Annual Insurance Seminar

Tuesday 25 September 2018

Dublin  London  New York  San Francisco
Welcome

Rachel Kavanagh, Partner & Head of Insurance & Risk, Mason Hayes & Curran
Health and Safety and Employers Liability

Deirdre Munnelly, Partner, Mason Hayes & Curran
Investigating Accidents

TOM ROWAN
Presentation Outline

1. Who are REC & Tom Rowan
2. Accident Statistics
3. 5 Points of Defense
4. How to Investigate an Accident
5. Good Engineering Defense
## Company Profile

<table>
<thead>
<tr>
<th>Founded</th>
<th>1998</th>
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<tbody>
<tr>
<td>MD</td>
<td>Tom Rowan</td>
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<tr>
<td>Office Manager</td>
<td>Denise Ashe</td>
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<td>Headquarters</td>
<td>Trim</td>
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<tr>
<td>Satellite offices</td>
<td>Tuam, Galway</td>
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<td>Areas covered</td>
<td>Leinster, Cavan &amp; Monaghan Connaght, Clare &amp; Limerick</td>
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<tr>
<td>Number of employees</td>
<td>14</td>
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<tr>
<td>Services</td>
<td>Forensic Engineering Environmental Consultancy</td>
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Tom Rowan

- MD of REC
- Forensic Engineer
- Degree in Civil Engineering
- Chartered Engineer with Engineers Ireland
- Diploma in Safety and Health at Work
- Director and Member of Association of Consulting Forensic Engineers (ACFE)
- Graduate Member of Institute of Occupational Safety and Health (IOSH).
Forensic Engineering

- Slips & trips
- Fall from height
- Manual Handling
- Doors & Door Closers
- Stairways
- Road Traffic Accidents
- Industrial Accidents
- Playground & Sports Facilities
- Flooding
- Farms
Environmental Consultancy

- Food & Drinks Industry, Local Authorities & Foreign Investors/Banks
  - Phase 1 & Phase 2 Commercial Due Diligence Assessments
  - Oil & Chemical Contamination
  - Planning Reports
  - Environmental Impact Statements (EIS)
  - Noise monitoring
Accident Statistics
HSA – Work Environment Breakdown

**Figure 2.25b**: Reported non-fatal injuries by work environment, 2017 (HSA)

- Construction site: 6%
- Hospital & other healthcare: 17%
- Public thoroughfare: 9%
- Production area, factory, workshop: 26%
- Area for storage, loading: 4%
- Shop, sales, service activity area: 19%
- All other: 18%
HSA – Injuries per Industry

Figure 2.19: Proportion of reported non-fatal injuries by trigger, 2017 (HSA)

- Manual handling: 32%
- Fall on same level: 19%
- Fall from height: 5%
- Body movement (no physical stress): 6%
- All other triggers: 27%
- Aggression, shock, violence: 7%
- Loss of control, transport or handling equipment: 4%
HSA – Hospitality Accidents

- Manual Handling: 34%
- Slips, trips and falls: 23%
- Loss of control of hand tool: 6%
- All other: 37%
5 Key Points of Engineering, H&S Defense
RISK ASSESSMENT
Identify this risk
If not is this reasonable?
Control measures

TASK ITSELF
Routine, Specialized, Difficult Standards Guidelines

TRAINING
Recorded Appropriate

PROCEDURES
SOP, SSWP, Established & Evolved

EXTRA
Monitor & Clean SOP Service records
Investigating an Accident

Appoint an Investigator
Investigating an Incident

- Photograph Scene & Save CCTV
- Collect facts, relevant measurements or weights
- Witness Statements
- Risk Assessments
- Procedures
- Training & Experience
- Monitoring & Cleaning, Maintenance, Service records, etc
Important – Photographs & CCTV

Compact camera / smart phone

Set the scene - context

Specific causes

Save relevant CCTV immediately
What is a good Engineering defense?

Note: I never say what case will we win
Good Engineering Defense?

- Full Reasonably Practicable Defense: Risk Assessment, SOP, Task, Training, Extra e.g. Guarding
- TP is expert – Actions contrary to expertise & training
- Slip & Fall with reasonable practicable M&C procedure
- TP role has inherent hazard which can't be eliminated but all reasonably practicable control measures implemented
- Cases that are difficult to defend
TP lies or exaggerates injury

- TP slipped & fell on wet bathroom floor
- Taps were leaking
- Company aware taps were leaking
- TP claimed completely incapacitated
Court Case

- Our client admitted complete liability in case
- Argued case based on exaggerated claim
- TP gave evidence he was completely incapacitated
- Private Investigator showed heavy working at home and as nixers
- Case thrown out
Full Reasonably Practicable Defense

• TP used a ladder to get above a guard to clean a machine during production
• TP slipped and fell onto moving part
• TP claims established procedure with poor guarding, training & supervision
Full Reasonably Practicable Defense

Risk Assessment:
- Full RA in place
- Control measures of Guarding, Warning Signage, SOP & Training & No interaction with moving parts

Procedures:
- RA was used to create SOP attached to machine which included:
  - No interaction with machine
  - No bypassing of guarding

Guarding:
- Guarding conformed to BS EN ISO 13857:2008-4 under normal circumstances – working at ground level
Full Reasonably Practicable Defense

Training:
TP training included importance of guarding, lock out, tag out procedure & never remove or unblock anything

Supervision:
Supervisor strong that this procedure was not established, had never seen TP or other operator doing same despite regular walk throughs

QC:
TP’s actions to clean during production unacceptable from a QC point of view
TP is expert

• TP was woodwork teacher
• He was making a sign for the school
• He made it during last 15 mins of a class
• He cut thumb
• TP claimed no risk assessment, inappropriate training & was rushed
Court Case

Risk Assessment:
Teacher had been instructed to & had completed a RA

Procedures:
RA was used to create procedures
These procedures were on signs beside machine
Machine was teacher use only
A mark was placed on room floor which students could not pass unsupervised
Wood work aids and PPE was provided
Court Case

Maintenance:
Saw had emergency stop and recent service

Supervision:
Teacher was instructed weeks before sign required
Dep. Principal supervised class while teacher made sign to prevent distraction

Judgement:
Teacher was expert, completed risk assessment & trained students
Adequate advance notice and employer covered supervision of class while he made sign
Slip & Fall – Good M&C Procedures

• TP slipped and fell on liquid product on supermarket aisle
• There was broken jar of liquid product
• TP claimed inadequate monitoring & cleaning
Court Case

Monitoring & Cleaning Procedures:

- SOP for monitoring every half hour & cleaning spillages
- Designated person to monitor & record on half hour basis
- Genuine records with actions including area monitored within half hour before accident and cleaning spillage after accident

Training:

- Designated person had signed SOP
- Designated person advised they continuously walk the aisles checking for spillages, untidy shelves or assist customer

Judgement:

- Unfortunate accident but difficult to see what more the supermarket could do
Slip & Fall – Appropriate floor

- TP slipped on swimming pool surround
- TP claimed slippery floor
- TP claimed inadequate monitoring & cleaning
Appropriate Floor for conditions
Pool specified a floor with a minimum PTV of 40 (low risk of slip) when wet under normal conditions for 10 years.
Tested floor with pendulum before opening the pool and determined PTV of 43 when wet.
Tested floor after 6 & 12 months and after accident using a pendulum with PTV of 40-42 when wet.

SOP:
Detergent supplier assisted with a comprehensive documented daily cleaning & deep clean procedure with detergent and rinsing
Daily cleaning records outlining locations cleaned were signed off.

Training:
All staff received training from detergent supplier and had signed off on cleaning procedure.
Slip & Fall on pub floor

**THE PLAINTIFF**

- She slipped and fell on terrazzo floor on her way to toilets
- Witnesses stated toilets and floor was very wet
- Witness claim they reported wet floor to bar staff
- Terrazzo floor had high risk of slip when wet
- Timber floor had medium-high risk of slip when wet

**THE DEFENDANT**

- CCTV showed TP fell on timber floor a few metres away from terrazzo floor
- Bar manager & security gave evidence they checked floor and found it dry
- CCTV confirmed bar manager & security attended scene
- Spillage SOP in place
- Staff trained in SOP
- Dedicated floor staff
- Toilet cleaning record in place
- Evidence from staff member that she completed it hourly
- TP wearing four inch heels
Accident Case Study

Judge Barr Judgement:

- Accepted that TP slipped and fell
- Accepted there was liquid on the floor
- Accepted witness claims toilets were in poor condition
- Accepted witness claims they reported this to bar staff
- System was not properly implemented
Accident Case Study

Judge Barr Judgement:

“This area should have been monitored carefully throughout the evening and corrective action taken when drinks were spilt on to the floor”

“People cannot be expected to look at the floor when walking across a bar”

"She was entitled to expect that the floor was dry and it was safe for her to walk across it"
Inherent Risk– Good Procedures

- TP was spraying forestry area
- Area was very rough with recently cut trees and furrows in the ground
- TP stumbled on roots & fell
Court Case

Training:
TP attended 6 day Coillte Spraying foundation course & hand Held Appliance course
1 day of course assigned to assessment course of trainees
TP had 12yrs constant work around forestation plantations

Risk Assessment
Inherent risk as forestry is rough ground
Training course identified inherent risks associated with the job & relevant control measures of training, personal care
Risk assessment for each site identified same hazards & control measures

SOP:
System of work was created by Coillte – experts in forestry
Court Case

Exaggeration:
Some evidence TP was working from home and not as incapacitated as claimed

Judgement
Forestry work has inherent risk
TP was extensively trained
Risk assessment and established system of work
When I was in FCA we travelled across forestry ground regularly and were aware of these risks
Difficult to see what else employer could do
Case dismissed
Difficult to defend Manual Handling

Detailed manual handling Risk Assessment

MH Training - Specific

Snook diagram used as maximum weights
Difficult to defend Machinery cases

• Genuine accidents
• Almost absolute liability to protect employees from moving parts
• Inevitably some guarding could have been provided to prevent accident
Summary – 5 Key Points

1. **RISK ASSESSMENT**
   - Identify this risk
   - If not is this reasonable?
   - Control measures

2. **TASK ITSELF**
   - Routine, Specialized, Difficult
   - Standards
   - Guidelines

3. **PROCEDURES**
   - SOP, SSWP,
   - Established & Evolved

4. **TRAINING**
   - Recorded
   - Appropriate

5. **EXTRA**
   - Monitor & Clean SOP
   - Service records
Questions & Answers

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Thank you

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