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Workplace Health & Safety Report 2013

An insurer's perspective

In association with

THE Manufacturer

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Contents

The challenges for the manufacturing sector

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It will be no surprise to anyone involved in manufacturing that these have been challenging times for both small and large businesses. This is not only as a direct result of an evolving and complex risk agenda, but one that is accentuated by a difficult economic climate and an on-going squeeze on spending.

The risks are diverse. Disposable income has been impacted as spending cuts, structural unemployment and high consumer debt rise. VAT has increased whilst the value of Sterling has decreased, pushing up the cost of imports. Dependence upon international sourcing is also increasing but so, too, is the cost of raw materials.

Whilst focusing on proactive sourcing strategies, judging volumes, providing excellent service, actively managing costs and so on, ensuring onsite health and safety can often be neglected. This is particularly the case when looking to change a manufacturing model in order to respond to growth or other economic challenges.

But failing to manage health and safety effectively can have damaging consequences. Not only can it result in enforcement action, prosecution and associated reputational damage, but also spiralling insurance premiums as claims frequency increases and associated costs mount. Minimising the potential for accidents by implementing robust health and safety procedures is key to containing insurance spend. In addition, should things go wrong, being in a position of strength to defend claims can minimise cost and protect reputation.

Why does workplace health and safety remain a significant operational risk?

Increased stakeholder concerns, corporate liabilities and personal accountabilities have ensured that workplace health and safety has, for many, remained a key operational risk that needs to be effectively managed.

The impetus for this has been shaped by a number of external factors including:

- **Economic** – accidents, ill-health and enforcement activity can result in unplanned costs, particularly as a result of increased fines for breaches of legislation, Fee For Intervention (the Health and Safety Executive's (HSE) cost recovery scheme – see **http://bit.ly/FeeForIntervention**) or from associated business interruption. In addition to this, many more organisations are aware of the commercial benefits of a total loss control approach to the management of health and safety risks - for example, accident cost minimisation.

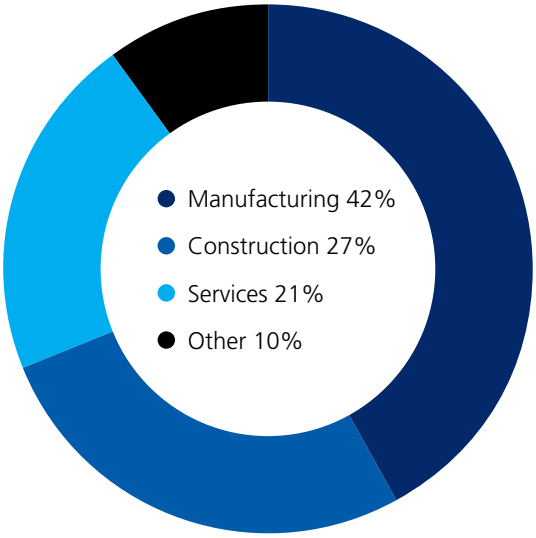
- **Technological** – continued innovation and other advances in products, processes and technology has revolutionised areas of the manufacturing sector changing not only the way people work, but also the work that they do. This has meant consideration and, in some cases, the control of emerging health and safety hazards – for example those resulting from the increased application of nanotechnology or enhanced use of robotics.
- **Political and legal** – health and safety has been the subject of considerable reform over the last four years in a bid to encourage growth and reduce bureaucracy. However, much of the legal infrastructure remains in place, particularly requirements relating to the accountability of Directors and others in senior positions including the Corporate Manslaughter and Corporate Homicide Act.
- **Social and cultural** – society is generally better informed of health and safety risks, but when coupled to the prevalence of a blame and compensation culture, awareness has increased significantly. In addition to this, increasingly the conduct of any organisation is being assessed by key stakeholders – including customers, shareholders, suppliers, other stakeholders and the general public.

> “Health and safety has been the subject of considerable reform over the last four years in a bid to encourage growth and reduce bureaucracy”

Yet establishing effective, robust and transparent processes to manage health and safety risks remains a challenge for some organisations.

The HSE ‘estimates’ that there are approximately 2.8m people working in the manufacturing sector in the UK. People are employed in a diverse range of sectors, from aerospace and engineering to textiles and woodworking. It further reports, that in each of the last 5 years in manufacturing, an average of 31 workers died in workplace accidents, there were an average of more than 4,500 reports of major injuries and about 19,500 reports of injuries that kept workers away from work for three days or more. The HSE also ‘suggests’ that many involved in manufacturing suffer ill health as a result of workplace exposures.

Revenue generated by the Fee for Intervention by sector:



At Zurich, we deal with some 40,000 personal injury claims every year. As the largest Employers’ Liability (EL) insurer in the UK, we see a wide variety of risks and many different approaches adopted to manage health and safety and improve claims defensibility. Looking at the types of losses in detail, it is clear that there are certain types that occur regularly in manufacturing premises. They include claims from employees resulting from slips and trips; falls from height; manual handling; workplace transport and being injured by tools or equipment as well as noise induced hearing loss.

See more at:
http://bit.ly/HS_Training
http://bit.ly/feeforintervention

What about the Government's health and safety reforms?

As with other sectors, manufacturing is affected by proposals for reform. The last four years have seen considerable activity relating to health and safety and reform in this area remains a key focus in the Government's bid to promote growth, reduce bureaucracy and address the issues of a compensation culture.

As far back as 2008, the HSE issued its strategy for Great Britain[1], calling on insurers to help promote good health and safety management and encourage a commonsense approach.

In 2010, David Cameron appointed Lord Young to carry out a review of health and safety and the compensation culture. The recommendations[2] made then still form the basis for reforming the current system in the UK today. However, since that time there has been significant activity to take this agenda forward.

In March 2011, the Government published a progress report on the implementation of the Lord Young recommendations as well as plans for further reform. Of particular note, were the intentions to:

- shift the focus of health and safety enforcement activity away from businesses that do the right thing, and concentrate on those with higher risk areas, and dealing with serious breaches of health and safety regulations
- seek to simplify health and safety legislation and guidance, and in doing so ease the burden on business.

On the last point, the Government set up an independent review of health and safety regulation under Professor Löfstedt. He reported in November 2011[3], advising Government that in general he found no case for radically altering current health and safety regulation. However, he did put forward a number of further recommendations. For example, he recommended that self-employed workers whose work posed no potential risk of harm to others should be exempt from health and safety law. He also recommended that to improve clarity on what is required, the HSE should review all of its Approved Codes of Practice (ACoPs).

In addition to this, we have also seen further initiatives. For example:

- the Prime Minister's Insurance Summit aimed at tackling the compensation culture and perceived issues around obtaining insurance cover
- the introduction of Fee For Intervention (FFI), the HSE's cost recovery scheme. From the 1st October 2012, those who break health and safety laws are liable for the recovery of HSE's related costs, including inspection, investigation and taking enforcement action.

As the reform agenda has developed, there have been certain challenges for insurers along the way. There has also been a concern that much of the debate has focused on the criminal law element of health and safety legislation, but not the civil law one.

One of the key recommendations put forward by Lord Young required the insurance industry to publish a 'code of practice' on health and safety. This was to be aimed at giving business and the voluntary sector reassurance that they have complied with appropriate levels of health and

safety and the ability to obtain insurance without having to employ the services of a health and safety consultant.

'Health & Safety for Businesses and the Voluntary Sector - Key Principles'[4] was published in November 2011. It sets out the insurance industry's response to the Lord Young requirement, identifying a number of key principles that insurers look for when evaluating the management of health and safety. These include senior management commitment and leadership; competent assistance; a structured approach; and the completion of suitable and sufficient risk assessments. There will be a degree of variance in the way in which individual insurance companies view these, but broadly this document outlines what insurers want to see.

Professor Löfstedt also put forward other proposals that could have a bearing relating to both Employers' and Public liability claims. In his report he raised concerns about cases where health and safety regulations impose a strict liability on employers. He found that although the Health and Safety at Work etc. Act 1974 is underpinned by the principle of 'reasonable practicability', in some instances the duty imposed is a strict one. This leaves employers with no defence, even if they have taken all reasonable steps to protect their employees.

To redress the balance he recommended a review of this to gather more information. However, keen to encourage growth and reduce the burden on business, the Government deemed the position unfair and proposed an amendment to section 47(2) of the Act. This became law on the 1st October 2013 (when Section 69 of the Enterprise and Regulatory Reform Act was enacted), removing all civil liability for breach of statutory duty relating to health and safety (other than where new regulations provide otherwise).

[1] The Health and safety of Great Britain: Be part of the solution', HSE, www.hse.gov.uk

[2] 'Common sense, common safety: A Report by Lord Young of Graffam', HMG, www.gov.uk

[3] 'Reclaiming health and safety for all: An independent review of health and safety regulation', Professor Ragnor E. Löfstedt, www.gov.uk

[4] 'Health and safety for Business and the Voluntary Sector – key principles', ABI, www.abi.org.uk

> "In 2010, David Cameron appointed Lord Young to carry out a review of health and safety and the compensation culture. The recommendations made then still form the basis for reforming the current system in the UK today"

On the face of it, this will give employers the right to defend themselves against compensation claims when they have taken all reasonable precautions to protect their employees. Also, the burden of proof will shift to employees and their families to prove the employer's negligence.

However, this goes much further than the original intention, a fact noted by Professor Löfstedt who said he hoped the Government would carefully monitor the impact to ensure there are no unforeseen consequences.

From an Employers' Liability insurance perspective, unforeseen consequences could include:

- An increased need to ensure that liability is assessed on the conventional principles of proof of breach of duty/negligence to avoid paying out unnecessarily
- Prolonged investigations and increased costs
- There may be a greater need for employers to be able to demonstrate more extensively the robustness of their health and safety systems and keep more comprehensive records to avoid insurers having to admit liability due to lack of evidence.

All of this specific activity relating to health and safety should be viewed against the backdrop of Lord Jackson's reform on legal costs (see 'Recent changes impacting civil law claims' below).

This reform agenda has evolved significantly and is set to continue into the coming months. It is one worth following, as there are implications for both manufacturers and stakeholders alike.

How Employers' Liability premiums are calculated

The major problem for an Employers' liability insurer (EL) is making a judgment on an imponderable i.e. the likely incidence and cost of future claims.

The attritional claims cost is the insurers prediction of how many claims (and their cost) the particular policyholder is likely to produce in the next twelve months period of insurance. The usual starting place is to look at the number of claims produced in the last three or five years by that policyholder. Whilst getting a claims experience for five years seems to offer more predictability than three years, there is also a greater likelihood that the hazards presented by an individual policyholder may have changed because of technological factors, making the older historical experience potentially less useful for predicting the future.

Moreover, at the smaller end of SME risks, the number of claims suffered by an individual policyholder is usually very low and not of any statistical predictive value. In such circumstances insurers tend to look at their own historical experience of risks of that or similar trades to help them make a prediction.

Sometimes policyholders consider that they would like a premium based entirely on their own experience which sounds attractive especially if their individual claims experience is minimal. However, there is a downside to this. Significantly large claims, say those that could cost in excess of £500,000 tend to occur randomly and are not necessarily restricted to certain hazardous activities. So, if you were attracted by the idea of an EL premium calculated exclusively on your own experience, and you experienced a claim of that magnitude your future premiums would rise astronomically.

Insurers tend to smooth this out by factoring in the cost of such large claims across their entire account so an individual policyholder is not funding the entire cost in their own experience. This leads to the second item in the cost make up; that of the large claim loading. All risks will include a contribution towards the Insurer's experience of

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large claims. Clearly the large claim load for a hazardous activity like roofing would be larger than that for an office based risk.

Whilst most people are familiar with EL insurers dealing with claims arising from accidents, a significant portion of the claims received by Insurers relate to diseases. Included under this heading would be respiratory diseases like asbestosis, mesothelioma and also noise induced hearing loss as well as vibration white finger.

Disease claims are immensely difficult to predict, but what is certain is that they will occur, sometimes in surprising workplace activities, for example cleaners in entertainment venues getting exposed to amplified sounds. Disease claims are known as ‘long latency claims’ because the exposure can occur for many years before the condition becomes apparent at which stage a claim is likely to be made. EL insurers load premiums for the potential for disease claims (the latency load). This load will vary with the trade activities involved.

All Employers’ liability premiums will factor in the following:

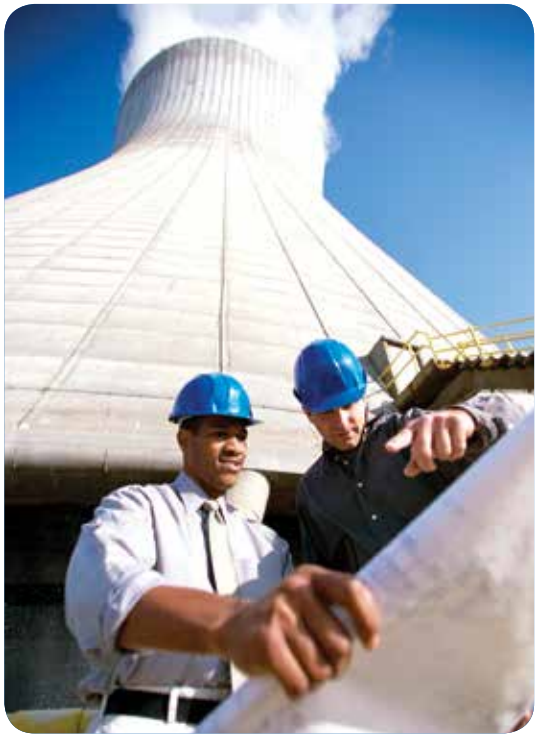
- Attritional claims cost
- Large claim loading
- Latency load - long tail claims
- Expenses
- Profit

Insurers also have to factor in all the usual costs which any product supplier has. The insurer’s expenses are largely staff and premises engaged either in the original underwriting of risks or the handling of claims. Because most insurers re-insure themselves, that cost would also be factored in.

Finally, there is the question of profit. In common with all major businesses insurers are subject to market expectations in terms of profit. All investments involve risk and as insurers very business is risk, investors will usually be looking for a higher return than from some other forms of business activity.

EL insurers are issuing policies that will indemnify for claims that arise in the period of insurance but also for claims that arise in the future from current exposures. EL insurers are currently dealing with disease claims where the exposure may go back to the 1960s, so setting premiums in the knowledge that claims may not arise until many years into the future is fraught with unknowns. For this reason, insurers have to continually monitor the external economic and legal environments as one legal decision can alter the risk environment dramatically.

So what does a well-controlled 'risk' look like from an insurer's perspective?



From an EL perspective, those manufacturers that are capable of minimising the potential for accidents and ill-health make for a better proposition. One of the indicators is that the organisation has adopted a number of key principles. Implementing these principles in a sensible and proportionate manner will help to prevent accidents; drive appropriate performance and – where things do go wrong – provide a basis for the defence of claims.

These principles are verifiable by an insurer and apply to both Employers' and Public Liability as this relates to the management of health and safety. Critically, these principles reinforce significant aspects of current statutory requirements. They also complement established and accepted guidance prepared by the HSE. As such, the principles and the framework they underpin are already in place and create no additional burden on any organisation, particularly small or medium sized enterprises.

The key principles include:

- **Senior management commitment and leadership** - For most, there should be evidence that senior managers have recognised and adopted the actions established in the 'joint code' published by the HSE and the Institute of Directors (IoD) – 'Leading health and safety at work'[5]. This sets out a number of leadership actions for Directors and others to ensure effective leadership on workplace health and safety matters. It applies to all organisations of all sizes – although further contextual guidance has been provided by the HSE for SMEs[6] and is relevant in the manufacturing sector

- **The appointment of competent assistance** – Under the requirements of the Management of Health and Safety at Work Regulations[7], most organisations are required to appoint one (or more) competent people to assist them in complying with health and safety requirements. The definition of 'competence' will not be the same for all organisations – manufacturing premises are not office premises! Therefore, competence will be determined by the size; nature of the undertaking; and its risk profile set against the required training, experience and knowledge of those individuals who are to provide the assistance. For some manufacturers, sufficient levels of competency may be as simple as having an understanding of relevant current best practice; an awareness of the limitations of one's own experience and knowledge; and the willingness and ability to supplement existing experience and knowledge, when necessary by obtaining external help and advice. Further guidance on this important issue is available from the HSE[8].

- **The adoption of a structured management approach for health and safety** - Applying a structured approach to managing health and safety is not only a legal requirement[9] for many, but essential in preventing accidents at work. Employers are required to make appropriate arrangements to ensure the effective planning, organising, controlling, monitoring and review of any preventative and protective measures that are put in place. Again, the extent of these arrangements will be determined by the size and nature of the manufacturer concerned. The HSE has provided further guidance on this[10].
- **The adequacy of general risk assessment** - General risk assessment has been a statutory requirement for over twenty years. Done properly, these risk assessments are the cornerstone of a structured, effective and transparent management approach to the control of manufacturing health and safety hazards. Under the requirements[11], most organisations are required to complete them to identify the precautions they need to take to comply with the law. Where they employ five or more employees, the risk assessments must be recorded. Of course, risk assessments won't prevent workplace accidents on their own, but if used as a first step to develop appropriate safe systems of work, then significant steps can be taken to prevent them. Similarly, when faced with a claim, being able to provide evidence of a 'suitable and sufficient' risk assessment is just one element of a defence – albeit an important one.

[5] Leading health and safety at work, Health and Safety Executive and the Institute of Directors, INDG 417

[6] available at www.hse.gov.uk/leadership/smallbusinesses.htm

[7] The Management of Health and Safety at Work Regulations, SI 1999/No. 3242, (Regulation 7)

[8] Getting specialist help with health and safety, INDG 420 and the HSE Statement to the external providers of health and safety assistance, HSE

[9] The Management of Health and Safety at Work Regulations, SI 1999/No. 3242, (Regulation 5)

[10] Managing health and safety available at www.hse.gov.uk/managing/index.htm

[11] The Management of Health and Safety at Work Regulations, SI 1999/No. 3242, (Regulation 3)

Using a best practice approach to influencing your employers' liability insurer

In the context of these principles, manufacturers who wish to contain costs in their business may not be presenting their risk management approach to maximum effect. At Zurich, it is a common experience that when we talk to customers we tease out much more relevant information to us than is usually put forward by companies in their risk presentations.

Risk presentations are often kept brief in the interests of efficiency, but this can result in the omission of information which might favourably influence an insurer. Big companies with in-house health and safety personnel are more adept at ensuring that their risk presentations communicate fully what the company is doing to maintain and improve health and safety standards.

Smaller manufacturers may initially find it more difficult to influence their insurer because premiums for them may seem too small to be able to do much by individual risk differentiation. However, the insurance market like other sectors has periods when it becomes more difficult to place risks, or terms become more expensive. This is when any manufacturer that has incorporated effective health and safety management into their business activities and can evidence this can improve their negotiating position.

Insurers vary in their underwriting appetite. What influences one insurer may not be so relevant to another. Your broker will be able to guide you in this respect. As a general rule though, being able to evidence the principles set out above will go a long way and you could also ask yourself the following:

- Do you have staff trained in health and safety issues?
- Do you carry out regular audits?
- Have you reviewed your approach to general risk assessment?

> “Risk presentations are often kept brief in the interests of efficiency, but this can result in the omission of information which might favourably influence an insurer”

- Can you evidence your approach to the provision of safety equipment and the use, maintenance and enforcement of the use of Personal Protective Equipment (PPE)?
- What about environmental improvements - sometimes an improvement undertaken for environmental reasons can impact favourably on the workplace health and safety risks, for example phasing out of chemical solvents in favour of water based ones.

If you have had problems in the past, for instance a health and safety conviction or a poor claims experience, whilst this is not positive news, the response of your company to the issue and what you have done to improve performance in the future would help to present your risk. If you have acquired another company which has a poor claims history or has had problems with regulators, then how relevant is that history to your future?

If you are putting in a new management structure and new systems such proactive measures should improve the profile of the acquired company and that information would assist your broker in presenting a more positive view of the risk going forward.

To illustrate this point, one of our customers acquired another business and it was revealed that this business was subject to on-going regulatory action because of extensive failures to protect the workforce against noise levels and dust exposure. This was clearly not a risk that would attract an insurer. However, the customer engaged the assistance of a supplier of PPE to help with the problems. In conjunction with the PPE company, a regime of immediate risk improvements was introduced including appropriate PPE. The customer was also able to commit to introducing more long-term improvements in health and safety by controlling noise and dust exposure at source as part of an approved capital expenditure programme. It was the commitment to improve the situation which we as insurers were able to respond to.

The moral is clear: if you are managing your workplace risks well, make sure your insurer and broker know about it.

Recent changes impacting civil law claims

In 1997, the Woolf Reforms resulted in frontloaded legal costs into bodily injury claims and new procedures which added to insurers (and policyholders) costs. They also introduced the concept of Conditional Fee Agreements (CFA or 'no win no fee') and ATE ('after the event') insurance, all of which were recoverable from defendants (in reality their insurers) and which added to costs. It also made litigation potentially risk free from a claimant's perspective. This led to pressures on defendants and their insurers to settle claims rather than fight them.

To address this, a review was undertaken by Lord Justice Jackson who published his recommendations in January 2010. These were implemented as part of the Legal Aid, Sentencing and Punishment of Offenders Act earlier this year and will result in some of the most significant changes that have been seen over the last ten years. They will affect the way EL (and Public Liability - PL) claims are handled across the insurance industry, and this will impact manufacturers. These changes are principally aimed at reducing legal costs and speeding up the claims process.

The changes affect EL (accident and disease) and PL (accident) claims, valued at between £1,000 and £25,000, where the accident or letter of claim (disease) is made on or after the 1st April 2013. The changes do not affect claims for PL disease, abuse, mesothelioma and clinical negligence, as well as claims where the defendant is an individual or where there is more than one defendant.

One of the key changes is the timescales that are applied to investigate these claims (referred to as

> “It is important for you to work closely with your insurer to make sure the notification of new claims is consistent, efficient and effective”

Stage 1). These have been significantly reduced from 90 days to 30 working days for EL (and 40 working days for PL). The deadline to negotiate settlement of the claim (referred to as Stage 2), will be within 35 working days. Practically, there is now a lot less time for the claims investigation process to conclude than has previously been the case.

Another change is that claims in scope will need to be submitted by a claimant's solicitor via an electronic portal. This operates in almost an identical fashion to the Road Traffic Act portal with lower fixed claimant solicitor fees applicable for portal cases. Any cases not submitted using the portal will also attract fixed staged claimant solicitor fees, but these will be higher.

Potentially, these changes could have both a financial and operational impact for manufacturers.

As we have seen, claims will be notified through an electronic portal and there are reduced timescales on decision making. As claims could go directly to your insurer via the portal, you may not be the first to be aware that a claim has been made against your policy. Where the insurer cannot be identified, you may receive a Claims Notification Form (CNF) at your registered address. If this happens, you will need to forward this onto your insurer and respond to the claimant's representative confirming your action promptly.

Where the specified timescales are not met, the claim will be removed from the 'portal' process. This could incur significant cost and it is important for you to work closely with your insurer to make sure the notification of new claims is consistent, efficient and effective. For example, it will be critical that all relevant documentation to support the defence of a claim is provided to your insurer quickly.

This may include:

- Information gathered at the scene of the accident detailing the injured parties, extent of injury, the circumstances (time, location, environmental conditions etc.); the layout of the area (including any sketches/photographs); witnesses statements etc.
- Investigation documents that may include accident books, internal accident report forms and investigation reports; first-aid reports and records; RIDDOR report forms and related documents; any Enforcing Authority correspondence relating to the event; minutes of any meetings at which the event or related matters were discussed etc.
- Relevant documents drafted to meet specific health and safety requirements and as identified in the hazard management approach e.g. risk assessments; records of maintenance, inspections and other checks; records of information, supervision and training provided; policy documentation etc.

As a result, manufacturers should review their procedures to ensure that they remain adequate in the context of these changes. This may include procedures to:

- record and investigate all incidents/accidents.
- deal with any claim or correspondence regarding a claim.
- retain relevant evidence, including CCTV, accident book, inspection records, etc.
- prioritise and reply to requests for information/ documents made by an insurer or broker.
- provide other relevant details promptly to the insurer (e.g. earnings details on EL).

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