QBE Business Insurance

IN YOUR DEFENCE

Q1 2017

Made possible

QBE

Accidents happen and 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 of our claims handling approach which illustrate how we put QBE's vision of being "the insurer that builds the strongest partnerships with our customers" into practice.

Discontinuance of a complex loss claim

This motor claim arose from an accident where the Insured's ambulance, responding to an emergency call, collided with the first defendant's vehicle.

The claimant was a paramedic in the back of the ambulance. The ambulance driver and the patient who the claimant was looking after both died. The claimant was very seriously injured, with a head injury and fractured spine, shoulder and wrist. He was discharged from work as medically unfit to continue.

There were several claims arising from the incident. Our valuation of the paramedic's claim alone was in excess of £500,000 The first defendant sought a contribution of one third from our Insured. When that was rejected, they asked for £150,000 towards all claims.

We obtained a statement from the head of the driving school who taught the deceased ambulance driver, to the effect that he would have had his siren activated, and was schooled in over-taking technique. On the strength of this impressive witness evidence we made a time limited offer, open for 7 days, to bear our own costs if we were indemnified by the first defendant. This was accepted, the claim against our Insured was discontinued leaving the first defendant to meet all damages and claimant costs.

Our Insured were delighted with the outcome as it exonerated the deceased ambulance driver of any blame for the accident. It also meant that they were able to make a full recovery of their uninsured losses, including the write off value of the ambulance.

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Trial Win

The claimant, a HGV driver employed by our Insured, loaded his trailer on a customer's premises. Having done so he was required to cover the trailer with a tarpaulin sheet. Normal practice was to do this in the loading bay, where there was platform access to the trailer. An employee of the Insured's customer instructed him to do it in a trailer park, where there was no platform access. The claimant moved to the trailer park, covered the load and alleged that as he jumped down from the rear of the trailer, he landed in a pothole. He sustained an ankle injury.

Our investigation confirmed that the Insured had risk assessed the task and been satisfied that the use of a loading bay provided a safe system of work. It also identified that the claimant was fully trained in how to safely access and egress the trailer. We denied liability. Legal proceeding were brought against our Insured as well as the occupiers and owners of the premises on which the accident occurred.

During cross-examination, the alleged circumstances of the accident changed. The claimant stated that the accident did not occur due to a pot hole but as a result of a grass hole. He then reverted to saying it was a puddle, and then back to a pot hole. The claimant's credibility was substantially undermined and following cross-examination by all defendants a decision was taken to only call evidence from the second defendant's witness who could deal with the discrepancies in the claimant's factual case.

The Judge held that the claimant's evidence was so contradictory that the claimant was not sure how he was injured. The case was dismissed, with the claimant ordered to pay the defendants' costs.

Substantially reduced fine in HSE prosecution

A substantial fire occurred at the Insured's warehouse. An employee sustained relatively minor injuries. The Insured's premises were destroyed. The fire was so intense it melted the frontage of residential properties adjacent to the Insured's premises, destroyed several nearby cars and a tanker undertaking a delivery. It also led to the closure of a local railway line and the evacuation of nearby residents from their houses. The fire service took 18 hours to bring the fire under control.

Following a HSE investigation, two charges were brought against our Insured. It was alleged they failed to discharge their duty imposed by Sections 2 (General duties of employers to their employees) and Section 3 (General duties of employers and self-employed to persons other than their employees) of the Health & Safety at Work Act 1974.

The HSE requested the Crown Court presiding Judge take a starting point in relation to the fine of £1.4 million reflecting a company of medium turnover with high culpability and causing/risking harm category 1 (death or serious injury).

The tabulated starting point was £900,000 but increased by 50% to reflect the risk of death / serious injury to numerous employees, non employees working on the site, firefighters and members of the public.

As a result of the witness statements and documentary evidence we obtained through working closely with the Insured, the HSE was ultimately persuaded to accept medium culpability and to drop the requested 50% increase in the starting point. This reduced the starting point, subject to any comments of the Judge, to £540,000 for the Section 2 offence.

Following representations from both sides at the Sentencing Hearing, the Judge confirmed that he accepted the starting point of £540,000 but reduced it to £375,000 to reflect mitigating factors on behalf of the Insured. These included no short cuts to save costs, a good H&S record, genuine remorse and full co-operation with the HSE. The Judge also identified the a 12 month delay due to the Prosecution failing to progress the matter sufficiently.

The Judge then further reduced that £375,000 by one-third to reflect a guilty plea being entered on our advice at the first opportunity. Consequently the fine was reduced to £250,000.

The ancillary Section 3 breach starting point was £50,000. The Judge reduced this to £30,000 to reflect mitigating features and delay before reducing it by one third to reflect the early guilty plea. This meant an additional fine of £20,000 giving a grand total of £270,000.

Our Insured was very pleased with the result having regard to the fact that two months previously they had recognised that they were facing a fine of £1.4 million.

Trial Win

Our Insured, a plumber, was contracted to install a new kitchen sink at the claimant's premises. During the installation a pipe snapped resulting in water entering the claimant' property.

The claimant alleged that the new kitchen sink was deeper than the one it was replacing and that the Insured forced the new sink into position, damaging the pipe's push fitting. It was also alleged that our Insured had not isolated the water supply before undertaking the task.

Liability was disputed on the basis that our Insured was not negligent. The accident circumstances alleged by the claimant were not accepted by our Insured. Our Insured maintained that he isolated the water supply to the sink and removed the existing sink. As he did so, the existing fittings gave way causing water to enter the property. It was the insured's position that the existing fittings were faulty.

The matter proceeded to trial whereby the claimant's claim was dismissed.

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Counter-fraud success
Trial win on a QOCS case

The claimant attended the Insured's nightclub and alleged that as he exited the VIP room he leant against a banister before he fell over it down a seven metre drop. It was alleged that the banister was dangerously low and fell below building regulation requirements by 65mm. This was supported by expert engineering evidence.

Investigations into the incident revealed an entirely different cause of the accident. CCTV footage showed the claimant clearly sliding down the banister. Liability was denied and the matter proceeded to trial.

The Judge held that the claimant was sliding down the banister and found there to be no duty under the Occupiers' Liability Act 1957. The rationale for this was that as he was not using the banister for the purpose for which it was intended, at the moment that the claimant fell he was a trespasser. The Judge found that the claimant had voluntarily accepted the risk and that he was not satisfied that the claimant would not have slid down the banister if it were 65mm higher.

Claim discontinued Costs to be recovered

In the early hours of the morning a visitor to our Insured's nightclub collapsed. He was assisted by security staff. Paramedics were called and attempts were made to revive him. He was taken to the hospital but unfortunately died a few days later. A post mortem found that he had suffered from significant hypoxic brain injury secondary to a cardiac arrest. Treatment was withdrawn and he died in hospital a few days later.

The Insured were contracted to the nightclub operator to provide security services. They in turn sub-contracted the provision of door services to another security services company who employed door staff at the nightclub on the day of the incident. The main allegation was that the Insured and the nightclub operator failed to give adequate treatment within a reasonable time period. It was claimed that the 20 minute delay in calling an ambulance proved fatal.

Liability was denied on the basis that there was no duty of care owed by the Insured. None of their employees had any direct contact with the deceased as they had sub-contracted the security services. It was further denied that the Insured owed a non-delegable duty of care. Causation was also firmly denied as the claimant's medical evidence confirmed that irreversible brain damage can begin to occur within 5 minutes of cardiac arrest. The consultant neuropathologist reported that it was sufficient only to state that brain injury could possibly have been avoided had the alleged delay in restoring an effective cardiac output been less than 5 minutes. Due to the Insured's commercial relationship with the nightclub operator and our prospects of success, we took over the defence.

A denial was maintained on behalf of both defendants throughout the case. A week before trial the Claimant served Notice of Discontinuance. This is a pre-1st April 2013 case so we will recover our costs in full from the Claimant's ATE insurers.

Counter Fraud success at Trial

Our Insured's vehicle reversed into the front of the claimant's vehicle at very low speed over a short distance on two separate occasions. The claimant alleged that he was a passenger in a vehicle driven by his friend and was injured as a result of the collisions. The driver of the vehicle in which the claimant was travelling punched the driver's door window of our Insured's vehicle causing it to shatter. He was arrested but not subsequently charged. He did not bring a civil claim against our Insured for either injury or damage.

The claimant intimated a claim under the low value claims process. We made an admission in the Portal accepting that the accident had occurred due to a breach of duty by our Insured and that this had caused some loss to the claimant. The nature and extent of these losses was not admitted.

The case litigated. Under instructions from us, our solicitors immediately withdrew the admission in both correspondence and the Defence. They invited the claimant's solicitors to agree by consent (a pre-litigated admission could only be withdrawn with consent or with a specific order from the Court). A default judgment had been obtained butt the claimant's solicitors agreed to this being set aside with a Defence being served which, whilst conceding negligence, disputed causation. The matter was allocated to the Fast Track and transferred to County Court.

The claimant had not relied upon the admission within his pleading and had arguably by inference consented to the admission being withdrawn by agreeing to set the judgment aside. We continued to challenge the case and obtained medical records which, to a degree, undermined the claimant's assertions that he had been injured. No evidence had ever been shown to identify any damage to the claimant vehicle and no claim for repairs had ever been put forward.

The claimant's solicitors fell into default with regard to service of witness evidence and had to make an application for relief from sanctions. In their evidence supporting that application, they referred to the admission and the fact that it had not been formally the subject of an application to withdraw. They argued that there was in effect a binding agreement and that the Defendant could not dispute the claim.

The relief from sanctions application was dealt with by consent. We made a "drop hands" offer but this was rejected by the claimant.

In serving their Case Summary, the claimant's solicitors again identified the admission and were clearly inviting the Court to take the view, certainly as a preliminary issue, that we could not dispute the causation aspect of the claim.

Counsel made an application on the morning of trial to formally withdraw the admission which the Court allowed despite vehement opposition. The claimant asked for leave to appeal which was refused.

The matter then proceeded to a final hearing with evidence from both the claimant and our Insured's driver. The claim was dismissed and a finding of fundamental dishonesty was made against the claimant who was ordered to pay costs of £4,500.

Defendants are often faced with litigation where pre-litigation admissions have been made and not withdrawn. The outcome of this case illustrates that wherever there is a causation or fraud element, if admissions made under the Portal are withdrawn pre-litigation, generally consent is not required. If the case litigates and our opponents are clearly taking the point then an application should be made at the earliest possible opportunity or an open letter should be obtained from the claimant confirming that they do not object to causation (in an LVI case) being disputed notwithstanding the admission given under the Portal.

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