17 The Effect of Liability Insurance

Deafness is a materialisation of a risk originating from prolonged noise exposure. The Employer's Liability (Compulsory Insurance) Act 1969 introduced compulsory insurance against an employer's liability to his own employees for damages. The Health and Safety at Work Act 1974 resulted in more complete reporting of industrial injury. An increased awareness of hazards is accompanied by an increased awareness among workers of the possibility of recovery of compensation from the employers.

According to John Humphries of Insurance Brokers Sedgwick UK, insurance companies are increasingly weighting premiums to take into account risk and safety performance factors. He suggests that the cost to the employer of liability insurance should be spread out among more employers and a greater proportion of insurance costs should be borne by departments generating the most risks and claims. [1]

It is said that in the United States, when a problem arises, the insurance company will be the first to complain and the last to do anything about it (Van Atta, 1970). This is not really the case as they can raise the premium or refuse to renew insurance cover. They can effectively force employers to have realistic hearing conservation programmes.

Insurers are not amongst those who believe in throwing the tort baby out of the window with the bath water of reform. There is already a large element of no-fault provisions in our existing systems and it is not something new to import from America or Canada.

The biggest failing of no-fault schemes is that they concentrate all their efforts on smaller claims and often do little to improve the situation of those more seriously injured. To think that insurers support a no-fault system because it saves them money is wrong. Since it is claimed that there is no underwriting profit in employer's liability anyway, any gain in one quarter is lost in another. Any savings in administrative cost is easily wiped out by a lowering of the threshold level for claims (Epstein, 1984).

Insurers continue to be amazed by their apparent inability to get it accepted that the tort system, pricing premiums and loss prevention activities operated by them assist in accident prevention. Lord Robens made a statement to the contrary but insurers nevertheless persevere with their view that they make a positive contribution to accident prevention in the workplace.

Apart from the Health and Safety Inspectorate (and they suffer from severe resource problems) insurers are virtually the only organisations which go into workplaces and give advice on preventive measures. [2] (Sherman, 1979). The difference in premiums for the same risk covered can vary by 40 times the basic rate. This is because premiums are experience-weighted. Employers can regard increases in premiums as very substantial. A 25% increase over £200,000 will be significant. Doubling or tripling premiums can be crippling.

In a no-fault system, attention is drawn away from the injury. No one is interested, no

[1] Health and Safety Information, Bulletin, 100, 3rd April 1984.

[2] P.J. Sherman, Home Underwriting Manager of the Royal Insurance Group, 1979, The Pearson Report and Insurance, in Accident Compensation after Pearson, Allen, Bourn, Holyoak eds. The article is a forceful rebuttal of some of the Pearson recommendations.

one is involved and it goes into some sort of social security mechanism. A court claim will at least focus on the injury. An employer may like to change the machine to prevent it from happening again.

If a company employs, say 100 workers, it is conceivable that it has equipment worth over £500,000. The average out-of-court settlement for significant cases is £5,000 [3]. Awards of more than £10,000 have been made in court but these are the minority. Not every one of the workers will qualify for compensation; it can be cheaper (£5,000 x at most 100 = £500,000) for an employer to pay the compensation than to change the equipment. Unless, of course, the insurers raise their premium on experience-weighting.

Insurers know that compensation levels will rise. They have to quote a price today for the liability undertaken in future. In a tort system with legal case reporting, the number of credible excuses for employers will diminish. Employers will have to do more to keep ahead of negligence suits. There appears to be a litigation industry built around each compensable industrial disease (Barth, 1984).

To an insurer, safety regulations appear to lack effective action behind them, the words are hopefully meant to achieve a long term objective. On the short term, a threat of a rise in the insurance premiums is just the impetus required for stricter compliance with safety recommendations (Sherman, 1979).

The Health and Safety Commission issued a consultative document in 1981 entitled "Protection of Hearing at Work". This contained a draft code of practice for protection of hearing together with guidance notes. Subsequently, in October 1982, the Council of the European Communities submitted proposals which, if adopted, would have been far more stringent than the HSC proposals.

The employers' organisation, the Confederation of British Industries, has already suggested it would cost UK industry over £500 million to satisfy the HSC proposals. If the EEC proposals were adopted, the number of employees would have to be reduced and even so, the cost to UK industry would be increased considerably beyond the £500 million CBI estimate for UK recommendations. [3]

[3] Spotlight, Health and Safety at Work Vol 7 no. 4 April 1985: Industrial noise problems can be solved effectively, page 21.

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