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## Corporate Manslaughter - are you ready?



The Corporate Manslaughter and Corporate Homicide Act of 2007 is now in force. The background to the act lies in the high profile failures to prosecute companies where clearly there has been a serious breach of negligence which has resulted in loss of life - the major rail disasters of the late 90's and early 00's at Hatfield Paddington and Charing Cross for example.

By delivering a more effective basis for corporate liability, the new law will make it easier for companies and organisations (large and small) to be prosecuted.

The new law complements the existing law under which individuals can be prosecuted for gross negligence, manslaughter and health and safety offences where there is direct evidence of their involvement.

The Act builds on the legal framework and does not impose new requirements on businesses.

Under the legislation the courts now consider the wider corporate picture by looking collectively at the actions of senior management. The Act does not apply to individuals but directors can still be sued through health and safety civil suits so are still vulnerable, whether the corporate prosecution is successful or not.

The Act places a greater responsibility on businesses to ensure that they put in place effective health and safety practices. Failure to do so could lead to a business being publicly named and shamed and a fine of up to 10% of their annual turnover if a death occurs as a result of

"gross management failure".

### What should you be doing?

- Check your occupational health and safety policies and procedures are effective and robust.
- Check that your Directors' and Officers' liability insurance cover provides for the new laws and that coverage includes investigation and defence costs for both the company and the directors.
- Train staff how to handle a corporate manslaughter crisis - your company's reputation is invaluable.
- Ensure clear corporate governance and internal controls are in place and that they are effective. Where are the gaps?

## Is "The Crunch" Biting?

Firms, particularly large multi-national ones, are risking the increased threat of class actions, as a result of rising volatility in the financial markets. This may become more evident as the full impact of the subprime "crisis" and the subsequent liabilities, evolves worldwide.

Companies with a lot of debt may see problems when it comes to refinancing or if interest rates go up. Indeed, the number of bankruptcies in Europe could rise as a result of tighter credit controls - bankruptcy related claims being the most common form of Directors and Officers Liability claim in Europe.

There is already some evidence that credit conditions have tightened and many SME's report that they are anticipating a deterioration in the availability of capital to their business in the future.

In addition to this, an area which is also developing is the growing prominence of situations where large investors take issue with the way in which a business is being managed. Shareholders can launch a claim in order to prevent the management taking action in respect of mergers or the sale of assets. The current legal framework in Europe limits the effectiveness of such claims but these are nonetheless part of a growing trend.



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### Q & A

Do you have any specific questions for our Risk Manager, Mark White - what topics are you interested in reading about in centralrisk?

If you have any specific questions about any insurance or risk management related topic please let us know and we will do our best to provide guidance and other helpful information (links to other sources of information etc.) to you and include this within our next publication.

Please send all questions to Mark White at [mark.white@central-group.com](mailto:mark.white@central-group.com)

# Kidnap - Protecting your Employees



“Firms may be surprised to know that frequently the company is the focal point of a kidnap case, not the family or the authorities.” Leslie Edwards of Clayton Consultants discusses some of the measures required to minimise the risks associated with a kidnap threat. (Statistics by Jon Lee of JML Consulting.)

## Managing risks associated with a kidnap threat

You are the risk manager of an Aberdeen-based medium-sized oil service company. It's 4.30 p.m. on a Friday afternoon and the telephone rings. Four of your UK-based staff on duty in Nigeria have been kidnapped for ransom. The kidnappers are demanding US\$5 million for the release of the men.

What do you do? What is your priority? What do you tell their families? Have you been trained to deal with this kind of incident?

## 26 UK nationals kidnapped in Nigeria in 2006-2007

The oil-rich Niger Delta region of Nigeria has seen an explosion in the number of foreigners kidnapped for financial or political gain. Seven foreigners were reported kidnapped in Nigeria in 2005. That figure increased to 72 in

2006 and 223 in 2007. This exponential increase has been largely the result of activity by the Movement for the Emancipation of the Niger Delta (MEND) and other armed militant groups. Twenty six of the hostages were UK nationals.

Of the 295 foreigners kidnapped in 2006/07, five died as a result of injuries sustained during their abduction - including a Briton killed when the kidnappers' boat was attacked by the Nigerian Navy. One Syrian hostage died of illness very shortly after his release.

Nigeria may be a special case but expatriate employees are at risk of kidnapping where judicial and police systems are weak or corrupt, there is a huge disparity between rich and poor and there is political and economic breakdown.

## Kidnapped Britons still held in Iraq

The case of 5 Britons kidnapped

and held in Iraq since May 2007 illustrates the extreme risks that employees and employers are prepared to undertake. Somewhere in the UK their families anxiously await news; their employers too will have expended considerable human and emotional effort in trying to secure their release. The outlook is not good. More than 300 foreigners have been abducted in Iraq since kidnapping erupted there in April 2004. Of these, 149 have been released, 56 have been killed and 86 are missing presumed dead.

## Better ransomed alive than rescued dead

Worldwide kidnapping figures are always incomplete because most cases are never reported to the authorities. Indications are that 20,000 kidnaps are reported annually. The true figure may be two or three times that. Current kidnap hotspots include Afghanistan, Algeria, Colombia, Haiti, India, Indonesia, Iraq, Mexico, Nigeria, Philippines, Somalia, Venezuela and Yemen. The majority of these kidnaps are settled safely and quietly by the payment of a ransom or some other material concession.

“It is better to be ransomed alive than rescued dead,” an experienced kidnap adviser told me during my training. Quite simply, in many parts of the world the security forces do not have the skill and experience to carry out a raid to free hostages without putting those they are trying to rescue at extreme risk. In many countries, including Venezuela, security forces are involved in some kidnappings. So a payment of a ransom is, in most cases, the lowest-risk option.

## Many victims sleepwalk into their own kidnaps

Of the 54 kidnap cases handled by Clayton Consultants during 2006/07, a significant number of the hostages “sleepwalked into their own kidnap”; their kidnap being entirely foreseeable and avoidable. Employees and management must be ‘kidnap aware’ - alert to the threat and alive to the preparations that prospective kidnappers must make. When conducting surveillance if the kidnappers decide the target is too difficult or too “kidnap aware”, they will often move to an easier target. Avoidance techniques depend very much on the local conditions and training must be tailored accordingly: what may be appropriate in Latin America may not be in Nigeria.

## Kidnap survival requires training

Staff need to be trained how to survive a kidnap. In a recent case in Nigeria, four Western hostages had not received any training prior to capture. The kidnap lasted almost a month. Throughout the ordeal, the hostages thought they would be killed. Had the men undergone training prior to deployment, they would have known that the chance of them being deliberately killed by kidnappers in the Niger Delta was remote. Lacking this knowledge, the men suffered unnecessary emotional trauma.

## Kidnap management should be handled by a crisis management team

Frequently the company is the focal point of a kidnap case, not the family or the authorities and managing the kidnap is a task best shared by a crisis management

## Cyber Risk – Directors Exposed?



Worried about Cyber Crime? What have you done to minimise your exposure - do you know what your exposure is?

It is expected that the threat of directors being the subject of lawsuits resulting from cyber risk losses will increase over the next few years. Directors may be held accountable for losses incurred to the business and shareholders if they fail in their duty of care and do not take meaningful steps to minimise the likelihood and severity of cyber risks and the resultant losses which can be incurred - including phishing, denial of service, improper data manipulation or data loss.

Recent examples of large scale loss of data such as the NHS losing patient data and Revenue and Customs “mislaying” 25 million child benefit records should keep the risks on the boardroom radar.

It is not just lawsuits from those outside the business that should be considered. Directors could even find themselves being sued by employees or shareholders for not taking appropriate measures to prevent hacking, or failing to back up data.

Directors need to take action to protect the assets of their business against cyber crime or face the potential consequences.

### What can you do?

Whilst there are insurance policies available which will provide some degree of protection, directors should also look to prevent the cyber risk in the first place by:

- Develop strong IT security defence - and ensure that the policy is upheld
- Put in place a business continuity plan - and test it regularly.
- Raise awareness throughout the business to create a positive security culture.

team within the company. This team must manage pro-actively 5 groups of people: the families of the hostages, the authorities, other employees, the media and lastly the kidnapers. Chief executive officers who think they can run it alone may be in for a shock. The best method of training is the kidnap simulation exercise which gives all interested parties in the organisation "ownership" of the challenges involved in achieving a safe resolution.

**The value of Special Risks insurance**

Cases can go on for weeks, months and sometimes years and are expensive to manage. Special Risks Insurance is the name traditionally given to insurance against kidnap. Contrary to popular belief, the insurance company does not pay ransoms directly to the kidnapers but will reimburse insureds for losses, including ransoms.

The real value of the insurance is the provision of a highly-experienced kidnap response consultant to advise the company for the duration of the incident. In many cases, the consultant has lived and worked in the incident area and speaks the local language. The consultant will deploy just about anywhere for any nationality of hostage, whereas government agencies such as the British Foreign & Commonwealth Office and U.S. Federal Bureau of Investigation are often limited to deployments for British and American citizens only and are also inhibited by political factors.

**Safe release of a hostage is consultant's objective**

The consultant's objective is the safe release of the hostage. Catching kidnapers or solving crimes is not part of the consultant's mission. Instead, the consultant will guide the crisis management team through the complex negotiations with the kidnapers and advise on the management of the other 'factors' in any incident.

Good Special Risks Insurance policies will also provide preventative services, such as training and crisis planning - usually supplied by the same consultants who will respond to a live incident.

**No part of the world is immune**

Kidnapping is an ancient crime and continues to be profitable. No part of the world is immune. Organisations of all shapes & sizes have a responsibility to protect their employees. A kidnap for ransom insurance policy can help prevent and minimise some of the high risks involved in deploying staff to areas where kidnapping is on the local menu.

*Leslie Edwards leads the Clayton Consultants team responsible for kidnap resolution in Africa, Europe and the Middle East. He was formerly an infantry officer in the British Army and has as been involved in kidnap resolution for 11 years, successfully resolving kidnaps in Afghanistan, Iraq, Nigeria and Latin America. Clayton Consultants, a Triple Canopy company, delivers crisis management consulting services worldwide.*

*Visit [www.claytonconsultants.com](http://www.claytonconsultants.com) to subscribe to the K&R and Extortion Monitor and Nigeria RiskBrief.*

# First Minister Officially Opens Crown House



First Minister Alex Salmond, performed the official opening of our new HQ on February 19th, 2008 and this marked the start of a new era for Central Insurance Services.

The First Minister's visit follows a management buy out (MBO) which concluded in January 2008 and which secured the future independence of CIS at a time when many medium sized brokers are being swallowed up by larger predatory operators.

The move to a new HQ in Westhill from the city centre location where the company first opened for business 30 years ago, allied to the MBO, is part of a long term strategy aimed at ensuring the business continues to grow while remaining in local ownership.

The company, which employs 70 staff, predicts significant growth, both organically and by strategic acquisition, with an ambition to double the company's income in the next five years.

First Minister Alex Salmond said: "I am delighted to open this £3 million development - a sure testament to Central Insurance Service's confidence and future in Scotland. These impressive new headquarters provide a great working environment for the 70 members of staff working for CIS. "My Government has been clear that its overarching purpose is to increase sustainable economic growth in Scotland.

"The financial services industry is vital to our plans to build a Celtic lion economy in Scotland and we are committed to providing the industry, and growing independent companies

like CIS, with the support needed to flourish."

CIS managing director, Iain Henry, said the company were committed to retaining its independent status in the face of increased consolidation in the insurance broking industry which last month saw another Aberdeen broker being taken over by Towergate Partnership.

Mr Henry said: "While other companies in our sector are fast disappearing through takeover and acquisition we are here for the long haul and are more focussed than ever in making sure Central Insurance will be independently owned for at least the next 30 years of our history.

"The MBO and the move to a modern headquarters heralds the start of a very exciting period in the development of CIS. We have set out our stall and have ambitious targets to reach with regards to increasing our client base and taking revenue to record levels which will consolidate our position as Scotland's leading independent broker."

"I am delighted the First Minister, Alex Salmond, has been able to join us today to perform the official opening of Crown House and we are pleased he is taking a close interest in the development of our company and the insurance broking industry in Scotland."

Crown House was named after the Aberdeen street where the business was based when it was established in 1973 and Central Insurance is the first company to open for business in Phase 2 of the Arnhall Business Park development at Westhill.

**Slips, trips and falls at work cost Scotland £67 million**

Every week one person dies from a slip, trip or a fall, and every 25 minutes, someone breaks or fractures a bone at work, according to the latest figures from the Health and Safety Executive (HSE).

The HSE recently launched the 'Shattered Lives' campaign, to highlight the devastating consequences of simple slips, trips and falls in the workplace.

In Scotland last year 4,081 people were injured and there were five fatalities as a result of a slip, trip or fall, costing the country over £67 million - one third of all accidents in Scotland.

Introducing the 'Shattered Lives' campaign, Stewart Campbell HSE Director Scotland said:

"Each year slips, trips and falls cost

the British society nearly £811 million. But what these figures don't reflect is the extent to which these injuries affect individual workers and their families.

Slips, trips and falls can be viewed as being minor, funny accidents but the effects are not. They can lead to major injuries, and a lifetime of disability or time off work and in worst cases fatalities. 'Shattered Lives' will encourage people to change their attitudes: if you spot a hazard, don't assume 'somebody else will sort it out'.

Slips, trips and falls also shatter businesses through costs such as employee absence, sick pay and reduced productivity. Irrespective of the size of the business and the job that you do, it could happen to you."



## Health & Safety Update

### Alfred McAlpine fined £250,000 over roadworks death

Alfred McAlpine Capital Projects Ltd. has been fined £250,000 with £5,859 costs at Maidstone Crown Court in connection with the death of a motorcyclist at a roadworks site in August 2005. The company failed to properly plan, inspect and maintain the project. A number of deficiencies in signing led to the motorcyclist colliding with temporary concrete crash barriers laid in a line across the road, no warning signs or traffic cones were placed along the route to warn drivers of the closure.

### Forklift driver prosecuted

The operator of a forklift truck has been fined £1,750 having been convicted of breaching S.7 of the Health and Safety at Work Act 1974 as a result of a workplace accident in which another employee received major injuries when struck by a forklift truck at Eardisley Sawmills, Herefordshire. The forks were loaded with a stack of 12 modular sheds which significantly obscured the operator's vision, causing the accident.

### HSE and HSC merger closer

Draft legislation is now before Parliament that will eventually lead to the merger of the Health and

Safety Commission and its Executive arm. The draft law will enable the change by amending the Health and Safety at Work etc Act 1974.

### Legislation Watch

New legislation coming into effect within the last few weeks includes the following:

- Health and Safety (Fees) Regulations 2008
- Building (Amendment) Regulations 2008
- Gangmasters (Licensing Conditions) (No.2) (Amendment) Rules 2008
- The Corporate Manslaughter and Corporate Homicide Act 2007

### First UK case of "popcorn worker's lung"

A Yorkshire man is believed to be the first person in the UK to develop "popcorn worker's lung", a breathing condition affecting workers in the food packaging industry. There have already been a number of cases in the US involving people working in the popcorn manufacturing and packaging industry. The condition is said to be caused by exposure to the chemical diacetyl, an agent used in food manufacture which imparts a butter flavour to food and is known to cause irreversible lung damage when inhaled.

## North of Scotland Group - Institute of Risk Management



Following significant interest across the region, representatives from more than 20 north east companies attended the inaugural meeting of the Institute of Risk Management's North of Scotland branch which was held on February 28th, 2008 at the offices of Central Insurance Services.

Representatives from a diverse range of business sectors took part including insurance broking, fund management, offshore training and services, life sciences, NHS, oil and gas, accountancy, engineering, haulage and transport.

Mark White, Risk Manager at Central Insurance Services was elected chairman of the group and Doug Smith of Marsh (UK) elected secretary.

Delegates discussed many different areas of interest, including enterprise risk management, crisis risk management/business

continuation management, slow disasters /emerging risks, environmental risks and risk reporting.

Mark White said: "I am delighted with the response we've had from a variety of businesses across the north east of Scotland and it confirmed there is a genuine need for this type of forum which will share risk management knowledge."

"The group will provide great networking opportunities for people from a multitude of backgrounds and together we can look at problems from different perspectives and encourage best practice in the risk management profession."

The next meeting has been set for Thursday 1st May at Central Insurance Services, Westhill, Aberdeen, when the main topic for discussion will be the Corporate Manslaughter and Corporate Homicide Act.

The Chief Executive of the IRM, Steve Fowler, will be addressing the Group at their August meeting and will discuss the IRM and its wider activities and initiatives.

**For more information on IRM or to take part in the next meeting, contact Mark White at [mark.white@central-group.com](mailto:mark.white@central-group.com).**

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