QBE European Operations

UK casualty claims

Case studies | April 2014

In your defence

Accidents happen and in liability insurance the frequency and cost of claims are on the up. It is only when you receive a claim that you really discover the value your insurance company delivers.

We are equally committed to paying valid claims promptly and maintaining a robust defence where appropriate. Our philosophy reduces the cost of claims against you and protects your reputation. Here are some recent examples evidencing our claims handling approach in practice.

Fraud success – IFED caution Claimant

Précis: Our Insured received a claim in September 2012 alleging that a picture hook they sold had failed, resulting in a picture falling from a wall onto a television causing irreparable damage. To substantiate the claim of £1,250 a set of photographs were submitted by the Claimant showing the damaged television.

Investigations revealed an issue with the photographs. It was believed that the same set had been submitted for a similar claim 12-24 months earlier. Further analysis of the photographs revealed a time stamp of August 2011. We wrote to the Claimant asking for confirmation of the accident date and circumstances. Once these details had been reiterated, the evidence was passed to the Insurance Fraud Enforcement Department (IFED) of the City of London Police, who investigated the allegations. It transpired that the Claimant took the photographs from his ex-partner when they split up. He then asked his current girlfriend to pretend to be his wife and make the claim as he was terrible over the phone and could not convey his claim articulately. She had no idea that the claim was fraudulent and was shocked when we voiced our concerns. The Claimant was invited for an interview with IFED and confessed immediately. Due to previous good character the Police decided to issue a caution.

This is UK Casualty Claims' first successful outcome from an IFED referral and an excellent result that only serves to reinforce our zero tolerance approach to fraud regardless of the level of damages being claimed.

Trial win

Précis: In 2008 the Claimant injured his knee at work when he fell from a ladder. It was alleged the Insured was in breach of the Work at Height Regulations 2005, that there was a lack of training and that the ladder was not lashed or secured to prevent it from slipping.

We argued the Claimant was suitably trained in the use of ladders and knew how to safely position and set up a ladder. There was also a dispute as to whether the ladder slipped or he just fell from it. Despite denying liability we had some concerns regarding the breach of duty allegation. By keeping liability as a live issue, we retained the pressure on the Claimant to accept the fact that he faced risks if the matter ran to trial.

Given the length of time the Claimant had been unable to work and the fact no benefits were being claimed, in 2010 surveillance was undertaken. This showed the Claimant engaged in heavy manual work as a roofer. It also showed him push-starting his works van. The surveillance was referred to our medical expert who openly accused the Claimant of dishonesty in his report. In December 2010 we made a costs protective Part 36 offer of £12,500. Further surveillance was obtained in 2011 and 2013.

A schedule of loss circa £300,000 was submitted by the Claimant. His particulars of claim and witness evidence stated he had not worked since the accident as the injury and on going symptoms meant that he was unable to climb ladders, thereby, preventing his return to his pre-accident job or any other form of work. The family had become totally reliant on the wife's income and board and lodging from his two sons. He had not claimed benefits for the entirety of this period. Medical evidence submitted supported the losses being claimed.

Based on the Claimant's schedule of loss, we requested the Claimant commit himself to his alleged incapacity to work through Part 18 questions. He duly complied with this request and produced a statement of truth confirming his inability to work since the accident date. We amended our defence, pleading fraud.

In January 2014, the Claimant's solicitor made a counter offer of £13,000, which we rejected.

At a CMC held in January 2014, the court required the Claimant to provide a further witness statement, an updated Schedule of Loss, a Pre-Trial Check list and pay a Court fee of £1,500. The latter two issues were subject to an Unless Order, and breach of these would result in the claim being struck out.

On 24 January 2014, the Claimant's solicitor accepted our Part 36 offer from 2010. We advised the Claimant's solicitor that they were in breach of the Unless Order as the expiry was close of business 23 January 2014 and their claim had been automatically struck out. The Claimant subsequently sought an application to set aside the sanction, but that was rejected.

Presently the claim is struck out and at the time of publication it is not yet known if the Claimant is seeking leave to appeal. An application has been made to the Court that the Claimant pays our costs to date on an indemnity basis.

Once the civil issues are resolved we will be discussing whether to pursue the Claimant on Contempt of Court charges.

This claim serves to highlight our continued drive to eradicate grossly exaggerated claims by obtaining early surveillance and making well constructed Part 36 offers at the earliest possible opportunity.

Trial win

Précis: The Claimant was employed by the Insured as an engineer, and was instructed to connect an alarm system at a site in Manchester. The task involved drilling a hole in a partition and passing an electrical cable through it. It was the Claimant's case that, because the hole was between 2 metres and 2.5 metres above the floor, he used a metal step ladder which was provided by a colleague. After drilling the hole and feeding the cable through it, the Claimant averred that the ladder gave way and slid down the wall, causing him to sustain injuries to the right side of his body. Damages were reserved at £20,000, with third party costs estimated at another £22,000.

The Claimant alleged that the floor where the step ladder was positioned had been broken up to such an extent that the surface was uneven, that the Insured had failed to provide him with a ladder and that he had not been sufficiently trained.

Investigations proved the Insured provided the Claimant with a set of ladders. We produced documents showing the purchase of ladders and other equipment around the time that the Claimant started working for them. The Claimant's CV showed his vast number of qualifications and provided details of the training the Insured had provided to him. Liability was denied and the matter proceeded to trial.

At Court, the Claimant changed his story, stating that he had been provided with ladders but that they had broken and the Insured would not provide him with a new set. He also alleged that the Insured must have forged his signature on the training records as he had not received any training.

The Judge dismissed the claim and awarded costs in our favour.

Favourable settlement

Précis: An employee of the Insured was struck on the head by a wheelie bin which had allegedly fallen from the Insured's refuse collection vehicle's lifting mechanism whilst in the raised position. The Claimant sustained serious injuries resulting in complex spinal and neurological problems confining him to a wheelchair for most of the time. The Claimant's Schedule of loss was in excess of £932,000 net of general damages including claims for care and alternative accommodation due to the unsuitability of his current home.

Liability investigations revealed there was no specific evidence that the wheelie bin had not been attached to the lifting mechanism. No defect was identified with the lifting mechanism. However, the Claimant was inexperienced and had not been adequately trained in respect of the task being carried out. Furthermore, similar incidents had occurred in the past. Consequently the Insured was open to criticism due to the system of work, lack of training and the absence of risk assessments. We did not make any concessions in respect of liability but recognised that if the matter reached trial it was very unlikely that the Insured would escape blame entirely. Counsel had suggested we may get a 20% discount for contributory negligence.

We were vulnerable on most aspects of quantum. There was reasonable justification for the accommodation claim in view of the Claimant's limited facilities at his current home. Counsel's valuation on a full liability basis was £985,000 inclusive of general damages. A Joint Settlement Meeting (JSM) was arranged.

Early discussions between parties at the JSM proved difficult and the other side kept their cards close to their chest on quantum. We therefore pitched our opening offer deliberately low at £175,000 to test the water. To our surprise, the claimant's team returned with an offer to accept £396,000 which was far below our own assessment. They were clearly worried about some aspect of their case. Negotiations continued with us arriving at an eventual settlement at £275,000. Costs were also agreed at an additional £95,000.

This was an excellent outcome bearing in mind the potential. The Insured's UK Insurance Manager was very pleased with the result.

Favourable settlement

Précis: In 2009 an employee of the Insured fell through damaged plywood flooring that had cracked as a result of being driven over by a Bobcat which was operated by one of the Insured's employees. The plywood covered a temporary crash deck and was six metres above a concrete floor. He sustained life-changing injuries.

The Claimant initially brought his claim against the Insured on the basis they were his employer. We denied liability on their behalf. Investigations showed the Claimant was present at the time of the plywood being damaged yet in his haste decided to walk across it. The Claimant's solicitors thereafter joined several other parties into the proceedings including the designers of the crash deck, the company who built the crash deck and supplied the plywood and the main contractors on site who had construction and design management responsibilities.

The claim was pleaded at £3.7million and the Claimant relied upon medical evidence from an Orthopaedic Surgeon, Neurologist, Urologist, Professor of Colorectal Surgery, Neuropsychologist, Consultant Psychiatrist, Occupational Therapist and an Accommodation Expert.

Following a review of the Claimant's medical evidence and records, we decided to instruct just one medical expert and were able to confirm the Claimant had longstanding significant problems in relation to Type 1 diabetes. Our expert concluded the Claimant had a shortened life expectancy and a shortened working career as a result of poorly controlled diabetes.

Mediation was arranged given the outstanding liability and quantum issues. We were able to limit our Insured's contribution to 35% with the other three contributing parties paying the balancing 65%. This was an excellent result given that, as Employer our Insured had a non-delegable duty towards the Claimant and the action of the employee driving the bobcat meant we were also vicariously liable. It was not out of the realms of possibility that our Insured could have been found 100% liable at trial.

Our contribution towards the agreed £1.2million settlement (less than one third of its pleaded value) was £420,000. Costs were subsequently presented at £561,000 though by taking a robust approach we were able to negotiate the same at £358,500 of which the Insured's contribution was £125,475.

The claim serves to highlight how thorough and details analysis of medical records can serve to reduce quantum. We were able to pinpoint the one weakness in the Claimant's case and, by instructing a suitable expert who specialises in life expectancy rates of diabetics, obtained an improved result for our Insured.

Matter discontinued – Liability denied

Précis: The Claimant was employed by the Insured as a case lidder/maker. On the day of the accident he opened up a crate to insert some additional items and began the process of resealing the crate. To ensure the crate was properly sealed for transit, a polypropylene banding was required. The banding was the standard piece or work equipment to use in this instance.

The Claimant was trained to use a ratchet tool or, in the alternative, a knife to cut the banding. The tools were readily available to the Claimant on the day of the accident. Instead he chose to cut the banding to length with a large fixed crosscut saw resulting in the banding becoming entangled with the blade which pulled his left hand into the blade severing his left thumb and index finger.

The claim was brought on the basis that the ratchet tools and knives supplied were of sub-standard quality and that the training provided was inadequate. There were no eye witnesses to his accident.

Damages were reserved at £150,000, and costs at £65,000.

Investigations revealed the Insured could show training was provided to the Claimant and safe systems of work were in place. The allegations regarding sub-standard work equipment were unfounded as the tools were subjected to regular inspection and maintenance. His colleagues also questioned the method of work used by the Claimant and all agreed that they would never have done what he did. The Claimant was in his 50's and very experienced at the role he was undertaking. Liability was denied.

Just prior to limitation the Claimant`s solicitors offered to apportion liability on a 50/50 basis. That offer was rejected and they then confirmed that the claim was withdrawn.

Whilst a seriously injured claimant will engender sympathy for the injuries sustained, even in these days of claimant-friendly regulations it is possible to defeat claims in their entirety by dint of timely and detailed investigations on behalf of a safety-conscious insured. Our Insured was delighted with the outcome.

Further information

If you would like any further information or advice on our claims service please contact the QBE Claims Team on **+44 (0)20 7105 4000.**

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