

SLIPPING AND TRIPPING CLAIMS - FRAUD OR JUST MORE 'CONCERNS'?

Dealing with Allegations of Fraud
in OL and PL claims

clerksroom

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All the indications are that RTA Fraud has been brought under control to some extent. Many of the large Defendant insurance law firms have either reduced or closed their RTA fraud departments. However, a new type of allegation of allegation is rearing its ugly head, public liability and occupiers liability fraud. As a fraud practitioner, I have seen a spike in this type of litigation over last few months, arising from allegations by Defendant insurers. This article looks at the types of allegations being made, and what Claimant Solicitors can do to combat them both at a pre and post litigation stage.

THE ALLEGATIONS

1. It did not happen

The defendant alleges that the accident did not happen as alleged or at all. In other words, the claim is investigated for fraud. The key to this is credibility. Ensure you obtain an early statement and detailed statement from the Claimant and any supporting witnesses as to the mechanism of the accident. Further, is there any CCTV?

Ensure you obtain straight away the claimant's GP/ hospital entries and look for supporting records as to the mechanism of then accident.

Ensure either the Claimant and / or someone acting for the Claimant takes photographs of the defect, as soon as possible after the accident, with clear colour photographs with clear measurements. Ideally, the Claimant should attend when the photographs are taken to point out the direction of travel, and which part of the defect, he or she tripped over, and should not be the claims company if this can be avoided. An independent investigator is much better. Photographs taken many months later when the defect may have deteriorated further are of little help.

Ideally the photographs should be time or date stamped. If not, ensure that they are exhibited to the claimant's statement explaining how and when they were taken. If it was not the Claimant who took the photographs, a statement should be taken from the person who took the photographs and the photographs exhibited.

Defendants are now attempting to argue that the Claimant should produce the electronic images, which may show 'metadata' as to the time, date and place the photographs were taken, if for example, taken on a modern iPhone. The Claimant should be advised to keep electronic copies in case they need to be disclosed.

iPhones (and indeed other smart phones), will now track a users location at any given day or time. Try the settings in your Iphone and have a look for yourself!

Some insurers are asking for the 'metadata' many months or even years after the photographs were taken, even where breach of duty is admitted. A useful part of the CPR is 32.19:-

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Notice to admit or produce documents

32.19

- (1) *A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial.*
- (2) *A notice to prove a document must be served –*
 - (a) *by the latest date for serving witness statements; or*
 - (b) *within 7 days of disclosure of the document, whichever is later.*

The Defendant is deemed to admit the authenticity of the photographs, if they have not served relevant notice under the rule, and therefore cannot then later challenge whether the photographs are genuine or not, and at that point, the metadata, arguably becomes irrelevant.

2. The Claimant was Injured elsewhere or there was no Injury.

The insurer will argue that the injury was not causative of the accident or there as no injury at all. The same investigations as above will apply but in addition.

Clearly medical records and hospital notes are relevant, but in addition you can ask:

- a) if the accident suffered an inversion injury, send the expert the photographs of the defect / claimant's statement and ask the expert whether the mechanism of the injury is consistent with the accident;
- b) for other types of slips/ fall, it is always worth sending the expert the photographs of the defect and the claimant's statement, asking if the injury sustained is consistent with the mechanism of the accident.
- c) sometimes the Claimant may have been drinking. The Claimant's statement should deal with this, and ask the expert whether the amount of alcohol consumed, would likely cause the Claimant severe impairment, to be a causative factor.

3. Fraud Rings

Some insurers say that are now beginning to spot fraud rings in slipping and tripping litigation (as with RTA fraud), linked either via claims companies or accident management companies. Some common factors may be:-

- a) Dates searches such as Experian (address searches), Facebook, CUE (previous accidents). If links are alleged via data searches to other suspected claims, it is important you firstly establish if there is a direct link i.e the parties went to school together or if there is an indirect link i.e they may reside in the same location or used the same accident management company. The links of most 'concern' will usually be direct links. If there are direct links, the claimant must be questioned about them and an investigator such as Brownswords or Ravenstones can be instructed who have access to the same databases to interrogate the data to see if there are any credible links and carry out further data searches to undermine the insurers' searches.
- b) Claims submitted many months or even years after the accident happened, when CCTV has disappeared.
- c) Large groups of claims against one defendant within a short space of time.

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- d) Histories of numerous PL/OL accidents within a short space of time, or failed claims against other insurers.
- e) An insurer saying the claim is with a validation team or refusing to engage as to liability issues.
- f) Claims that have arrived from accident management companies or claims companies.
- g) Claims that happen late at night (no witnesses) or in locations unlikely to be covered by CCTV.

If you have any claims that exhibit these indicators, it is wise to have early conferences with Counsel. If your firm receives work from accident management companies or claims companies, it can take some time, before you realise there is a problem. More than 2, or 3 of the above factors within a claim should be raising alarm bells, and signal further investigations, to validate the claim.

Conclusions

Public Liability and Occupiers Claims fraud is likely to increase and insurers are likely to put more work into detecting and investigating this type of fraud. The fraudsters are having to find new ways of operating now the insurers have become much better at detecting and preventing RTA fraud.

It is important that Claimant Lawyers and particularly those at the front end i.e Portal Fee earners, claims investigators are able to spot the warning signs early on, and carry out early investigations to dispose of potentially fraudulent claims, before significant costs are incurred, or with a view to validating the claim.

Arguably, there is no doubt insurers will make allegations on genuine claims, for example because a claimant has used the same accident management company, but Claimant Lawyers must be alive to this type of fraud that has been around for many years, but is perhaps now becoming more prevalent. It is more important than ever for Claimant firms, that with fixed costs in fast track cases, problematic cases with poor prospects are spotted and disposed of quickly and validated cases, issued and resolved.

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