ISSUE 25 : November 2015

talking liabilities

FARADAY™

A FARADAY NEWSLETTER COVERING LIABILITY ISSUES

First Class Security
To Protect Your Assets

T +44 (0)20 7702 3333
W www.faraday.com

Welcome to our latest and last edition of 2015. It is probably fair to say that 2015 has been an extremely busy time for the insurance industry as it prepares for The Insurance Act 2015. Important reminders of some of the provisions contained in the Act are highlighted below, together with the usual array of case law and other interesting articles and legal developments. And - for those of you that play or are interested in cricket - make sure you read on!!.

We would like to wish our readers a happy and peaceful festive season and a rewarding 2016.

THE FARADAY EL/PL TEAM

In this Issue

Insurance

The Insurance Act 2015

The Insurance Act 2015 will bring about the most significant reform of commercial insurance law in over 100 years. The Act will come into force on 12 August 2016 and will apply to all insurance contracts entered into after this point. It will also apply to any endorsements entered into from that date, even if the insurance contract itself was entered into prior to 12 August 2016. What follows is a reminder of the key reforms.

The duty of fair presentation

At present the duty of utmost good faith imposes two essential requirements on a prospective insured; first to disclose all material circumstances and second to make true representations of material facts. Although the latter duty to make true representations will

Insurance

remain untouched, the Insurance Act 2015 abolishes the duty of disclosure and replaces it with a new obligation to make fair presentation of the risk. An insured will be able to satisfy this new duty in one of two ways, either by disclosing every material circumstance that it knows or ought to know, or, as a fall-back, by giving sufficient information to put a prudent insurer on notice that it needs to make further enquiries.

What the insured knows or ought to know

When assessing whether an insured has satisfied the duty of fair presentation it will be necessary to determine what it knew or ought to have known. Under the Insurance Act 2015 what is known by an organisation will be that which was known by anyone in the organisation's senior management, or those persons responsible for obtaining the organisation's insurance. What an insured ought to have known will be that which would have been revealed by a reasonable search of the available information.

Remedies for breach of the duty of fair presentation

Under existing law an insurer's sole remedy for breach of the duty of utmost good faith is avoidance of the contract ab initio. The Insurance Act 2015 introduces a scheme of more proportionate remedies that depend on whether or not the insured's breach was deliberate or reckless.

For breaches of duty that are deliberate or reckless the insurer will still be entitled to avoid the policy and retain the premium. If the breach is neither deliberate nor reckless the insurer's remedy will depend upon what he would have done if there had in fact been a fair presentation of the risk. If the insurer would not have written the risk at all then it may avoid the policy and refuse all claims but it must in that case return the premium. Alternatively if the insurer would have written the risk but on different terms, the insurer may require that the contract takes effect as if it had been written on those terms. If the insured would have written the risk but charged a higher premium, the insurer may proportionately reduce the amount it pays on a relevant claim.

Breach of warranty

At present a breach of warranty by the insured automatically terminates the contract from the date of breach. Under the Insurance Act 2015 a breach of warranty will instead serve to suspend the insurer's liability rather than discharge it permanently from the date of breach. The insurer will not be liable for losses that occur whilst the insured is in breach of warranty (unless there is no connection between the breach and the loss), but if the insured subsequently remedies the breach the insurer will be liable for losses that occur after that date. These reforms apply not only to commercial contracts but also to consumers.

The position for fraudulent claims

The Insurance Act 2015 also clarifies the position in relation to fraudulent claims. Where an insured has acted fraudulently an insurer is not liable to pay any part of the claim that has been tainted by the fraud. In addition the Act creates a new entitlement to terminate the contract as effective from the date of the fraud. In the event that the fraud is not discovered until sometime later the insurer may terminate the contract retrospectively and recover any sums paid out in relation to claims that post-dated the fraud.

First Class Security
To Protect Your Assets

T +44 (0)20 7702 3333
W www.faraday.com

FARADAY™
talking liabilities

Insurance

Avoidance for material non-disclosure and misrepresentation

Brit UW Limited v F&B Trenchless Solutions Limited [2015] EWHC 2237

F&B Trenchless Solutions Limited (the insured) was a sub-contractor which had installed a concrete micro-tunnel under a road and railway level-crossing. It had estimated that after the work, the railway track above the tunnel would settle 2-4mm, slightly less than the Network Rail's maximum permitted settlement of 5mm.

However, when the work was completed tests confirmed that the track had actually settled by 11-12mm. This subsequently increased to 15-18mm. A void also appeared in the road where the level crossing was situated.

The insured then purchased a contractors' combined liability policy, which provided cover for public liability, employers' liability and product liability. Neither the increased settlement of the track nor the void in the road was disclosed to the insurer, nor was it incorrectly stated that the insured was not carrying out works on any active railway lines.

A freight train later derailed when passing over the level-crossing and the cause was found to be severe settlement of the railway track caused by the insured's construction activities. The insured claimed that it was entitled to an indemnity for its losses, and the insurer sought a declaration from the Commercial Court that it had valid grounds to avoid the policy.

In reaching its conclusion the Court applied established insurance principles governing the duties that two parties owe to one another. Prior to entering into the contract, the insured is required to disclose every material circumstance to the insurer and to make true representations of all material facts. The increased settlement of the tracks, the void in the road, and the fact that the work had been carried out under an active railway line were all found to be material in that they would have influenced a prudent underwriter when deciding whether to accept the risk and in determining the amount of the premium. For these reasons the Court found that the insurer was entitled to avoid the contract.

The outcome may have been different if this case had come to be decided under the Insurance Act 2015 which is due to come into force in August next year. The Act abolishes the current duty of disclosure imposed on an insured and replaces it with a duty to make a 'fair presentation' of the risk to the insurer. The insured will be required to disclose every material circumstance which it knows or ought to know; or, alternatively, to provide the insurer with sufficient information to put it on notice that further enquiries are required.

Crucially, the insurer's right to avoid the policy is replaced by a scheme of more proportionate remedies. An insurer will still be entitled to avoid the contract where a failure to disclose was deliberate or reckless, but otherwise if an insurer would have entered into a policy on different terms, the remedy will reflect what the insurer would have done had a fair presentation of the risk been made. This is similar to the regime now applying to consumer policies as a result of the Consumer Insurance (Disclosure and Representations) Act 2012.

Court orders defendant employer to disclose details of insurance cover

Senior v Rock UK Adventure Centres and others [2015] EWHC 1447 (QB)

The claimant had been grievously injured in a climbing accident in the course of his employment with the defendant company. His employer admitted liability for the injuries and a trial for the assessment of damages was due to begin in July

Insurance

2015. Crucially the extent of the claimant's loss exceeded £5 million, the minimum level of cover required by law for employers' liability insurance.

The claimant therefore applied for a court order requiring his employer to disclose details of its insurance policy. The application was granted, seemingly in contravention of the general rule that parties to a claim will not be required to disclose insurance arrangements unless they are relevant to the issues in dispute.

The Court's decision to order disclosure can be explained with reference to the particular facts of the case. The employer's liability for the injuries was not in dispute and the claimant sought damages including an order for periodical payments. Section 2(3) of the Damages Act 1996 provides that a judge may not make such an order unless satisfied that the continuity of the periodical payments would be reasonably secure.

This would depend on the details of the employer's insurance policy, particularly in light of concerns that the claimant's loss exceeded the level of cover that it provided.

The Court concluded by finding that there would be no prejudice to the defendant in having to provide the information, and that since the trial judge would require it in order to determine the most appropriate order, any failure to do so was likely to result in significant problems at the trial.

General Liability

No duty of care owed by a publisher to its readers

Mandy Wall (Personal Representative of the Estate of Stephen Wall, Deceased) v British Canoe Union (2015)

The claimant was the widow of a canoeist who had drowned whilst trying to negotiate a weir. She brought a claim against the publisher of a guidebook on canoeing, alleging that it had been negligent in failing to give an appropriate warning about the weir, which the book said could be safely negotiated.

In order to succeed the claimant was required to show that the defendant publisher had owed her husband a duty of care. This meant establishing that her husband's death had been foreseeable, that a relationship of proximity existed between the two parties, and that it was fair, just and reasonable for the Court to impose a duty.

The Court found that there was no relationship of proximity between the defendant and the deceased. The canoeist had not been engaged in an activity arranged by the defendant at the time of his death, nor had he been under its skill, instruction or control.

The Court also found that it would not be fair, just or reasonable to impose a duty of care in these circumstances. If such a duty were found to exist the publisher of every guidebook on whatever subject would assume unlimited responsibility for the actions and omissions of its readers at any time after publication. Such a finding would lead to publishers avoiding topics which could result in death or physical injury for fear of being exposed to liability.

The Court concluded that the claimant had no reasonable grounds for bringing the claim and therefore it ought to be struck out.

First Class Security
To Protect Your Assets

T +44 (0)20 7702 3333
W www.faraday.com

FARADAY™ talking liabilities

General Liability

Occupier's liability for the injuries of a blind visitor who fell through a window

Pollock v Cahill [2015] EWHC 2260

The claimant, Mr Mark Pollock, was a 39 year old man staying at the home of the defendants in Henley-on-Thames. This was not his first time visiting the house and on both occasions he had slept in the bedroom on the second floor. It was a room with twin beds positioned either side of a window which had been left open. Mr Pollock was totally blind and, although he assumed there was a window in the room, he did not know where it was or that it was open. Mr Pollock fell through the open window whilst trying to make his way to the bathroom during the night. He sustained spinal and brain injuries and was left paralysed from the waist down.

Mr Pollock brought an action against the defendants pursuant to section 2 of the Occupiers Liability Act 1957. Under that section an occupier owes a duty to take reasonable care to see that visitors will be safe in using the premises for the purpose for which they are invited.

The Court accepted that occupiers are required to have regard to any known vulnerabilities of their visitors when determining the degree of care to be taken. An open window did create an obvious risk for a blind person, particularly when it was on the second storey of a house with nothing to prevent a fall to the ground below. Instead of creating the risk, the defendants ought to have appreciated it and taken steps to prevent it by warning Mr Pollock or by keeping the window closed.

The Court found that the defendants had failed to discharge their duty of care as occupiers and that Mr Pollock's injury had been caused by their breach. Judgment was given for the claimant.

Cricket umpires were not negligent in allowing a match to proceed on wet and slippery ground

Thomas Edward Bartlett v The English Cricket Board Association of Cricket Officials (2015)

Mr Thomas Edward Bartlett, the claimant, was a cricket player and captain of a cricket club. It had rained heavily prior to a scheduled match so the claimant decided to call off the match and telephoned the opposing team captain to inform him that the ground was unsuitable for play.

The opposing team captain did not accept the claimant's decision and insisted that the ground be examined by the match umpires. The umpires were of the view it was not dangerous or unreasonable for play to take place, and the match was allowed to go ahead.

During the match the claimant used a 'sliding stop' technique which involved extending one leg whilst in a crouching position. He felt excruciating pain in his left leg and was found to have suffered a soft tissue injury requiring the use of a knee brace for eight weeks. He brought an action against the umpires claiming that they had been negligent in allowing the match to take place whilst the pitch was unfit.

The Court applied the principle that referees owe players a duty of care to enforce the rules of a sport so as to minimise the risk of injury. By extension of that principle the umpires of a sporting event also owed a duty of care to the players involved in the game over which they officiate.

The Court then went on to consider whether the umpires in question had breached their duty of care by allowing the game to proceed. Whilst it would have been unreasonable to proceed in the face of an obvious risk to the safety of the players, the fact that the grass

General Liability

was wet and slippery did necessarily not mean that conditions were dangerous. It was still possible for a match to be played safely even where conditions were not ideal. The court found that the umpires had carried out a detailed assessment of the ground and that their resulting decision was not outside the range of reasonable responses.

In any event the Court found that the condition of the ground had not been the cause of the claimant's injury. In fact this had been his carrying out the sliding stop incorrectly, leading with his left leg instead of with his right. Accordingly the claimant's case was dismissed.

No duty of care owed by a local authority to ensure adequate road safety measures

Foulds v Devon CC (2015)

The claimants were the personal representatives of their son, who had been seriously injured whilst riding a bicycle on one of the local roads. He had lost control of the bike and crashed into a set of railings placed on top of a low rise wall several years earlier by the local authority. The railings broke upon impact and he fell down a large drop behind the wall sustaining serious head and spinal injuries which rendered him paraplegic. He died two years later for reasons unrelated to the accident, and the claimants brought an action against the local authority, alleging that they owed a duty to ensure that the railings were sufficiently strong to prevent a cyclist from falling over the wall.

It is a well-established principle that highway authorities owe no common law duty of care to maintain a road or to make it safer. The position is however different where an authority positively acts so as to create a danger, in which case it may be liable to any persons who are subsequently injured. The claimants therefore sought to establish a duty on the basis that the authority had positively acted by installing the railings which amounted to an assumption of responsibility.

The Court found that whilst the railings were intended to provide safety to pedestrians, they had not been designed as a form of crash barrier for cyclists. The local authority had therefore not done an act or assumed responsibility to prevent a fall to the road below if a cyclist hit the railings with considerable force or speed. The claimants' argument amounted to a proposition that once a safety measure has been installed then a duty arises to maintain it, and the Court felt that it could not accept this. The Judge concluded that the local authority did not owe a duty of care to ensure that the railings were sufficiently strong to prevent a cyclist falling over the wall, and therefore the claim was dismissed.

Environmental impairment insurance - for all (?)

Many SMEs will only discover that they are uninsured for environmental liabilities when faced with a regulatory demand for environmental restoration which may threaten the continued existence of their business.

The International Underwriting Association's (IUA) 2013 report 'Environmental Loss Scenarios' identified the potential 'black hole' in coverage in standard liability policies for many environmental risks. This built on the conclusion to IUA's earlier report 'Environment Risks: insured or not?' that specialist environmental insurance products are available in the market to fill the gap.

Unfortunately, specialist environmental insurance products are often designed for businesses with exposure to heavy environmental risks such as hazardous waste disposal, oil pipelines and brownfield remediation where losses can run into millions of pounds and

General Liability

underwriting requires analysis of detailed engineering information.

'This approach is inappropriate for the vast majority of the 50,000 incidents reported each year in the United Kingdom which arise from the day-to-day operations of routine businesses,' says Dr Malcolm Aickin of Environmental Impairment Limited, who was part of the team that created the first EIL policy back in the 70s. *'Analysis of the Environment Agency's NIRS database confirms the Agency's assertion that their interventions are increasingly cost effective, but' adds Dr. Aickin, 'they also show the Environment Agency has got much better at identifying the sources of pollution incidents and recovering the costs of their larger investigations'.*

'These can run to hundreds of thousands of pounds and threaten the survival of a small business.' Comments John Butcher, a senior broker at Independent Broking Solutions who are working with Environmental Impairment Limited to make coverage available as an optional extension to existing liability cover.

Faraday Underwriting Limited is being assisted by Independent Broking Solutions and Environmental Impairment Limited to offer policies with a separate EIL section for small to medium sized enterprises. *"We believe this offers valuable insurance protection to our SME clients at affordable premiums"* says Roger Nash, Faraday's Liability Underwriting Manager. **A targeted insurance extension can therefore prove an effective financial solution**.

Employers' Liability

Failure to establish a causative link between a breach of duty and the injury suffered

West Sussex CC v Fuller [2015] EWCA Civ 189

The claimant was employed as a receptionist in the social services department of the West Sussex County Council. One of her main tasks was to sort incoming mail and place it into various pigeon holes located throughout the building for collection by other employees. Whilst undertaking her task of delivering the mail, the claimant slipped on a staircase and sprained her wrist. She subsequently brought proceedings against her employers seeking damages for the injury.

The claimant alleged that the large amount of post she was carrying meant that she was unable to make use of the handrails or to see where she was walking. She claimed to have caught her foot on a sticky patch and to have fallen forward, being unable to grab the handrail as a result of the bulk of post.

The Judge at the first instance hearing did not accept the claimant's account of the accident, finding that she was not in fact carrying a large amount of post but only a small number of items in one hand. Nor was there a sticky patch as alleged; the fall was simply a result of her having misjudged her footing. Despite this the Judge felt bound to conclude that the Council had breached its statutory obligation to make a risk assessment of the task and to take steps to prevent the injury as required by regulation 3 of the Management of Health and Safety at Work Regulations 1999 and regulation 4 of the Manual Handling Operations Regulations 1992. The Council subsequently appealed against the finding of liability and the case came before the Court of Appeal.

First Class Security
To Protect Your Assets

T +44 (0)20 7702 3333
W www.faraday.com

FARADAY™ talking liabilities

Employers' Liability

The Court of Appeal found that there was no causal link between the failure to conduct a risk assessment and the injury suffered by the claimant. She had simply misjudged her footing - an ordinary risk inherent in using a staircase and totally unconnected to the activity of carrying post. The outcome might have been different if the circumstances had been as the claimant alleged and she had been carrying such a volume of post so as to be unable to use the handrail. But, as it was, what had happened to the claimant had nothing to do with the fact that she was carrying one or more items of post at the time. In the absence of this causative link the Court allowed the Council's appeal and dismissed the claim.

Liability for injuries sustained by an employee who came into contact with a high voltage power cable

Milroy v British Telecommunications Plc [2015] EWHC 532

The claimant was employed by a telecommunications company as an engineer. Part of his duties included operating a Mobile Elevated Work Platform, which enabled him to access high-level telephone lines via a boom attached to the roof of a van with a bucket at the end. The bucket was designed to accommodate two people, and the boom could be operated either from the bucket or from the back of the van.

The claimant had qualified as a platform operator in 2003. Up until early 2009 platforms were manned by two trained employees, one in the bucket and the other providing ground support. In 2009 the systems changed and the platforms were manned by a single trained operator with support from a ground engineer who was not platform-trained.

On the day of the incident the claimant was called out by a site engineer who needed access to a carrier pole. The claimant accessed the pole using the platform, and the site engineer got in the bucket with him rather than providing ground support. The distance between the bucket position and the high voltage power line was 4 metres. The claimant subsequently came into contact with the power line after moving the bucket for a lady on a horse that needed to get past. He brought an action for damages against his employer claiming that it had failed to provide a safe system of work and that it was vicariously liable for ground support failings by the site engineer.

In determining liability the court was required to examine details of the engineer's training back in 2003. The requirement to keep 2 metres clear of all power lines had only been displayed on one electronic slide during the training day, and although folders repeating this advice had been handed out to employees, there was no evidence that the specific paragraph had been drawn to employees' attention. The claimant's understanding was that he should not go within a 2 metre diameter of the power line, but this distance was insufficient to guard against the risk of injury, and the employer stated that the 2 metre clearance was supposed to be horizontal.

The employer later altered its guidance to clarify this point, but only an electronic version of the information was disseminated. The Court found that this was inadequate without any further notification to employees. Further computer training in 2008 was also inadequate in that it did not highlight or require the claimant to rehearse the piece of information relating to the new system. In failing to provide adequate training the employer was found to have breached regulation 4(3) of the Electricity at Work Regulations 1989 and regulation 9(1) of the Provision and Use of Work Equipment Regulations 1998.

Employers' Liability

The Court went on to hold that the site engineer had been in breach of his duty to the claimant by removing himself from a position on the ground to get into bucket, and for failing to consider alternative systems of working that did not involve using a platform in close proximity to the power line. The site engineer had been acting in the course of his employment and therefore the employer was vicariously liable for his breaches of duty.

It was accepted that the claimant had negligently contributed to his injuries by moving the bucket so close that he came into contact with the power line and by allowing the site engineer to get into the bucket alongside him. The Court concluded that the contribution of the claimant to the accident was one-third, and that damages ought to be reduced accordingly.

Health and Safety

Largest fine to date for corporate manslaughter is imposed on parent company

In July 2015 CAV Aerospace was convicted of corporate manslaughter at the Central Criminal Court in London. The related incident took place at the premises of CAV Cambridge, a wholly-owned subsidiary of CAV Aerospace. Operations at CAV Cambridge involved processing large billets of aluminium ready for use in the skeletal structures of aircraft. Due to problems of overstocking and insufficient storage, the billets were often stacked haphazardly across the premises before being loaded onto machine beds. The deceased was an agency employee working at the premises as a warehouse operative, and was killed when a stack of billets stored down a narrow walkway collapsed on top of him.

The Court found that the failure to stack the billets in a safe and orderly manner throughout the hanger amounted to a gross breach of the duty of care. The particular stack that had collapsed on top of the deceased had not been secured by the appropriate restraints, exceeded the maximum height in terms of safety limits, and was located in a walkway that should have been kept clear at all times.

The Court also found that CAV Aerospace had ignored warnings from local management about excessive stock levels and the need for a new storage system. The HSE found that six incidents of previous collapses had been reported to the company prior to the accident in question, but no risk assessment had been carried out, nor any remedial action taken.

Whilst sentencing, the Judge considered the fact that proceedings had been brought against CAV Aerospace, the parent company, as opposed to the subsidiary responsible for employing the deceased, and on whose premises the incident had occurred. This was held to be attributable to the unique set of arrangements between the two companies in that decisions relating to finance and purchasing were taken by CAV Aerospace and not by its subsidiary. Although local management did make occasional requests with respect to the excessive stock levels, ultimate power and control lay with the parent company whose failure to heed warnings and take appropriate action had resulted in a situation that led to the employee's death.

CAV Aerospace was fined £600,000 for the offence of corporate manslaughter, the largest fine of

Health and Safety

its kind ever imposed to date. The company was also convicted of exposing persons other than its employees to risks to their safety under section 3(1) of the Health and Safety at Work etc. Act, 1974.

The Judge imposed a concurrent fine of £400,000 for the latter offence, and ordered the company to pay prosecution costs of £125,000. Interestingly the Court opted not to use its powers under the Corporate Manslaughter and Corporate Homicide Act 2007 to make either a remedial or a publicity order, meaning that CAV Aerospace is not compelled to take any specified steps to remedy the breach nor to publicise details of the conviction.

Engineering company found to have a 'gross and reckless disregard for the safety of employees' in corporate manslaughter case

Huntley Mount Engineering Ltd, a company engaged in the provision of engineering services, has been fined £150,000 for corporate manslaughter following the death of a 16 year-old apprentice.

Cameron Minshull began working for the small family-run company in December 2012 as part of a government-funded apprenticeship. Part of his role involved the processing and polishing of metal components using a computerised lathe. The interlocking guard on the lathe was disabled to allow the company's workers to polish the components by placing their arms inside the machine. On 8 January 2013, Mr Minshull's overalls became entangled on the lathe and he was pulled into the machine. He died later that same day in hospital having suffered severe injuries to the head.

In the period following the incident the HSE served seven prohibition notices on Huntley Mount Engineering relating to the absence of properly functioning interlocking guards and to the operating systems for polishing the components. The Court found that the risk of injury from such practices must have been obvious to the company, its sole director and its supervisor, although not to company's employees who were mainly young, untrained and inadequately supervised.

The company pleaded guilty to the offence of corporate manslaughter under section 1(1) of the Corporate Manslaughter and Corporate Homicide Act 2007 and was fined a total sum of £150,000. This figure amounted to 160% of the gross profits made by Huntley Mount in 2011.

Mr Zaffar Hussain, the company's sole director and owner, pleaded guilty to Huntley Mounts Engineering's failures to ensure the safety of employees having occurred with his consent, connivance or neglect under section 37(1) of the Health and Safety at Work Act 1974. He was sentenced to eight months imprisonment and disqualified from acting as a director for a period of ten years.

Mr Akbar Hussain, a supervisor at the company, pleaded guilty to failing to take reasonable care for the safety of himself and other persons under section 7(a) of the Health and Safety at Work Act. He received a four month prison sentence suspended for 12 months, a fine of £3,000, and was ordered to carry out 200 hours of unpaid work.

The company responsible for organising the apprenticeship, Lime People Training Solutions, was criticised by the HSE for failing to conduct even basic checks to ensure that the company was a safe environment in which to place a young apprentice.

It was convicted in a separate trial and fined £75,000 for exposing persons other than its employees to risks from its undertaking under section 3(1) of the 1974 Act.

Health and Safety

Building and development company pleads guilty to corporate manslaughter following death of subcontracted employee

A residential building and development company, Linley Developments Ltd, has been convicted of corporate manslaughter following the death of a subcontracted employee. The company was contracted to build an extension for a store room at a development in St Albans and whilst laying the foundations carried out an excavation adjacent to a 2.9 metre wall. The wall was inadequately supported and subsequently collapsed on top of the employee as he was hammering metal pins into the ground nearby.

The company admitted to having acted in gross breach of their duty by failing to take sufficient care for his safety. St Albans Crown Court found that it had failed to conduct a risk assessment for the excavation works and to adequately assess the stability of the wall or put measures in place to prevent it collapsing.

The company was fined a total sum of £200,000 for the breach and ordered to pay costs of £25,000. The Court also made a publicity order requiring the company to publicise details of the conviction under section 10 of the Corporate Manslaughter and Corporate Homicide Act 2007.

The company's managing director and the project manager also pleaded guilty to breaching regulations 28 and 31 of the Construction (Design and Management) Regulations 2007. The managing director was fined £25,000 and ordered to pay costs of £7,500, and the project manager ordered to pay costs of £5,000. Both individuals were also sentenced to six months imprisonment suspended for two years.

HSL research suggests that increasing workforce involvement leads to improved health and safety record

The Health and Safety Laboratory has published a study on the application of one of HSE's key strategies for improving health and safety, Leadership and Worker Involvement ('LWI'). The focus of the study was on the Leadership and Worker Involvement Toolkit ('LWIT'), launched by HSE in June 2011 as a good practice guide for health and safety managers in small and medium-sized organisations.

The study followed five construction SMEs for 12 months in order to monitor progress and explore the benefits and challenges of using LWIT. It also included a mentoring programme whereby LWIT was used as a tool for providing guidance and advice to the SMEs via an appropriate industry mentor. It was thought that management perceptions of health and safety would be influenced by both the application of LWIT initiatives and the mentoring support provided.

Findings suggest a number of benefits arising from the use of LWIT, most notably improved health and safety records, company reputation and efficiency. Other benefits included a perceived increase in the competence of supervisors in dealing with issues on site, and in worker knowledge and attitudes towards health and safety risks. Management also reported a positive experience of using the toolkit and found the guidance easy to follow.

Key areas of learning for the companies involved included a greater awareness of how to improve their health and safety record through exposure to additional techniques for improving workforce engagement. Others highlighted the benefits of taking the time to stop and think about their health and safety culture, and the importance of management training in worker involvement techniques.

Changes to Legislation/Regulations

The Construction (Design and Management) Regulations 2015

The Construction (Design and Management) Regulations 2015 have abolished the role of CDM Co-ordinator and replaced it with that of 'Principal Designer'. Taking effect on 6 April 2015, the Regulations introduced transitional arrangements for the period up to 6 October 2015, by which time all commercial and domestic construction projects must have a Principal Designer in place.

The Principal Designer has responsibility for managing health and safety in the pre-construction phase of the project, including the co-ordination of risk management as between the different designers. According to HSE these changes are designed to reflect the fact that those who create the risk should manage it, and the fact that a high number of incidents that occur on site are attributable to inadequate planning and design.

The potential for legal proceedings to result from failures to discharge their statutory duties is likely to have left many designers wary of assuming the new role. With this in mind the first step for prospective Principal Designers should be to familiarise themselves with the requirements of the Regulations and with the comprehensive guidance that has been published by HSE and the Construction Industry Training Board (CITB). This will ensure a full understanding of what is expected of Principal Designers and help to minimise the risk of non-compliance. Where appropriate it may also be advisable to approach the relevant professional body for further guidance and support.

Meanwhile the HSE has recognised that it will take time for Principal Designers to become fully confident in their new role and to develop proper working practices for collaborative planning and coordination. The emphasis is on proportionality, and the extent of what is demanded will vary according to the size and complexity of the project.