



## A Casualty Perspective

The fast-moving nature of this global pandemic, uncertainly over its duration and the long-tail nature of liability claims, make it difficult to predict the impact on the Casualty sector. However, with a sharp reduction in commercial activity in some areas and increased sales in others, new claims patterns are already emerging.

### Investigation

Investigations are being used widely, conducted by telephone or Skype, with witness statements taken remotely. Creative research plans of premises, video surveys and drone evidence and Google Maps are all being deployed. This enables us to undertake the necessary investigations to meet MOJ Portal deadlines in England and Wales and to comply with PIAB and other statutory timelines in the rest of the UK and Ireland.

We are also using these investigative methods for more complex and major losses although once government restrictions are lifted, necessary site visits, witness interviews and face-to-face discussions will take place, particularly where liability is in dispute or fraud suspected.

### Legal Liability

One question being repeatedly asked is whether an individual can make a claim against their employer or indeed a third party if that other party's actions may have resulted in them becoming infected?

Individuals and organisations have a duty to take reasonable steps to avoid harming others, whilst Employers must take reasonable care for the health and safety of their employees. If they are found to be in breach of that duty, they will be liable to pay compensation for injury, damage and losses which they have caused or materially contributed to. This includes infectious diseases and the Casualty sector is well versed in managing claims for outbreaks of E-Coli, Salmonella, Legionnaires Disease, MRSA and the like.

Companies must undertake suitable and sufficient risk assessments to identify risks and then take appropriate steps. One example, currently receiving much media attention is the provision of Personal Protective Equipment (PPE) but there are many more. Even where a breach of duty is established, it will be difficult for an infected individual to prove causation. There is still much that we do not know about how the virus is spread, its incubation period, and the long-term immunity for those who have recovered. There will be grounds to argue that an individual has been in contact with other sources of infection in the weeks prior to their illness and negligent spread or infection is not the only possible source of claim.

In the rush to ensure business as usual, it is possible that health and safety issues may have been overlooked. We can foresee allegations of failure to provide suitable/adequate tools and equipment, lack of risk assessments in respect of home workstations and increased stress resulting from lower levels of training.

Sectors such as supermarkets and manufacturers/suppliers of essential products have seen sales soar, bringing risks of physical injury to those who are moved into new roles and without adequate training and supervision. Others may suffer physical injury from over-working, in a bid to cover for the sick and self-isolating.



We may also see a rise in claims for stress or psychological injury. With a significant proportion of the workforce off work, workloads and stress levels of those remaining will increase, some placed in a domestic environment that is not conducive to work. To defend allegations, employers will need to evidence strong leadership and planning, regular contact, frequent review of risk assessments and work distribution.

## Policy Liability

Liability policies do not typically contain pandemic exclusions. Any attempts to deny cover for COVID-19 related claims are therefore likely to be centred upon the reasonable care condition.

There will be policyholders who are closed or have ceased trading when a new claim is received or when existing cases move through the litigation process, causing delay in notification and forwarding of correspondence to insurers. The issue of claim co-operation requirements under the policy may also arise.

Care will need to be taken where policy excesses (typically Conditions Precedent to Liability) apply. Policyholders who are not trading will have no cash-flow and will be unable to discharge any excess or to make payments for costs incurred within the excess.

## Quantum

### Policy Liability

COVID-19 is impacting a wide range of industries beyond those in the public eye. Farm crops and horticultural plants are going to waste as there is no labour to harvest them. Building products including materials, fossil fuels and the travel, transport and motor industries have all been hit hard. In contrast there is an increased demand for certain food and pharmaceutical products, paper, books, electrical and healthcare products. Each product liability claim needs to be assessed to determine whether COVID-19 has created a surge in demand during the claim period or created a downturn before and/or during the claim period.

### Third Party Property Damage and Financial Losses

The above comments apply equally to the third-party property damage, business interruption/loss of trade element of any liability claim. It is too soon to predict the potential impact on building costs but if companies fold, increased demand on those that survive, may push up prices.

### Personal Injury

We anticipate that Claimants will seek to settle as soon as possible to alleviate hardship in these challenging times. However, we need to be alive to the possibility of fraud, identifying cases where individuals, injured before the pandemic, seek to exaggerate their injuries in order to increase their general damages pay-out.

Claimants and their solicitors may look to settle as soon as possible, and this may be particularly true of fixed cost claims in the UK and cases currently within the PIAB system in Ireland. Previously, many claimant solicitors will have pressed on with litigation threats in order to secure an increased damages payment but as the courts will not be hearing cases in the current period, this tactic is no longer attractive.



With the suspension of non-urgent medical examinations, claimants may decide to rely on medical reports currently available whilst where there is no medical evidence, settlement negotiations will be delayed. In Ireland, independent medical examinations have been postponed, extending the 9 months assessment period, afforded to PIAB. There is a statutory provision for PIAB to extend the assessment period by 6 months, which they are opting to do in many cases, to create additional time to re-arrange medical examinations etc.

Attention needs to be paid to UK cases where standard costs apply. We are asking the claimants solicitors, to advise their clients of any delay due to lack of medical evidence but avoid further routine communication costs that will not progress matters.

Personal injury claims also require specific consideration relative to special damages. Significant numbers of employees are unable to work at present and this will include persons who suffered an injury prior to the impact of COVID-19. Now, with Government supports in place, the injured employee may be furloughed but only paid a percentage of their normal wage. In those circumstances, loss of earnings needs to be calculated to take account of COVID-19 related alterations.

There are numerous financial support schemes in operation during the current pandemic, including Universal Credit and the COVID-19 Wage Subsidy Scheme and COVID-19 Pandemic Unemployment Payment in Ireland. CRU/RBA Certificates will need scrutiny to determine if the benefit attributed to the claimant's injury or COVID-19.

## Conclusion

One thing that we can be sure of, is that there will be challenges ahead but solution-minded Casualty adjusters will deliver a high degree of comfort for Insurers.

## McLarens' Approach

McLarens UK and Ireland have established a specialist COVID-19 Complex Technical Team of senior adjusters and accountants to lead the claims arising from the Pandemic, providing technical guidance and ensuring consistency in approach. The Team comprises:

William Wilson	Head of Major Loss – Ireland	<a href="mailto:william.wilson@mclarens.com">william.wilson@mclarens.com</a>
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All new losses to McLarens should continue to be instructed through the normal channels.

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