



HIGGINS CLAIMS SERVICES

LIABILITY & MOTOR INVESTIGATION | CLAIMS CONSULTANTS | LIABILITY LOSS ADJUSTERS

Did you know...that as well as providing quality photography at the scene of an accident we can now provide video as well. This can be very useful in providing an explanation of the working of a complicated machine or road junction. We can provide a range of solutions from very small .wmv files for easy email attachment to DVDs with TV quality pictures for presentation in court. We are always happy to discuss your needs and tailor a solution for you.

SHORTS

Contributory Negligence can provide an important avenue for savings in claims. The case of *Hussey v. Twomey & Ors* [2005] provides a very detailed and fairly recent decision in this area of law. It involves a drink driving case where the claimant was in the same public house as the driver from about 7.30pm until closing time. She says that she did not know that he was drinking but accepts that she did not enquire before getting into the car. There is a useful discussion about what exactly is the difference between negligence and want of care. The emphasis is on the actions of the claimant or her failure to act to look after her own safety. There was a finding of 40% Contributory Negligence in this case. There is a full report on our website.

Supervision in Schools is another area where there are many court decisions available. Some are even apparently contradictory. We have noted with interest the judgement of Justice Peart in the recent High Court case of *Wayne Maher V Presentation Junior School 2004*. The judge was very much of the belief that the requirement is for reasonable supervision and he emphasised the *in loco parentis* rule. The test is clearly what a reasonable parent would have done in the circumstances. In effect he felt that to leave children alone for a few minutes "the time it might take to boil a kettle" was not unreasonable.

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IIF Communication Guidelines for Insurers and Policyholders have some interesting implications for claims handling and investigation. The guidelines are available on the IIF website (www.iif.ie) and they commence with a paragraph on Safety Policy. The next section repeats some of the policy requirements to notify accidents and to complete report forms. It goes on to deal with preservation of the locus and CCTV evidence, the identification of witnesses and the passing of correspondence. Insurers for their part promise speedy investigation and avoidance of undue disruption to the place of work. to tell the policyholder when a claim is to hand and to make available witness statements to the policyholder for verification.

Policyholders are to send in legal documents speedily, especially important since the introduction of PIAB. Insurers agree to be available to confer with policyholders and discuss assessments of liability and damages and to consult with policyholders in advance of settlement talks whenever practicable. At its worst, failure to consult fully with the policyholder can result in vital evidence being missed entirely in the preparation of a case. In cases "deemed to be fraudulent (spurious or exaggerated)" the insurer and the policyholder agree together to fight the case and to pursue costs. From my involvement in such cases, I can say that it is vital for all concerned to be aware of the long-term energy and cost necessary to pursue this course. This is why the commitment between the two is so vital.

SKILLS

In this section we will discuss some of those skills that claims staff may have to exercise at some stage in their careers. In this issue we will commence an article about taking statements

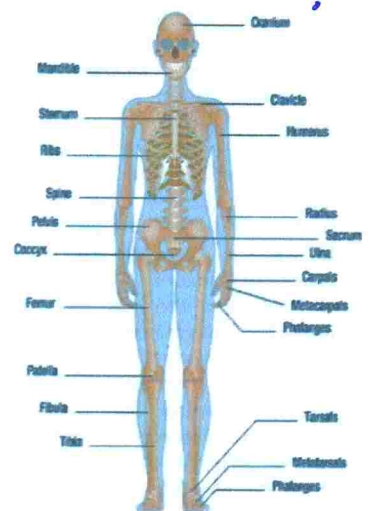
Statements (I)

Witnesses to an incident need to be interviewed carefully. An accurate record of what they have to say needs to be maintained. This is often best done in the form of a statement. It is usual for the person taking the statement to question the witness and write down the answers in the form of the statement. Typically this statement will then be read back to the witness and all of the facts will be checked. We find that this is one of the main benefits of this form of interaction. It is very easy for misunderstandings to develop otherwise. The witness is also usually asked to sign the statement as a true and accurate record of what they have to say. Most witnesses will be reluctant to sign a document that contains any inaccuracies, supposition or hearsay.

It is important when taking a statement to note that its purpose is to record evidence. There is no intention to trick witnesses into providing evidence to enable the adjuster to pursue a particular line of defence. It is equally important that nothing be left out simply because it does not suit the defence. The adjuster does have to make assessments of what is being said at all times. Hearsay is usually of little value and should be recorded in the adjuster's general notes on the case. The main focus should be the incident itself. Witnesses are often ready to speak at length about what happened after an incident.

This is because they can probably remember the aftermath much better and they may have helped in an important way. Often however, it is not very relevant to the assessment of liability.

This section to be continued in our next issue....



Skeleton: Remembering all those bones and where they fit can be a challenge. There is a bigger version of this on our website.

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www.higginsclaims.com

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