



LUG Conference 2022

Market update, Key Themes and Legal Updates
Date 6th September 2022



Amanda Catron
Technical Underwriting Officer
UK Casualty
American International Group UK Limited

amanda.catron@aig.com

The information, suggestions and recommendations contained herein are for general informational purposes only. This information has been compiled from sources we believed to be reliable

Agenda

Key themes and notable legal cases
since September 2021

- Market update
- Key themes
- Legal Updates

But first...



EL/GL Claims - HSE annual report 2022

- 2021/2022 saw 123 workplace fatalities – a decline of 22 from 2020/2021.
- Almost a quarter of fatalities occurred in the construction sector with 18 % each in agricultural/ forestry/ fishing and manufacturing respectively.
- 25 % of fatalities occurred to workers aged 60 years and above.
- The most common kind of fatal accident occurred from both; “falling from height” (29) and “struck by a moving vehicle” (23).
- The UK fatality rate per 100,000 workers was 0.38 in 2021/22, which the HSE regards as “in line” with the pre-pandemic figures.

Market update – key drivers

Inflation

- Catastrophic injury care and future care costs spiralling
- Future care costs account for more than 50% of damages
- UK care sector in crisis – shortage of qualified care and health workers
- Recruitment of care/health sector workers problematic post Brexit and Covid/exiting and fatigue

Social Inflation

- US phenomenon – spreading globally
- Litigation support – litigation funding and claimant law firms targeting large corporates
- Legal mechanisms allowing "Class Actions" – e.g. Group Litigation Orders in UK or Collective Redress in EU
- Delivery of social "justice" – influence of social media and Human Rights lens

Market update cont.;

PFAS

- Proliferation of "forever chemicals" since 1940's
- Numerous companies named in Environmental lawsuits
- Class action litigation – mostly driven by US but increasingly in Europe and Australia
- PFAS ubiquitous – found in water, food, blood – litigation through Human Rights lens
- Market beginning to manage this emerging risk – Exclusions flowing through from US

Russia/Ukraine War

- Identification of Russian and Belarusian portfolio
- Drafting and application of Territorial and Claims Jurisdiction restrictions and Exclusions
- OFAC, EU, UK, Asia/Pac – application of stringent Sanctions



Key themes

- Micro-mobility – E Scooters
- Autonomous vehicles
- Bodily Injury and Personal Injury
- Social Inflation
- Climate Change
- Cyber
- Data Privacy litigation
- ESG
- PFAS
- Human Rights and social justice
- Environmental Mass Tort litigation

Micro-mobility – E-Scooters

- E-Scooters are not legal to ride on public roads (other than approved trails) or pavements
- Trials of E Scooters in 31 areas in UK – 23,000 vehicles
- Ownership of E-Scooters in UK estimated at **750,000** per the Guardian Newspaper – majority used illegally!
- Robust regulations are needed around their use and safety – not yet in place
- Jan 2021 to December 2021 - 882 accidents involving E-scooters in UK, 931 casualties and 732 of these were riders themselves
- Calls for coherent standards regarding e scooter manufacture and safety standards including batteries and charging, brakes and lighting and protective equipment – helmets to be mandatory
- Speed to be limited to 12.5mph, weight unladen to 20kgs, riders to be at least 16 etc
- In-person rider training and third party insurance recommended

Chris Jones – IUA – director of legal and market services

"It is essential that an appropriate and effective regulatory system is introduced at the earliest opportunity"

Conservative peer Baroness Neville Rolfe – E Scooter ^{FC4} have become a **"menace"**!

Government waiting for data from trials...transport minister Baroness Vere of Norbiton

- **"I reassure her that we are making progress. I recognise that there is more to be done"**



Slide 8

FC4 Possible misspelling: 'E Scooters'
Fulton, Conor, 23/08/2022

E Scooters

Current position – PACTS – parliamentary report on E Scooters

	Rental E-Scooter	Private E-Scooter
Rider Requirements	Training recommended 18+ Driving licence required Helmet recommended Reporting of injury to scheme provider	Limited/no training No age limit or licence required
Speed	Capped at 15.5mph(12.5 mph in London)	Not capped and capable of faster speeds
Insurance	Yes - must be insured	Un-insurable without type approval or vehicle registration
Registration	Exempt	Exempt
Legal riding	Roads, cycle lanes no pavements	Illegal for use away from private land Can be subject to fixed penalty notice with no insurance, £300 fine and 6 points on licence
Regulation	Subject to motor vehicle regulations, as modified for rental scooters in trail scheme	Subject to motor vehicle regulations - but un-regulated for use on public highways and virtually impossible to insure on UK roads

Other issues – E Scooters and E Bikes

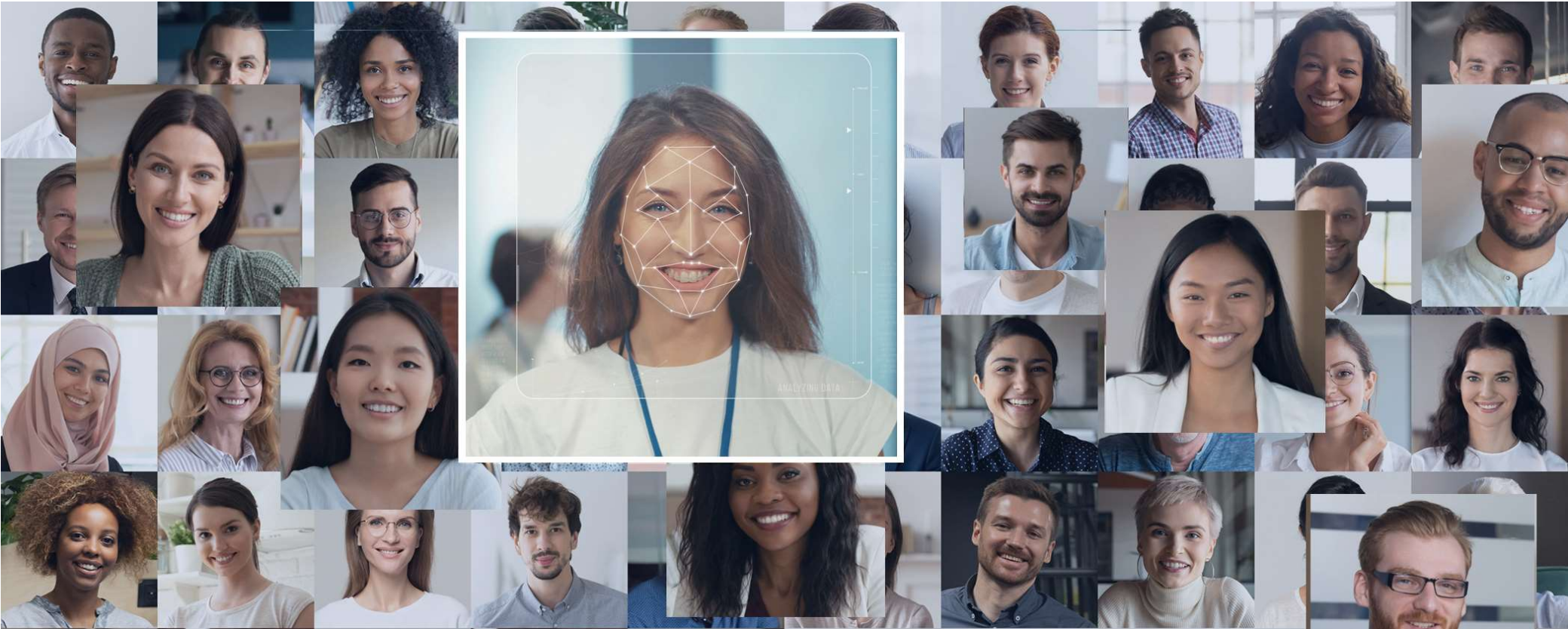
- Lithium Ion Batteries - figures from London Fire Brigade – 164% increase on E-scooter and E Bikes fires since 2020 - **Lithium ion battery fires known to be very difficult to extinguish**
- Lithium Ion Batteries are inherently flammable and vulnerable to heat
- Produce a large amount of power relative to weight and size
- Easily damaged by impact and puncturing the battery pack, exposure to heat, over charging
- Manufacturing defects – contaminated with impurities – leading to fire
- Design defects – weight and size
- User error or use of inappropriate or poor quality chargers (high voltage), non-branded or counterfeit
- Manufacture in Far East – difficulties with subrogation to manufactures and suppliers of batteries and components, chargers etc

A round up of Data Privacy litigation



- Lloyd v Google – overturned on appeal in the Supreme court
- SMO (a child) v TikTok Inc - a representative

Clearview AI



Round up of Data Privacy – cont.;

Clearview AI

- Clearview AI fined more than £7.5 million by the Information Commissioners Office (UK)
- This is one of the largest fines issued under UK GDPR to date
- Provisional fine was £17m but reduced by 45%
- Alleged serious breaches of UK data protection laws
- Images scraped from internet and social media - worlds largest facial network – **20 billion faces**
- Used by law enforcement bodies in US and UK
- France DPA (CNIL) Clearview "to stop unlawfully collecting and processing the personal data of data subjects in French Territory
- Italy – fined Clearview Euro 20 million – unlawful processing of biometric data
- Austria DPA – a decision awaited with similar allegations

ICO Decision

“failing to use the information of people in the UK in a way that is fair and transparent, given that individuals are not made aware or would not reasonably expect their personal data to be used in this way”;

“failing to have a lawful reason for collecting people’s information”;

“failing to have a process in place to stop the data being retained indefinitely”;

“failing to meet the higher data protection standards required for biometric data”; and

*“asking for **additional personal information, including photos, when asked by members of the public if they are on their database.** This may have acted as a disincentive to individuals who wish to object to their data being collected and used”*

Facial Recognition in Co-op stores in UK

- Co-op Stores in 35 stores including Portsmouth, Brighton, Hove, Chichester, Bristol and London, using facial recognition technology
- Biometric data taken of every visitor to these stores
- Complaint made to the ICO – by Privacy Rights Group – Big Brother Watch



Data Privacy – Trivial Data Breach

Rolfe v Veale Wasbrough Vizards LLP (2021)

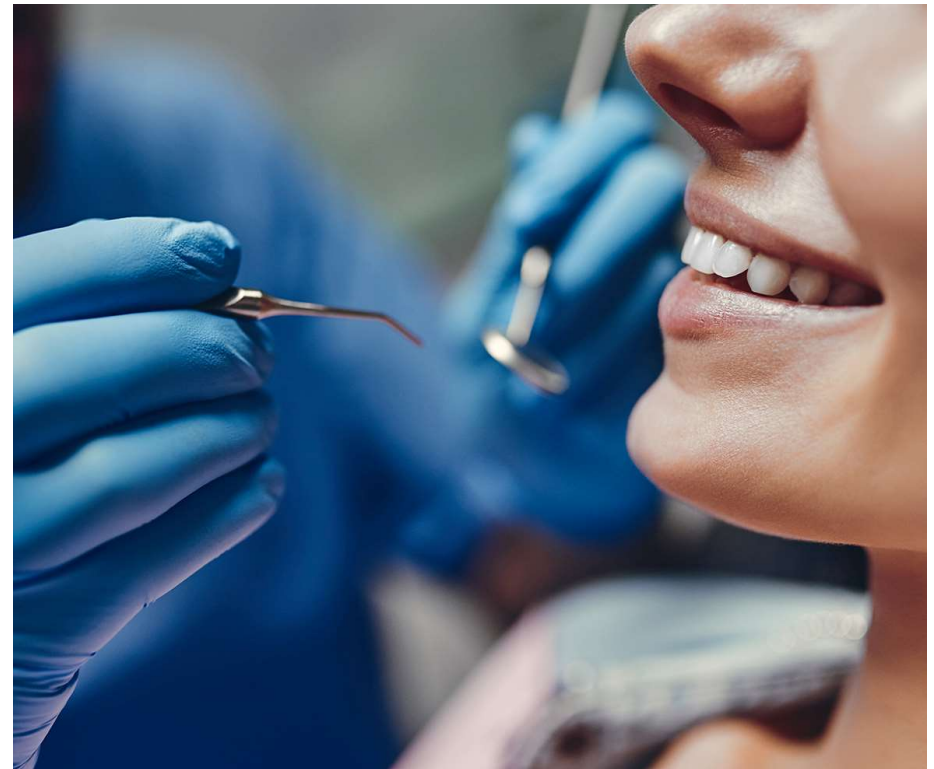
- Defendant mistakenly sent information on school fees to wrong email address
- Incorrect recipient contacted defendant immediately, saying the email was deleted
- Despite there being no personal or sensitive data a damages claim seeking an award for distress as well as a declaration and injunction issued

Summary judgement - Master McCloud

“There is no credible case that distress or damage over a de minimis threshold will be proved. In the modern world it is not appropriate for a party to claim, (especially in the in the High Court) for breaches of this sort which are, frankly, trivial”.

Round up of notable cases

- **Hughes v Rattan (2021)** – Dental Practice owner owes **non delegable duty** to NHS patient, though treatment provided by **self employed** associate dentist
- Practice owner vicariously liable for errors and omissions
- Practice allocated patient number and dental records, arranged appointments and took payment
- Standard British Dental Assoc contract - payment split 50/50 practice owner and associate dentist
- Contract – Practice Owner was the Contractor who delivered the services
- Practice owner under contract has to select associates, train and provide oversight
- Practice owner vicariously liable – associates relationship akin to employment



Vicarious Liability

Blackpool Football Club Limited v DSN (2021)

- Historic abuse – coach (Frank Roper) died some years ago
- Coach carried out "scouting activities"
- Assaulted young players, who were scouted
- Children who are now adults, seek damages for Frank Roper's acts of abuse, sue the club
- Court of appeal unanimously overturn a previous ruling – **Blackpool FC not vicariously liable for abuse**
- Roper was not an employee of the club and they did not exercise control over him

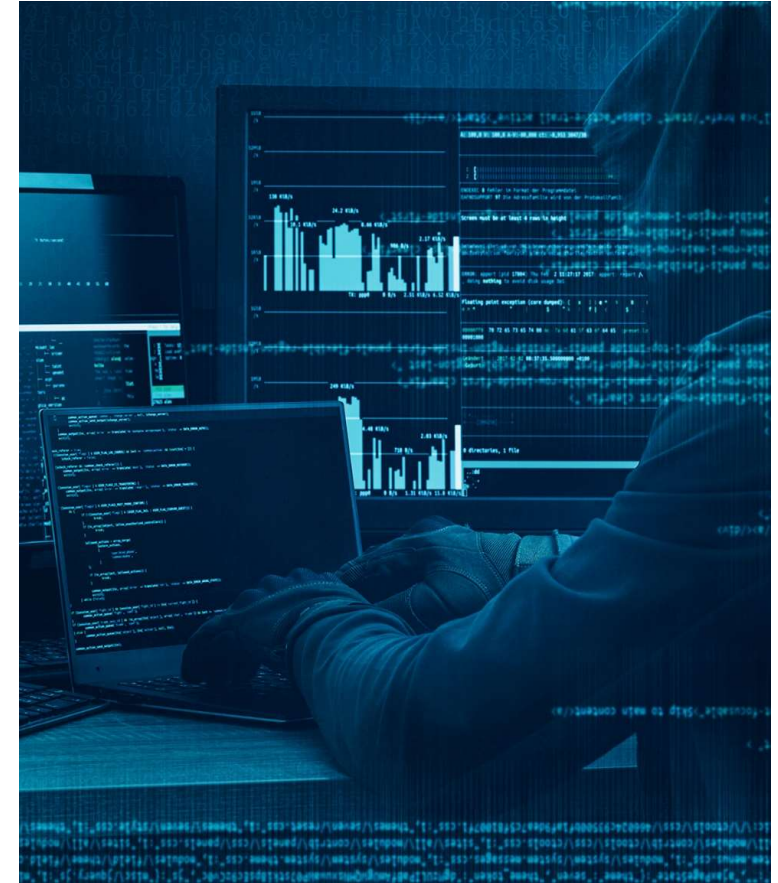
Stuart-Smith LJ...

"Leaving on one side the fact that he had a completely free hand about how [Roper] did his scouting, there is no evidence of any control or direction of what he should do."

Cyber - War

Merck v Chubb and others

- Merck case against its property insurers, settled in favour of Merck
- Merck suffered \$1 Billion in physical damages and business interruption due to NonPetya cyber attack
- Emerging in Ukraine, Russia widely accused of state actor orchestration of attack
- Insurers cited ISO War Exclusion Clause as defence
- 33 insurers and reinsurers involved
- Court ruled War Exclusion **did not apply to cyber events**
- **Case shines a light on the need for an affirmative cyber position – legacy of silent cyber**
- **NonPetya losses estimated to be \$3 Billion – worst ever cyber loss**



Notable changes in legislation

UK Nuclear third party liability laws updated January 2022

- Value of claims that can be made for a nuclear accident increases from £140 million to Euro 700m
- Operators liability increases to Euro 1.2 Billion over 5 years

- Feb 2022 – Environment Act becomes law in UK – "world leading legislation"

- Building Safety Act 2022

Conclusion

- Market update
- Key themes
- Legal Updates