

COVERNOTES

Winter 2011



THEFT OF METAL - THE RISKS ARE GROWING

Three years ago we reported the rise in metal prices had led to thieves stealing lead from church roofs, last year there was concern about the risk of precious metal theft and this year cable theft has made the press.

Nightmare commuters' journeys are not unusual – but in addition to the usual 'reasons' of leaves on the line, too warm, too cold – cable theft has become a common cause for delay. This August, Transport for London reported that nearly £300,000 worth of metal had been stolen from the system in the last year and is being sold for scrap. This includes £143,000 of material taken from bus stops over the last year. In addition £291,000 was stolen from the Tube, DLR, Overground and Tramlink over the last three years.

Thieves are going to even greater lengths to harvest these metals, risking life as well as long prison sentences. Non-ferrous metals such as lead and copper are desirable. They are not only costly to replace, but the theft can interrupt the running of your business, causing even further costs. Metals are often used in roof coverings and theft of these can lead to water damage in the building. In addition attractive amounts of cables and piping are often stored on construction sites – their loss can be very costly and delays build schedules, leading to increased staff costs on projects.

Most commercial property damage insurance policies will include theft cover, but cover may be restricted to theft following forcible and violent entry to or exit from the building – this may mean that theft of lead, piping etc. from the outside of the building may not be covered under the policy. On referral from us some insurers may consider removing these restrictions - though payment of an additional premium may be required. Alternatively, some policies will specifically include an extension to cover theft of metals. If you believe your premises are at risk, please make sure you notify us and we can check on the terms and conditions of your policy wordings.

In addition to ensuring you have adequate insurance cover in place, it is important to be aware of the increased risks and the security measures a business may require to help protect it. You may want to consider improving physical security to the perimeter of your premises:

- Install security cameras and security lighting to protect the perimeter of the site of your building
- Reduce ease of access to roofs – keep ladders locked and hidden away and scaffolding secure, as well as removing items that may provide a boost for a burglar such as waste bins, tall trees and water butts
- Consider putting anti-climb paint on drain pipes and don't forget the deterrent warning signs!
- Secure all equipment paying specific attention to metal based goods
- Ensure construction materials are delivered to your site on time, not early!

For guidance on the most suitable insurance cover for your business, please contact us to discuss your options.

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CRASH FOR CASH UPDATE

The term 'crash for cash' has become well understood due to rings of fraudsters around the country taking advantage of innocent motorists. The fraudster drivers deliberately stop their cars suddenly causing an innocent motorist to crash into their vehicle or two parties may even stage a crash. They will then make excessive personal injury claims for themselves and their passengers. The claims will usually involve whip-lash neck injuries which produce hefty payouts and are difficult to diagnose.

It is hoped recent convictions will deter would be fraudsters. This April, 35 people were convicted for being involved in a Luton-based scam which cost the car insurance industry £5.3 million. The scam was going on for three years before suspicious activity was spotted. In this case an accident management company was involved.

Crash for cash is not a 'victimless crime'. The activity pushes up premiums for motorists and in cases where individual drivers have been targeted, they may have lost their no claims bonus or even worse, suffered psychological trauma.

If you suspect you have been a victim of a 'crash for cash' scam, please ensure you let us know.

The Insurance Fraud Bureau (IFB) has published a list of 20 regional crash for cash hotspots:

1. **Birmingham**
2. Sheffield
3. Manchester
4. Nottingham
5. Cardiff
6. Liverpool
7. Newcastle-upon-Tyne
8. Leicester
9. Bristol
10. London South-East
11. London East
12. Coventry
13. Glasgow
14. London North
15. Peterborough
16. Leeds
17. Brighton
18. Reading
19. Guildford
20. Portsmouth



AGENCY WORKER REGULATIONS 2010

The Agency Worker Regulations 2010 came into force on 1 October 2011. Under the new legislation temporary workers are entitled to receive the same pay and benefits as permanent staff employed at the place they carry out their assignment after just 12 weeks in a job.

The new legislation has caused concern among some smaller businesses who may be obliged to match certain elements of a permanent worker's remuneration package such as bonus schemes, overtime and paid holiday. However, most benefits in kind do not have to be matched.

Primary responsibility for ensuring the correct pay is paid to the worker rests with the Employment Agency (EA) which supplies the worker. The hirer is responsible for ensuring it provides the agency with accurate details of its remuneration terms.

The regulations also give agency workers the right, from day one of an assignment, to the same access as permanent workers to certain facilities provided by hirers and information on job vacancies.

One important criteria of the legislation is the '12 week qualifying period' – this is a period of 12 weeks of employment with one employer, regardless of hours worked. The 12 week period started from 1 October, any time worked before this is not counted as part of the 12 week qualifying period. This is when temporary staff will be entitled to the same pay and benefits as permanent staff. These include, but are not limited to:

- Length of working time and night work
- Rest breaks
- Annual leave
- Paid time off for ante-natal appointments
- Elements of pay (with some specific exclusions)

If the regulations are breached either the hirer or the employment agency may be liable depending on who is responsible for the infringement.

To avoid breaching the regulations, employers must ensure that any agency workers they are hiring have access to facilities provided to the employer's permanent workers (such as canteens, childcare facilities, etc.) and information on job vacancies. After 12 weeks, agency workers qualify for equal treatment relating to pay and other basic working conditions. Hirers must ensure that they have forwarded the relevant information to the EA in advance of this date, and EAs must ensure that agency workers are treated accordingly.

THREE YEAR OLD'S DEATH - WALL DESIGNER CHARGED

A man who designed a wall which collapsed on a three year old girl, killing her, has been charged with gross negligence manslaughter. The Crown Prosecution Service (CPS) decided that the designer of the wall, which was also constructed by his company, Parcol Developments Limited, should be charged in relation to the death of Meg Burgess on 26 July 2008 in Prestatyn, Wales.

Parcol Developments Limited, of which the charged man was a director, was also charged with an offence under Section 3 of the Health and Safety Act at Work 1974 which requires all employers to conduct their business in a way that ensures, so far as is reasonably practicable, that others are not exposed to risk.

There are several types of insurance that may help pay defence costs if you or your company were to find itself in the difficult situation of facing prosecution. If necessary these could also help to compensate any victims. These include public liability insurance, product liability insurance, professional indemnity insurance and directors and officers insurance.

In addition to the above policies providing indemnity to you for sums which you may be legally liable to pay as compensation, including claimant's costs and expenses, some policies will also pay for legal costs and solicitors' fees in defending a prosecution brought for breach of the Health and Safety at Work Act 1974. Most of the policies will exclude any fines or penalties imposed.



From the design and build perspective of any project, quality control and safety are important concerns which should be addressed and documented at the planning stage. Having a proper risk management structure in place, in addition to a complete health and safety policy, may reduce the number of conditions which may lead to the cause of an unfortunate event (such as faulty design leading to a wall collapse).

For more information on risk management and insurance for your business, please contact us.

RIGOROUS RECORDS INJURY NOT CAUSED BY REPETITIVE STRAIN

A recent county court case demonstrates the importance of employers recording and maintaining records of risk assessments and health and safety training.

The claimant in the case was employed by the defendant as a manual parcel handler for just under two years. He resigned when back pain made him unable to continue in his job. He brought proceedings against his employers alleging that a previously asymptomatic back

condition had been exacerbated by his work. He claimed that the work was repetitive, had not been subject to sufficient risk assessment and that his employers had failed to provide a safe system of work.

The defendant denied liability on the basis that the job was a simple and straightforward one, had been properly risk assessed and was not repetitive. There was no previous history of any injuries arising from this work. It was accepted by both parties that the work could not have been done mechanically.

The records showed and the judge accepted that the claimant had received a significant amount of training including on manual handling and that this had been updated. There was not a formal system of breaks in place but employees could and did cover for each other on an ad hoc basis. There was inevitably some element of repetition but the injury had not been caused by this but by the claimant's posture and his twisting while lifting, both of which he had been trained to avoid. The judge found that the defendant could not have done more to protect the claimant from injury and dismissed his claim.

Thanks to QBE for providing details of this claim.



TSUNAMI SHORTAGES

In March 2011 the Tsunami in Japan devastated large areas of its North-East coast line, destroying hundreds of lives and thousands of homes. The devastation wiped out large swathes of Japan's manufacturing industry and energy systems, crippling its infrastructure.

The highly regarded 'just in time' supply chain system showed its weaknesses, when months of supplies and parts were lost and capacity to produce them weakened for months afterwards. Japan's people have shown their resilience by working together to regenerate the industries, with many factories nearly back to pre-quake capacity, though the shortages may still take a while to be filtered through the chain. There has been some suggestion that the U.K. is currently experiencing a shortage of batteries, flash memory chips and microchips used in mobile phones and computers.

Now may be a good time to consider what would happen if a company in your supply chain – whether a supplier or a customer – could not complete its part of a contract due to damage at its premises. For instance if you were a manufacturer reliant on components from a supplier who suffered a major fire, you may not be able to produce and supply your product to a customer, and may lose the business.

There is insurance cover available for this scenario under some commercial combined policies, offering automatic cover for loss of profits resulting from interruption or interference with your business due to damage at an unspecified customer's or supplier's premises, up to a given percentage of your gross profit figure. Cover can also be arranged specifically for any given customer or supplier with full details being provided to the insurer.

If your business is exposed to these types of risks, then please let us know your concerns so that we can advise you on the most appropriate insurance protection to meet your needs.

This newsletter offers a general overview of its subject matter. It does not necessarily address every aspect of its subject or every product available in the market. It is not intended to be, and should not be, used to replace specific advice relating to individual situations and we do not offer, and this should not be seen as, legal, accounting or tax advice. If you intend to take any action or make any decision on the basis of the content of this publication you should first seek specific advice from an appropriate professional.

Some of the information in this publication may be compiled from third party sources we consider to be reliable, however we do not guarantee and are not responsible for the accuracy of such.

SPEED OF SERVICE, JUST WHEN YOU NEED IT

While it is hard to dispute the benefits of buying simple insurance cover online, this ease is somewhat reversed when it comes to needing to amend your details or cover, discuss a problem claim or seek advice on a change of situation.

As we employ technical, knowledgeable and hands-on staff, we are able to respond quickly to our clients' questions and needs. You won't get lost as just another caller in a large service centre. We will try to either resolve your query instantly or speak to your insurers directly to obtain their decision (if needed).

We can advise you as we are independent and want to help deliver the best outcome for you.

It's when you need help the most that you will be glad you chose an independent insurance broker.



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