

Claims Case Studies: Product Liability, Fraudulent Claims & Recoveries

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inspirational

Risk & Insurance



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1. Where do I live?! – a case study on a fraudulent claim.
2. We didn't start the fire! – a case study on refusal to indemnify based on a contractual term.
3. Product Liability – a run through of the law.
4. When the ground opens up! – a case study involving a sink hole.

Where do I live?!



Case study – fraudulent insurance claim

- Large escape of water – property repairs
- Suspicious – large claim for AA for 2 people
- Claim denied
- Complaint to Insurance Ombudsman – not upheld
- Proceedings issued - Counterclaim

- No-one was living in the property at the time of the incident; or
- Only one person was living in the property at the time of the incident; or
- Claim fraudulently exaggerated.



“I record immediately, that I found Mr C to be a very unsatisfactory witness. He did not provide clear and consistent answers to questions tending to offer up whatever he thought was the answer required by the questioner or such as might best sustain his case – and then immediately modifying the answer if he thought he had misjudged”.

“I found that he had made reference to a ‘wife’ although he was unmarried. He had no explanation for that. In a phone call to insurers, he gave as his address as a property ... in which he did not reside and had never resided. In another, he could not accurately give the postcode of one house he said had been his long term home. He quite plainly caused difficulty in his own family about who was buying and insuring [the risk address] when he acquired it in 2005 and in his mind re-wrote the relevant history”.

“The truth of what had happened was whatever he wanted to believe it to be...”.

“The account given by Mr C of when he lived at which properties was the most confusing and muddled part of his oral evidence...”

“By the end of his evidence I considered that I could have no confidence in Mr C’s account whatsoever”.



The Judge found:

- Mr C's sister was not living in the property at the time of the incident.
- No-one was living at the property at the time it was flooded.
- The claim for AA was fraudulently exaggerated.

“We take a very dim view of insurance fraud and will fight tooth and nail if we think someone is trying to deceive us. This particular case troubled us from the beginning and our expert teams, along with the help of Pitmans, were able to shine a light on [Mr C’s] story. This judgment sends a strong message to all would-be fraudsters and will encourage insurers to challenge claims they believe to be dishonest”.

We didn't start the fire!





Mrs C's version of events!

- An intruder entered the back garden of the property.
- The intruder entered the property via the first floor window.
- The intruder stole jewellery and foreign currency.
- The intruder set a fire in the son's bedroom.
- The intruder set a fire by the window in Mrs C's room.
- The intruder left the property through the window to Mrs C's room.



- Fraudulent claim?
- Malicious acts or vandalism caused by the insured or any persons lawfully in the property.
- FOS finding:

“I think that Mrs C’s evidence has been contradictory and inconsistent and at times more vague than I would reasonably expect”.

“The insurers’ current position of not paying Mrs C’s claim, based on the evidence received so far, is reasonable”.

Product Liability



Product liability

- Regulatory Compliance advice;
- Investigation and defence of civil claims;
- Advice and representation in respect of investigations by prosecuting authorities;
- Insurance;
- Subrogated recovery actions.

- Civil Liability
- Contract
- Negligence
- Product Liability Directive (85/374/EEC)
- Consumer Protection Act 1987

What is a defective product?



Section 3(1) – Meaning of “defect”

... there is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes “safety”, in relation to a product, shall include safety with respect to products comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.

Who is liable?

- Manufacturers
- Producers
- Retailers



Defences



Investigating Authorities

- Health & Safety Executive
- Local Authorities
- Trading Standards
- Police



Criminal Liability



- Breaches of health & safety obligations
- Health & Safety At Work Act 1974
- General Product Safety Regulations 2005

When to consider a recall

- Knowledge of a ‘safety risk’.
- General Product Safety Regulations 2005 Guidelines.

Next Steps



- Notices to issue
- Media statement
- RAPEX (Rapid Alert System for Non-Food Products)

- Food Standards Agency
- VOSA (Vehicle and Operator Services Agency)

When the ground opens up!



<http://www.channel5.com/show/sinkholes/> Series 1, Episode 3

pitmans law

- The collapse happened during the early hours of 1 October 2015.
- 10 days prior to the incident the residents noticed a small void had appeared in the pavement.
- BT placed plastic barriers around the void.
- The resident noticed that water was escaping from a pipe within the hole.



- The resident reported the matter to the local authority, British Telecom and the local water supplier.

- At approximately 1.30 a.m. on 1 October 2015 this happened:



- Ownership & responsibility of the subsoil.
- **Presumption 1** – a conveyance of land includes half the adjacent roadway.
- **Presumption 2** – *Us que ad medium filum viae* – the owner of land abutting the road is also the owner of the adjoining section of the road up to the middle line.

Presumption 1

- There must have been a conveyance.
- There was never a conveyance of the property by the owner of the highway.

Presumption 2

- Only operates where the conveyancing history of the road is unknown and where there is no direct evidence regarding the ownership of the road.
- Cannot apply in circumstances where the property neither abuts nor adjoins the roadway.

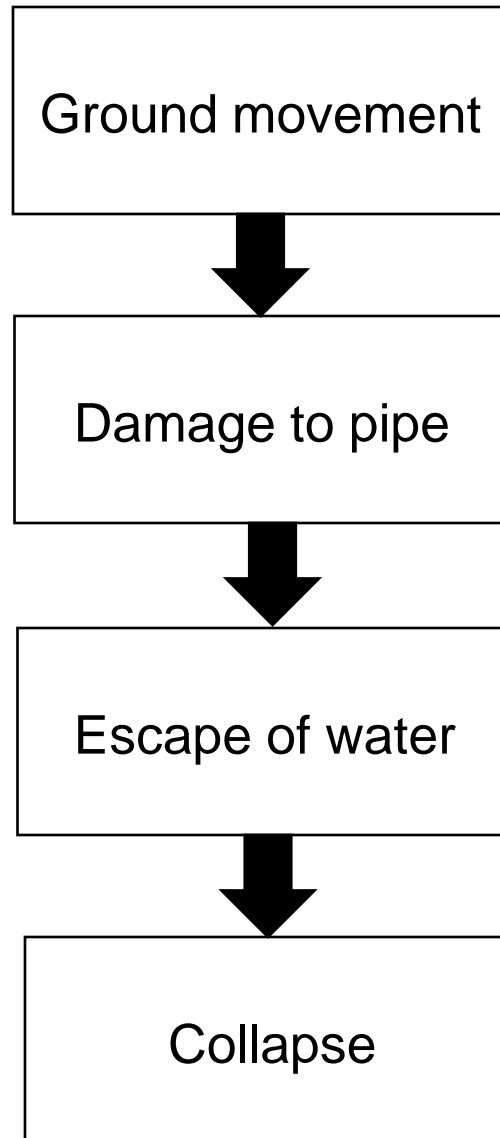


“Having carefully considered the documentation enclosed with your letter, I accept that it would appear that [the risk address] was not part of the original development of Fontmell Close, and that it was not conveyed by the owner of the highway.

I also accept that [the risk address] does not abut the highway”.

Water Industry Act 1991 – section 209(1)

- *“Where an escape of water, however caused, from a pipe vested in a water undertaker causes loss or damage, the undertaker shall be liable, except as otherwise provided in this section”.*
- Strict liability.



- Expert evidence obtained.
- The escape of water caused the collapse.
- Invited to reconsider the position in relation to liability.



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