



The Next 50 Years And The Impact For The Liability Market

02 September 2008

Presented by Neville White



A spirit of trust

A look at the past... to understand the future...

- Law and legislation
- H&S developments
- Significant events that have shaped the law or insurance
- Things that came and went without anything really happening



Law & legislation

- Donoghue v Stevenson (1932)
- Occupiers Liability Act 1957
- Hedley Byrne & Co. v Heller & Partners (1964)
- Civil Evidence Act 1968
- EL (Compulsory Insurance) Act 1969
- Defective Premises Act 1972
- Smith v Manchester (1974)

Law & legislation

- Unfair Contract Terms Act 1977
- The Judicial Studies Board personal injury compensation guidelines
- Limitation Act 1980 – in particular, Section 33
- Occupiers Liability Act 1984 (trespassers)
- Food and Environment Protection Act 1985
- Product Liability Directive 1985 (aka Consumer Protection Act 1987)
- Food Safety Act 1990
- The Environmental Protection Act 1990 (and Part II in 1995)
- EL Regulations 1998

Law & legislation

- Lancaster v Birmingham City Council (1999)
- The Woolf report and the Civil Procedure Rules reforms (1999)
- The Ogden Tables
- CPA 1987 (Product Liability) Modification Order 2000
- Lubbe v Cape (2000)
- Phelps v Hillindon Borough Council (etc) (2000)
- GPSD 2001 (General Product Safety Directive) (aka General Product Safety Regulations 2005)
- Philips v Syndicate 992 (2003)
- Fairchild v Glenhaven (2002)
- Hatton v Sutherland (2002)

Law & legislation

- Tomlinson v Congleton Borough Council (2003)
- CP190 and ICA's and ICR's
- Bolton v MMI (2006)
- Barker v Chorus (2006)
- Better Regulation Task Force: compensation culture report (2004)
- The Compensation Act 2006
- The Environmental Liability Directive 2004 (effective 2007)
- Harris v Perry, Perry and Harris
- The Mesothelioma test cases (2008)
- Pleural Plaques in Scotland (2008), and...
- Pleural Plaques in England & Wales (2008)

H&S in the workplace

- Factories Act 1961
- Construction (Health & Safety and Welfare) Regulations 1966
- Health & Safety At Work Act 1974
- The Control of Asbestos at Work Regulations 1987
- Noise At Work Regulations 1989
- Personal Protective Equipment At Work Regulations 1992
- Health & Safety (Display Screen Equipment) Regulations 1992
- The Management of Health & Safety At Work Regulations 1992
- PUWER 1992 (Provision and Use of Work Equipment Regulations)
- The Manual Handling Operations Regulations 1992
- CDM Regulations 1994 (Construction Design Management)
- RIDDOR 1995

H&S in the workplace

- The Lifting Operations & Lifting Equipment Regulations 1998
- COSHH Regulations 1999
- Management of Health & Safety at Work Regulations 1999
- COMAH Regulations 1999
- CAWR 2002 (The Control of Asbestos at Work Regulations)
- Control of Vibration at Work Regulations 2005
- Work at Height regulations 2005
- Control of Noise at Work Regulations 2005 (and Part II in 2007)
- REACH Regulations 2006
- Corporate Manslaughter & Homicide Act 2007

H&S in the workplace

HSE stats...

From 1974 to 2007:

- Fatal injuries: fell by 73%
- Reportable non-fatal injuries: fell by 70%
- but asbestosis deaths have risen

Significant events that have shaped the law or insurance

- Thalidomide (1950's and 1960's)
- Asbestos (1960's, 1970's, 1980's, 1990's, 2000's)
- Flixborough explosion 1975
- The Seveso disaster (Italy, 1976)
- Clapham Rail crash 1979
- Kings Cross London underground fire 1987
- Herald of Free Enterprise disaster 1987
- Piper Alfa explosion 1988
- IUA Bodily Injury Awards Study (1st, 2nd, 3rd, 4th...)
- The Bradford fire (1985) and the Hillsborough disaster (1989)
- Gulf War syndrome (the first gulf war) (1990)
- Lloyds "Reconstruction & Renewal" (early 1996)

Significant events that have shaped the law or insurance

- Southall train crash (1997)
- Ladbroke Grove train crash (1999)
- Hatfield train crash (2000)
- Potters Bar train crash (2002)
- Independent Insurance Company collapse
- WTC terrorism attacks in 2001, the Madrid train bombings (2004) and the “07/07” – the July 2005 terrorism attacks in the UK
- Buncefield (2005)

Things that came and went without anything really happening

- Sick Building Syndrome
- Acoustic shock
- Passive smoking
- EMF's caused by photocopiers
- Salmonella in eggs (1980's)
- BSE (1980's)
- EMF's caused by mobile phones
- Toxic Mould
- Organophosphates / sheep dip

42 | UK Business Times 29.05.2008

The concerned consumer

Bullying is chief concern surrounding mobile phones

Potential health risks prove less of a worry than victimisation of children or the possibility of exposure to pornography

On the move

On a scale of 1 to 5, how well do you think each mobile phone company addresses social and environmental issues (working conditions, carbon footprint, use of resources, etc)?

Virgin Mobile	2.71
O2	2.70
Orange	2.67
Vodafone	2.63
T-Mobile	2.55
BT Mobile	2.53
TalkTalk	2.50
3	2.40

What might stop you giving a child a mobile phone? % of respondent's saying

People using mobile phones while driving	84%
Children being bullied via mobile phones	69% (+6)
Children being exposed to adult content	63% (+2)
Roaming charges	51% (+3)
General pricing structure	46% (+8)
Potential health risks of living near masts	37% (-2)
Appearance of mobile phone masts	28% (-2)
CO ₂ from manufacturing and disposal of handsets	26% (-5)
Potential health risks of using mobiles	25% (-7)



Things that came and went without anything really happening

- Y2K
- DVT
- Aspartame
- RSI
- Stress

Looking Forward...

- Globalization and Society
- Demographics
- Resources, Environment and Technology

Globalization and Society

Economic regionalism

North America

Central & South America

Europe (the EU)

Africa (the African Union)

Russia

The Middle East

The Far East

Globalization and Society

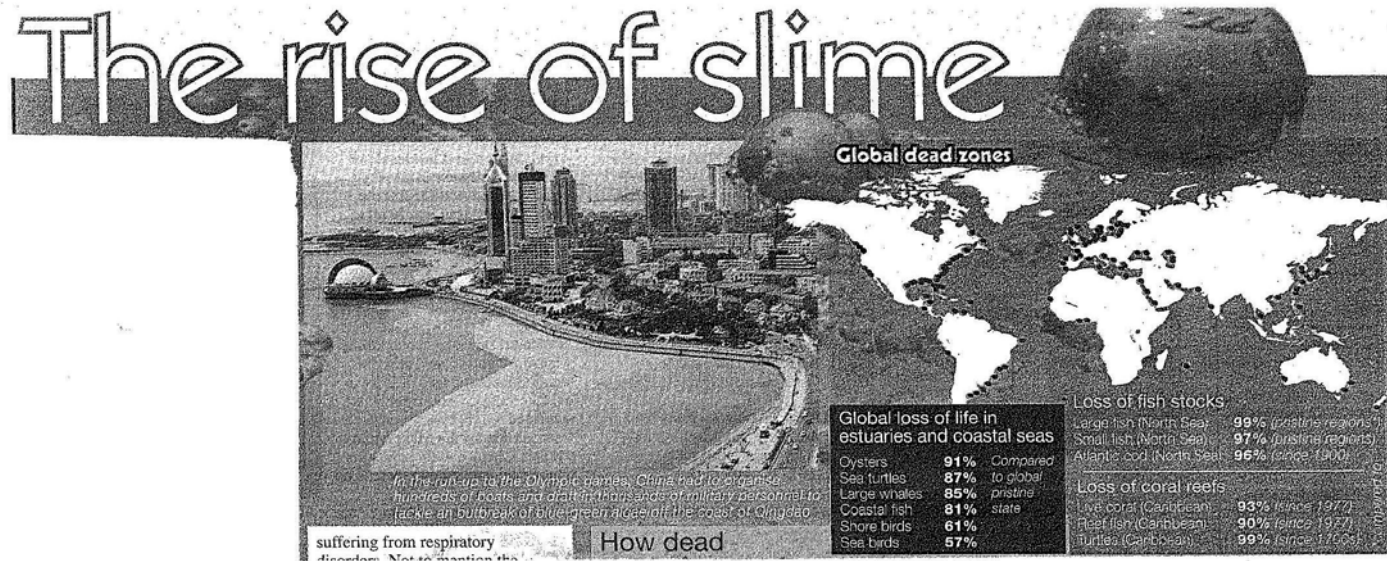
Environment

global warming

IPCC's (Intergovernmental Panel on Climate Change) 4th Technical Paper

Globalization and Society

algae blooms
sewerage and fertilizers
nitrogen and phosphorous



Demographics

- dual systems of law?
- Age discrimination
- age multipliers for injury claims will increase?
- medical improvements and rehabilitation skills?

Demographics

Pandemics

- Plague of Justinian in Constantinople
- The Black Death
- The Great Plague of London
- Influenza (Spanish Flu)
- Aids/HIV
- Sarin gas attack in Tokyo (1995)



Resources, Environment and Technology

Technology

Three technological revolutions:

- quantum mechanics
- bio-molecular knowledge
- intelligent computing

“The rate of technical progress and it’s impact is doubling every decade. An exponential growth is quite phenomenal. It literally means that these technologies will be a billion times more powerful than they are today in 25 years from now.”

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THE TIMES Thursday May 29 2008

Monkey puts its mind to mastery of a robotic arm

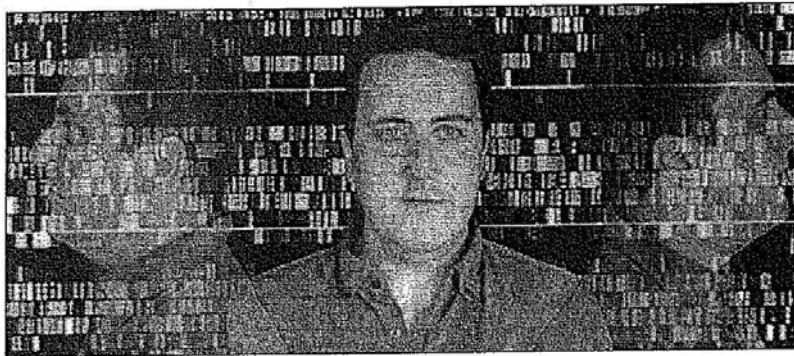


The monkey learnt to use its thoughts to grab food with the robot arm, raising hope of developing an aid for people with total paralysis

Resources, Environment and Technology

Cancer genome atlas...

Your DNA's in the post



Fancy being told you have a higher-than-average chance of getting prostate cancer but are at low risk of glaucoma? Now for about £500 you can have your genetic make-up analysed. Rob Liddle swabbed his cheek and sent off for a scan.

Cancer fears are lifted in the womb

A WOMAN has conceived Britain's first child guaranteed not to suffer from hereditary breast cancer. The girl was at high risk of contracting the disease as her father carried the harmful BRCA-1 gene and three generations of his family had suffered from breast cancer. Doctors at University College London Hospital were able to screen out the gene in the womb.

Gene therapy

8

News

Dr The

'Virtual children' will take guesswork out of making the medicine go down

David Rose

Using computers to test medicines could soon become routine, after the introduction of European Union regulations that require stricter testing for drugs intended for children.

Computer models that simulate the action of a drug on the body could hasten the development of new medicines and prevent children or adults being involved in unnecessary clinical trials — although they cannot completely substitute for tests in humans, researchers say.

Up to three quarters of medicines prescribed for the under-18s have never been tested on children, leaving medics to rely on their best judgment to decide what drugs and dosages to give. This can cause child patients to be given inappropriate or ineffective

it now has to have some data to support this use before it will be licensed. This will require extra testing by drug companies.

A British company says that computers can now be used to predict with accuracy the correct dosage, absorption and possible side-effects of new drugs in children. Simcyp Ltd, based in Sheffield, is announcing today a version of a paediatric simulator that will allow companies and doctors to test the effects of drugs on "virtual" children before they are given to patients.

Amin Rostami, Professor of Systems Pharmacology at the University of Sheffield and director of research and development at Simcyp, said that computers were now able to replicate the interaction with the body of substances and doses, based on initial laboratory studies.



New EU regulations on medicines for children come into force this week

Resources, Environment and Technology

THE TIMES Monday July 28 2008

Dr Thomas Stuttford times2, page 13



can be too simplistic to scale back from adult values when determining appropriate doses for children, as currently happens."

Using the software could cut by up to two years the time needed to develop new drug, he said.

"Virtual trials cannot replace the hard evidence of giving drugs to patients to find out their clinical effects, but could be crucial when designing studies which impact on rare genotypes or in identifying individuals, such as children, who are at extreme risk from adverse reaction," he said.

Simcyp's clients already include

'Complex scenarios can be explored in the safety of a computer'

nine out of ten of the world's biggest drug companies, such as Pfizer, AstraZeneca, Eli Lilly and Novo Nordisk.

Other companies in America and Israel are already using computers to simulate the action of compounds on solid cancer tumours and sarcomas, as well as diseases such as asthma, rheumatoid arthritis and diabetes.

In view of the extra work now needed to produce medicines for use in children, the EU regulations suggest that companies will be able to retain patents and intellectual property rights over new paediatric drugs for six months longer than the seven to

Replacement organs in the laboratory

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Cars...

Road deaths in the UK

2007

2,943 deaths

1966

7,985 deaths

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Cars...

Intelligent braking

CCTV

Read speed limits and one-way signs

Driverless cars?

Other things that will change

- Quality of research

Other things that will change

Alternative means of compensation...

Claimant... the fight for...

- compensation for workplace stress
- for compensation for the “weakened position in the labour market”
- for a severe injury when diving into a lake
- for post traumatic stress disorder
- for the costs of raising an unexpected child after a sterilisation failed
- for compensation for deep vein thrombosis on airline flights
- for blood contaminated with Hepatitis C
- for asbestos-diseased miners in another country to have their cases heard here
- for compensation of scarring of the lung tissue
- for an accident on a bouncy castle

Other things that will change

The underwriter... the right...

- not to pay any more than they originally envisaged that they would
- that the flood gates should not open
- to only pay what they are actually legally obligated to pay

- that scaring of the lining of the lung is not a compensatable injury
- that stress should only be compensated in certain circumstances
- that a party should not be held liable for the liability of others because those other parties cannot be traced
- that there is an obligation on the part of a claimant to be accountable for the risks that they undertake
- that tragic accidents can't be compensated where the blamed party weren't actually at fault

Other things that will change

Tomlinson

Harris

“the tort system is fatally flawed”

Balancing the risk of injury with the fun of the activity.

And balancing a system of compensation where an aggrieved party can be compensated, with the right of the individual not to be blamed when they are not at fault.

Other things that will change

You may have recourse against a third party if they are at fault

Not at fault

property damage via a household policy or a travel or motor policy

medical costs via a travel policy or private medical cover

critical illness cover

personal accident cover

life cover for your dependents

Other things that will change

the fault-based tort system

strict liability system, supported by compulsory liability insurance

self-insurance

Other things that will change

“Of course the government believes that people who have a genuine claim should be able to force their rights in compensation. Otherwise people would be able to offload the cost of their negligence onto their victim or the tax payer. But we strongly oppose any culture where people believe that if there is an injury there must inevitably be someone else to blame, and someone else to pay. And we oppose people being encouraged to believe it is always worth “having a go” , however merit-less the claim. This creates false expectations that there is easy money just waiting to be had. Some personal injury advertising does just this.”

16.04.2008

WAIL METRO www.metro.co.uk

Our culture of blame

■ Pat Cashman is absolutely right in pointing out that we are living in a culture of no personal responsibility (Metro, Tue), as demonstrated by the case of 13-year-old Kieron Saunders, whose mother is blaming the tanning salon for the fact that he got so badly burnt on a sunbed.

The same goes for the mother of Natasha Farnham, the girl who got liver disease through binge-drinking (Metro, Tue). It is, apparently, not the mother's fault that her 12-year-old daughter began drinking alcohol. Nor was Natasha herself to blame for the fact that she was binge drinking at just 14, when she landed in hospital with liver disease.

No, according to Natasha's mother, it is 'irresponsible

advertising' that's really to blame for her daughter's problem. These two incidents are both symptoms of a growing lack of personal responsibility in society — where people blame somebody else for their own actions rather than looking closer to home.

Craig Seaton, Brighton

■ Isn't it sad that a 13-year-old schoolboy feels the need to use a sunbed in the first place? When I was 13, the idea of a sunbed would have been alien to me. Only when society stops over-sexualising young people and making them feel bad about their appearance will they stop feeling that they have to mutilate their bodies to be socially acceptable.

Terry Goldsmith, London SE3



No responsibility? Natasha Farnham and her mother Michelle

16 APR 2008

How underwriting might look in 2058 (...or sooner!)

- Uniform legal system across the EU
- Consistent system of legal liability, probably codified law
- Legal liability will be mostly strict liability in most instances
- Uniform system of employee compensation, via Workers Compensation, with disease exposures pooled
- Standard liability wordings with standardised policy triggers across the EU

How underwriting might look in 2058 (...or sooner!)

- Pollution will be separate from the PL/Products section
- possibly pooled pollution underwriting, or
- separate Environmental Impairment Liability (EIL)
- ELD - compulsory insurance requirements
- separate ELD policy
- later will be incorporated into the EIL policy

How underwriting might look in 2058 (...or sooner!)

- Compulsory insurance - much more widespread
- Cars... controlled and driven by computers (deaths = nil)
- Motor insurance... cheaper
- CCTV... Black Box
- Injuries in the workplace... will fall
- Major disasters will continue to happen though

How underwriting might look in 2058 (...or sooner!)

- Organs... replaced with man-made replacements
- Limbs... replaced with man-made prosthetics (controlled by the brain)
- Severe brain damage... computer chips inserted
- Memories... uploaded
- Viruses and bacteria... controlled by computer designed drugs and by nano robots
- Future care costs... lower
- Most people with injuries will be able to recover
- Live longer... loss of earnings multipliers higher?

How underwriting might look in 2058 (...or sooner!)

- Insurers finance medical research?
- Patents?
- Central healthcare providers?
- Private medical cover...
- Care home management?