

# The painful reality of slip-and-trip insurance claims

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The growing liability risks faced by South African businesses was once again highlighted by the R7.1m claim filed against Woolworths by a customer who stumbled and fell over a packing crate.



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Personal injury claims are increasing in severity with each passing year. Looking at our own statistics, the average intimated values for personal injury (slip-and-trip) claims have risen from R172,600 to R270,690 between 2016 and 2018. This essentially means that the value of claims by individuals who sustained injuries on an insured's property, grew by over 56% in a space of two years. The frequency of claims in this category has also increased exponentially.

One of the main reasons for this rising litigation risk is that the public has become more aware of their rights in personal injury cases. In addition, claims for pain and suffering are becoming progressively larger and are often inflated, while claims for future loss of earnings tend to be exaggerated. The arena of personal injury claims also sees a high number of spurious and even fabricated claims.

However, even in cases where claims are obviously inflated and likely to be dismissed or greatly reduced, businesses could still face crippling monetary losses. From what we have seen, the cost of adequate legal defence has gone up by between 8% and 10% annually in recent years. When considering the inflationary effect that legal costs have on liability cases that routinely take three to five years to reach settlement, this represents a potentially catastrophic monetary loss for the uninsured business.

## Popularity of litigation funders

Another area of concern is the role of litigation funders and attorneys in driving these claims. The average South African consumer cannot afford the costs associated with pursuing a claim in court, especially against large corporations. However, recent years have witnessed a major increase in the popularity of litigation funders.

Individuals pay a premium to these entities in return for the promise that they will fund the costs of legal representation, in the event that the policyholder requires it. The concept may appear to be advantageous for all the parties involved - the insurer, insured and the legal representative. However, drawing out the litigation process often means that the legal representative has an opportunity to rack up more fees. In some cases, unscrupulous legal representatives play on the fact that most plaintiffs are lay people who have little to no knowledge of the onus that needs to be discharged in a civil claim for liability to attach to the defendant.

Consequently, drawn out litigation in instances where the plaintiff's claim is not valid in law, often results in the court handing down a costs order in favour of the defendant. Plaintiffs need to become more aware of the fact that property owners are not necessarily liable for each and every incident of injury or damage to property by virtue of the fact that an incident occurred on their premises.

## **Taking liability risks seriously**

These trends are likely to continue well into the future, which is why businesses must ensure that their broadform liability insurance policies, reporting procedures and their risk management measures are in place and up to date. On the positive side, it seems that the high-profile liability cases in past years have helped to raise awareness among businesses, and we are witnessing a gradual change in the attitudes towards risk management.

There are signs that both brokers and their clients are taking their liability risks more seriously than before, there is still room for improvement. As the litigation habits of the South African public continue to change and pose bigger risks for businesses, there is a growing need to adopt a more thorough approach to how liability risks are managed and insured against. This will ensure the sustainability of South Africa's business sector, in spite of the increasingly litigious market.

## **ABOUT THE AUTHOR**

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