and pay for their own solicitor to act for them. Once the insurers have handed over the sum equal to the limit of indemnity, they are entitled to limit their liability for legal costs to the costs incurred up to that date. In this situation, the policyholder not only has to fund the balance of the claim, but also its own ongoing legal costs and potentially those of the claimant.

## POINTS TO CONSIDER

- How many people could you have in one place at one time and therefore potentially at risk of injury? Liability insurance limits generally apply to each incident, not each individual, so it is important to consider the potential financial cost of an accident – in the workplace or other location – resulting in death or serious injury to several, or even many, people.
- What impact could there be on neighbouring premises and people if you had a major fire that spread and you were found to be negligent?
- What is the nature and number of your products and end users? The more end users, the more the potential injury claims arising from one event.
- Do you use commercial vehicles? Typically, the standard motor third-party property damage limit is lower than for cars, so you may need to consider purchasing additional cover in the form of “excess third party property motor” limits.
- Do you operate or export overseas? Damages claims in territories such as the US can be significantly higher than in the UK. For example, claims relating to a fire/explosion in 2013 at a US storage and distribution facility which resulted in multiple fatalities, injuries, and damage to surroundings, settled at USD101 million in 2013. In another instance, carbon monoxide poisoning in a US apartment in 2011 caused serious injury and settled at USD28 million.<sup>2</sup>
- Is there any potential for injury to children? Payments in respect of any serious injury may be expected – as in the JDF v Hampshire County Council case profiled overleaf – to continue for a considerable number of years.
- What typical level of cover is bought by others in your sector?
- Does the nature of your activities or products mean there could be the potential for serious injury to celebrities or high-net-worth individuals? Injury payments take loss of earnings into account, so those with higher potential earnings may receive higher awards.
- Have you taken into account inflation and potential increases in compensation levels that could occur between the date of an incident and the date it is settled (typically several years)?

*This list is not exhaustive and will depend on individual circumstances.*



## HOW MARSH CAN HELP YOU

Marsh recommends that you review your limits of indemnity annually, or more frequently if there is a significant change to your business profile or activities. We will be pleased to assist you by talking through the above points and any other relevant information with you and may be able to provide – on an anonymised basis – benchmarking data highlighting the limits purchased by some other companies with a similar profile. We can also obtain premium quotations for increased limits of indemnity. Additional cover can be purchased at any time, not just at your annual renewal date.

Source:

<sup>1</sup> QBE Insurance, 2015

<sup>2</sup> ACE Group, 2015

## CONTACT US

For assistance with this issue, please contact your usual Marsh representative or email: [national.enquiries@marsh.com](mailto:national.enquiries@marsh.com)



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