



**THE CHARTERED INSTITUTE OF LOSS ADJUSTERS**

**LIABILITY SPECIALIST INTEREST GROUP CONFERENCE**

**31 OCTOBER 2007**

**Part 2**

As the situation in Claimstown has developed, CIL A Insurance Company are able to provide each adjusting team with additional information to assist their consideration of the previously outlined claims:-

- As would be anticipated, in the immediate aftermath of the disaster the Wheretheres Coke and Chemical Company site and the development owned by Champagne Estates PLC, together with parts of Tort Lane itself, were sealed off by the police pending investigations by their officers, the fire brigade and the Health and Safety Executive. Nominated forensic scientists, with CIL A Insurance Company's approval supplemented by separate civil engineers, have worked closely with the authorities, and have quickly been able to provide conclusive information relative to causation.

Similar to the Champagne Estates PLC site, it has been found that Wheretheres Coke and Chemical Company site was developed subsequent to the demolition of prior industrial premises, and the ground conditions are poor. Insufficient temporary support work provided for the secant piled wall allowed the wall to move outwards on Friday, 26 October 2007 as excavation work proceeded. The removal of support allowed the disruption of fill material upon which the boundary wall was founded, and the recorded movement within the boundary wall itself.





The displacement of infill material was such that support to the underground gas pipes within the Wheretheres Coke and Chemical Company site was removed, placing strain upon the pipework system. As a result, a poorly formed weld connecting sections of pipework immediately beneath the equipment and chemical store failed, allowing gas to escape. Gas permeated into the store itself, and from what little can be determined from the severely injured maintenance man, the explosion occurred as soon as he entered the store, and switched on the lighting system. Being outside of the main factory facility, and further, the CHP plant room, electrical supplies and light switches were not explosion protected.

Gas blown back along the pipeline was blamed for the fires that subsequently developed within the main production facility, and the CHP Plant room.

- Erectit Ltd were engaged as Main Contractors by Champagne Estates PLC subject to the Standard JCT Form of Building Contract with Contractor's Design (1998 Edition), with Liquidated and Ascertained Damages set at £25,000.00 per week. Clause 22(A) applied, and there was a requirement for Clause 21.2.1 insurances.
- McDuff Ltd were engaged subject to the standard JCT DOM/2 Form, and it has been confirmed that they had no responsibility for either the design of the secant piled wall itself or temporary works. There is no issue to raise in terms of either poor workmanship or faulty materials.
- Erectit Ltd's in house engineers were responsible for all design work, and it has been confirmed that Clause 21.2.1 and professional indemnity insurances have been arranged by the rival CII Insurance Company.



- The nature of the work undertaken was such that, being in close proximity to the boundary wall, the Party Wall Etc, Act 1996 applies.
- Despite representations from their Brokers, CIL A Insurance Company have refused to reinstate the cancelled material damage/business interruption cover for the Claimstown plant and representations have already been made by Wheretheres Coke and Chemical Company to Champagne Estates PLC under the Act. Whilst it may be possible to remove associated consequential financial loss claims, Wheretheres Coke and Chemical Company are insisting that building and plant restoration works are dealt with by the nominated party wall surveyors in accord with the Act. Initial indications are that the buildings/plant reinstatement budget will be in the region of £30m. Security for expenses in accord with the Act has been requested.
- It has been confirmed that CIL A Re provide excess layer liability cover to both Champagne Estates PLC and Erectit Ltd for up to £50m beyond the primary layers.
- The failure of the nearby sub-station has been confirmed to be as a direct result of the failure of connections thereto with the CHP plant to facilitate the exportation of excess power from the factory. This situation is however quickly resolved, and all power is restored by approximately 2400 hours on Sunday, 28 October 2007.
- The pedestrian in Tort Lane at the time of the explosion has been confirmed to be Lindsay Cunningham, aged 36, and already the mother of 2 children, a son named Willis aged 9, and a daughter named Tessie aged 3. Her husband, Howard Cunningham, is the legal director of Wheretheres Coke and Chemical Company, and was the only other direct employee on site on the afternoon of Saturday, 27 October 2007. It appears that Lindsay had called to see Howard at his office en route to her parents who were looking after the children, having left the office only minutes prior to the explosion.



- The as yet unnamed baby is not expected to have anything other than limited mental development, and is anticipated to be part paralysed. Care throughout what may well be a shortened lifespan is anticipated.
- The maintenance man injured in the initial explosion has suffered extensive burns to his hands and arms. His prognosis is uncertain, but the prospects of being in a position to undertake manual labour of any form in the future are limited. He has been identified as Mr G A Robinski, a migrant worker with a wife and 2 children resident in Poland. Whilst a direct employee, he was working on a short term contract on site, for a 6 month period, with a pro rata wage of £25,000.00 per annum. Whereveres Coke and Chemical Company undertook extensive enquiries prior to issuing the short term contract to Mr Robinski, and their records show that at the time of the explosion, his work permit/visa only had 2 months prior to expiry. His prior employment record in Poland is not known.
- Finally, Mr A Driver's vehicle has been carefully examined, with all of the damage being to the near-side front and consistent with an impact with the lamp post after he veered away from the factory site. There is, however, on evidence of impact by debris from the factory to the off-side of the vehicle, which is in otherwise good condition.
- Mr Driver's passenger has been identified as Mr Cyril Crawford who is one of two partners running a local public relations agency. He was 45 years old. It has been confirmed that he received an annual salary of £75,000.00, plus profit shares which averaged £23,000.00 per annum. The PR agency is a limited liability company, with Mr Crawford and his partner being sole shareholders. A dividend of circa £3,000.00 per annum was also received.

Mr Crawford was a divorced man, and whilst he has no maintenance responsibilities to his former wife, Betty, he was required to pay £1,750.00 per month for his children, David aged 5, and Emile who is 2½ years old.



Mr Crawford entered into a civil partnership with his business partner, Mr John Axis in January 2007. Early indications are that all jointly owned property, including the business, will be bequeathed to Mr Garwyn although, funds from a variety of life insurance policies are to placed in trust for Mr Crawford's children.

Adjusting Teams are now asked to consider what supplementary investigations they would consider in the light of the foregoing, and to verbally report to CIL A Insurance Company when called providing a summary (no more than 10 minutes in length) to outline the nature of the enquiries initially instigated, revisions and supplements made after the release of additional information, and to give broad summaries of the potential for each identifiable head of claim; their views in relation to their policyholder's liability; policy liability; subrogation possibilities and lastly reserving policy.