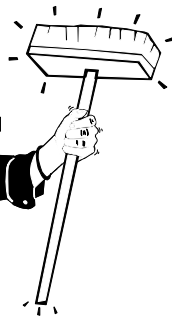


CLEAN START

FAIR DEAL FOR CLEANERS



17 October 2009

PUBLIC LIABILITY

KEY POINTS

Public liability claims present a significant and sizeable risk to property owners and managers.

- Many large claims are the result of slips and trips from “cleaning deficiencies”.
- Owners are increasingly found to share the liability of accidents, even where cleaning companies and subcontractors have indemnity clauses included in contract undertakings.
- In order to limit and control risks, owners are advised to make sure adequate systems of work are implemented at all levels of business.
- The LHMU is working with Clean Start cleaning companies to implement safe systems.
- Property owners can limit their own liability by ensuring tenders include safe working systems and thus meet the conditions necessary to implement these reforms.

“Despite a long history of such things, insurers continue to be surprised by the new and inventive ways in which people can injure themselves and others, and to be caught by the extent to which acceptable standards change over time.”¹

Public liability insurance protects owners against financial risk of legal liability to third parties for death or injury, loss or damage to property, or ‘pure economic’ loss. Public liability claims are generally classified as long tail cases with most claims taking average of three to six years to finalise and claims can be made long after the event² and fat tailed because “the probability of very high pay-out events is large relative to the probability of such events in the case of other insured risks”.³

The implications for property owners are unpredictable and at times financially burdensome potential public liability claims which make insurance difficult to manage, resource and plan for.

Although the number of bodily injury claims make up only 25% of all public liability claims (the other 75% is for property damage) they make up the majority of the cost. The size of the average injury claim is greater⁴ and the number of claims is increasing annually.⁵

¹ Institute of Actuaries of Australia, *Submission to the Public Liability Forum*, Parliament of Australia Senate, Canberra, March 2002, p.11.

² Trowbridge Consulting, *Public Liability Insurance. Analysis for Meeting of Ministers*, 27 March 2002.

³ Australian Competition and Consumer Commission, *Second Insurance Industry Market Pricing Review*, ACCC, Canberra, September 2002, p. xii.

⁴ Indicative figures from APRA for the mix of the claim types across the whole of public liability, from Trowbridge Consulting, *Public Liability Insurance*.

Slips and trips causing bodily injury as a result of cleaning deficiencies such as spills are a particular hazard for owners and managers of shopping centres.

Scott v Patterdale Pty Ltd (Queensland District Court, 27 November 2000)

The Plaintiff slipped not far inside the automatic doors. The Court found in favour of the Plaintiff citing: *"It seems to me to have been established that during the relevant day shift, only one cleaner was to be provided. What he or she could achieve was necessarily limited, given the large size of the Pialba Centre. While there might have been an expectation that cleaning staff would get to the Hunter Street entrance roughly every 15 minutes, the exigencies of the job, such as spills or messes elsewhere, might preclude this. I do not think the third party was in any sense guaranteeing or committed to achieving a Pialba Centre which was safe for the public. I think the deficiency which leads to the Defendants liability was in its system and that it, and not the third party, bears responsibility for the deficiencies"*(our emphasis).⁶

In some cases the risk to a property owner can result in significant losses, even where the cleaning contractor has their own public liability insurance and contract clauses indemnify the owner against contractual failings. In 2005 Lend Lease were ordered to pay \$512,000 after a woman slipped on a chip in a shopping centre although cleaning contractor SSL Support Services had included such a clause in their contract with Lend Lease. The fall was seen to be a result of cleaning deficiencies but Lend Lease was still found to be negligent and so not entitled to third party indemnity.⁷

Industry consultant Norine Cruise advises that to limit risk, owners need to ensure adequate systems of work are implemented at all levels of business:

*"If you look at Court proceedings where employers have been charged with offences or lost public liability claims, two things appear time and time again: 1 Duty of care has not been met. This means the employer was unable to prove that they had sufficient workplace safety systems in place, they were not known or available to the employee and records of implementation to prove compliance to those systems were not available. No systems – no evidence of duty of care. 2. Foreseeable risk. The incident before the Court was foreseeable and therefore systems could have been put in place to avoid the occurrence. In other words, the company could have identified/foreseen the risk and put risk assessment and control measure in place. It was avoidable through a risk management process."*⁸

In an effort to cut costs so they can win tenders, cleaning companies have pushed incredibly high workloads onto cleaners. The result is that it is now almost impossible to keep common areas clean and dry to avoid placing the public and tenants at risk. Clean Start works with cleaners and cleaning companies to ensure workloads are reasonable by linking shift hours to floor area <hyperlink>.

Owners are in an excellent position to minimise the risk of accidents and therefore liability by ensuring that the tenders meet Clean Start standards for workloads and work rates.

⁵ Trowbridge Consulting, *Public liability insurance*.

⁶ Scott v Patterdale Pty Ltd (Queensland District Court, 27 November 2000), cited in *Examples of Public Liability court case*, Riskex, 2006, viewed 24 August 2009, <<http://www.publicliability.net.au/Cases.htm>>.

⁷ Cairns v Woolworths Ltd (Supreme Court of the ACT, 30 September 2005), viewed 10/06/2009 at <<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTSC/2005/95.html?query=%22Elizabeth%20Cairns%22>>

⁸ N Cruise, 'Financial imposts make effective safety system imperative', *InClean Australasia*, February/March 2008, pp. 36-37.