

*The Chartered Institute  
of Loss Adjusters*

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# Contractor All Risks for High Value Homeowners

*1pm – Alexandra Suite  
CILA Conference 2016*



## Speakers

### **Bill Wilson**

*Director UK Operations*



Insurance Engineering Services & *Chairman* of the CILA  
HNW & Specie SIG

### **Timothy Carpenter**

*London Manager for HNW*



Cunningham Lindsey

### **Matt Deaville**

*Partner*



Kennedys Law LLP

# Market positioning



## *Case Study 1*

- Front view of risk address showing neighbouring property



# *Risk Address*



- Parties Involved
  - Know who your dealing with
  - Interior Designer, Chief Executive & Retired Lawyer
- Contract Works:
  - Basement Extension and complete refurbishment



# Contract Works

Basement Extension-  
Planning granted from  
Royal Borough of  
Kensington and Chelsea



Complete refurbishment works  
at risk address at first floor level  
at risk address

Rear Excavation works



## *Policy Cover – All Risks*

- Existing Structure £1,000,000
- Contract Works £990,000
- Legal Liability as property owner - Non Negligent Damage cover extension





## *Party Wall Awards*

- What is an Award?
- Impact of an Award
- Copy of condition survey
- One or two surveyors?



# Claim

- Damage to both neighbouring properties along the Party Wall
- Party Wall Surveyors fees for both neighbouring properties



# Claim



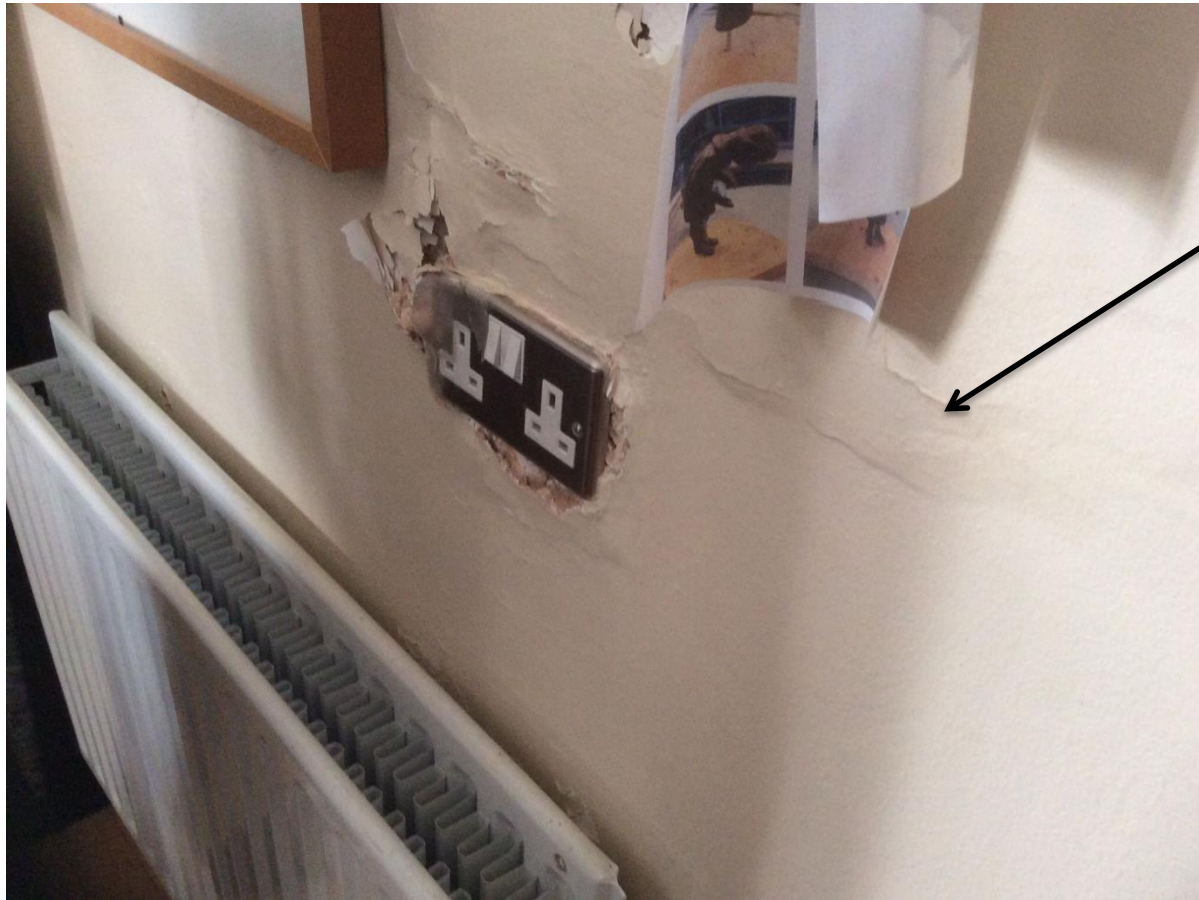
Cracks under  
the stairs near  
Party Wall

# Claim



Further Damage in  
neighbouring property  
No 15

# Claim



Damage to  
neighbouring  
property  
along the  
Party Wall

# Investigations

- Establishing all interested Parties
- Engaging all parties for the site meeting if possible.
- Engage both Party Wall Surveyors and obtain related documents
- Obtain required documentation of works being undertaken
  - JCT Contract
  - Method Statements

## Issues / Remarks

- Planning – Royal Borough of Kensington and Chelsea restrictions
- Absence of a Surveyor/project manager
- Absence of JCT contract
- Numerous subcontractors and building professionals i.e. surveyors, engineers, architects etc.
- Managing expectations/ tension between neighbours

## Issues / Remarks:

- Tension between Party Wall surveyors
- Historic crack versus new
- Need to adopt a HNW style of handling
- Method of Settlement
- Claims can be long tail as no party can reach agreement until the final condition survey. In the meanwhile, evidence gathering and hand holding.
- Sometimes no claim at all or so minor that an agreement is reached that the Insured's contractor simply carries out the work at no extra cost.



## Settlement & Outcome

- Settlement options
  - Cash or Reinstatement
  - Private agreement between parties
- Successful outcome for private homeowner and neighbours
- Insurers wanted to reinstate 3<sup>rd</sup> party however not agreeable under Party Wall Act



## *Case Study 2*



# Nature of Works

- Description of Works:
  - Garage conversion, refurbishment and basement extension



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← Underpinning and excavation works/rear extension

Ongoing works at risk address at second floor level →



← Ongoing works at first floor level- new beam installed.

# Policy Cover

- Existing Structure
- Contract Works £517,000
- Liability as Property Owner - No Non Negligent Damage Extension



# Party Wall Award

- Party Wall Implications:
  - Was there an award? Not required at commencement
  - Changed design mid contract to include works to Party Wall
  - Absence of pre-condition survey



# The Claim

- Damage to neighbours decorations on first floor in library along a Party Wall
- Surveyors fees incurred by the neighbour



← Damage along the Party Wall  
at first floor level



Damage at the neighbouring  
property →

# Investigation

- Request for correct for relevant documentation
- First site meeting to Third Party Property and risk address with the Insured and neighbour
- Second site meeting with broker - access to neighbours house





## Liability Issues

- Claim initially repudiated as no Non-Negligent damage cover
- No Party Wall Award - Insurers position prejudiced
- Established that after work commenced the contractor decided to carry out works along the Party Wall which were not originally planned. No initial requirement.
- No pre-condition survey

## Liability Issues

- Broker with insured looked to pursue a claim against the contractor who excavated the basement.
- Basement Contractor and their Insurers/ Adjusters looking to hold the main contractor liable as they suggest the damage was caused after they did the basement but caused by vibrations during the initial strip out works.

## Liability Issues

- Adjusters for the basement company suggested a claim should be made by the Third Party for Nuisance
- Delay by the Insured and Third Party in submitting a claim - Insurers position prejudiced
- Other causes differential movement with coach house passageway
- Historic Movement

# Adjustment

- Request for the neighbours to obtain an estimate for the damage
- Claim repudiated – no cover for non negligent damage cover
- Exclusion - no cover for legal liability in the absence of proven negligence by you or your contractor unless Insurers have included the Non Negligent Damage Extension
- Claim within the policy excess
- Suggested that the neighbour would have to prove negligence against them

# Remedies/Recovery Targets

- Main Contractor
- Sub-Contractor
- Surveyor
- Architect
- Insurance Broker



# Remedies/Recovery Targets

- Cause of Action:
  - Breach of Contract
  - Negligence
  - Nuisance
  - Trespass



# Remedies/Recovery Targets

- Recovery:
  - Cost of repair/rectification
  - Cost of alternative accommodation
  - Out of pocket expenses
  - (Sometimes) Damages for loss of amenity /injury to feelings



# Closing Statement

- Product development
- Market Study – Direct policies
- Insurance Act





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