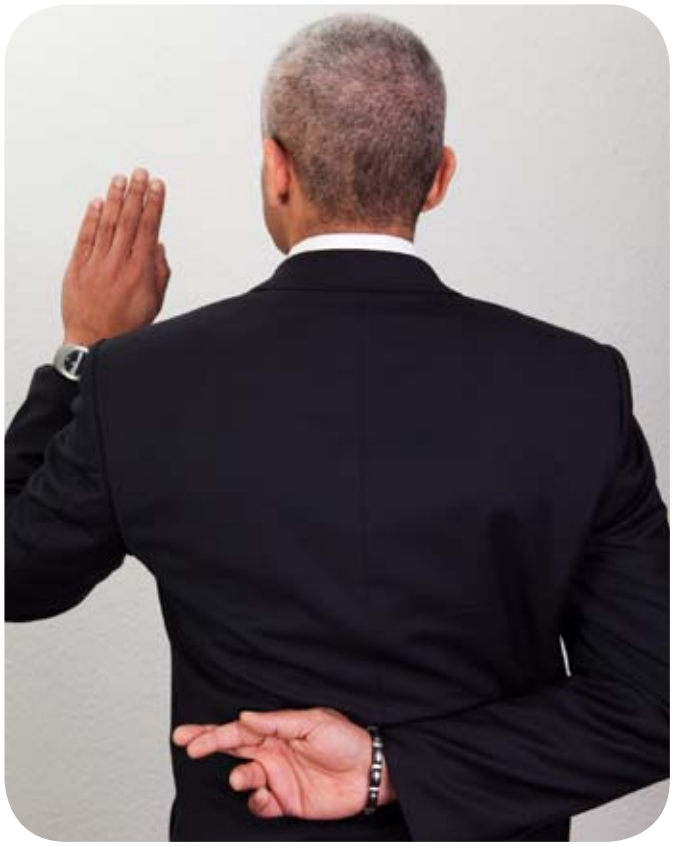
Dealing with fraudulent claims

Case Study 10

November 2012

Casualty **Risk Management**



Overview

The claimant, a labourer, was deployed to break up the top layer of a concrete access ramp into his employer's premises, using a jackhammer. He alleged the ramp was wet, causing him to slip whilst using the jackhammer, sustaining significant injury to his spine and permanent incapacitation, with a resulting claim for damages in excess of £125,000.

Investigation

The task had no formal risk assessment, the accident was not witnessed, nor was it reported at the time and the claimant continued to work for some 5 hours after the accident until the end of his shift.

Once reported, there were conflicting accounts of how the injury was sustained and of what the task actually constituted, leading to questions of whether the jackhammer was in fact being used at the time of the accident. The employer disputed that the ramp could have been wet as alleged.

Fraud indicators

Despite several calls to discuss rehabilitation options, the client's occupational health advisor was unable to make contact with the claimant. He never appeared to be home, although a tip-off suggested he had recently been seen returning a mini-digger to a plant hire company.

The claimant was unwilling to permit access to his medical history, although once received, this revealed he had reported back pain to his GP one week before the accident.

Further investigations revealed he had made a previous claim for a work-related back injury, although this had not been disclosed during pre-employment screening by the client.

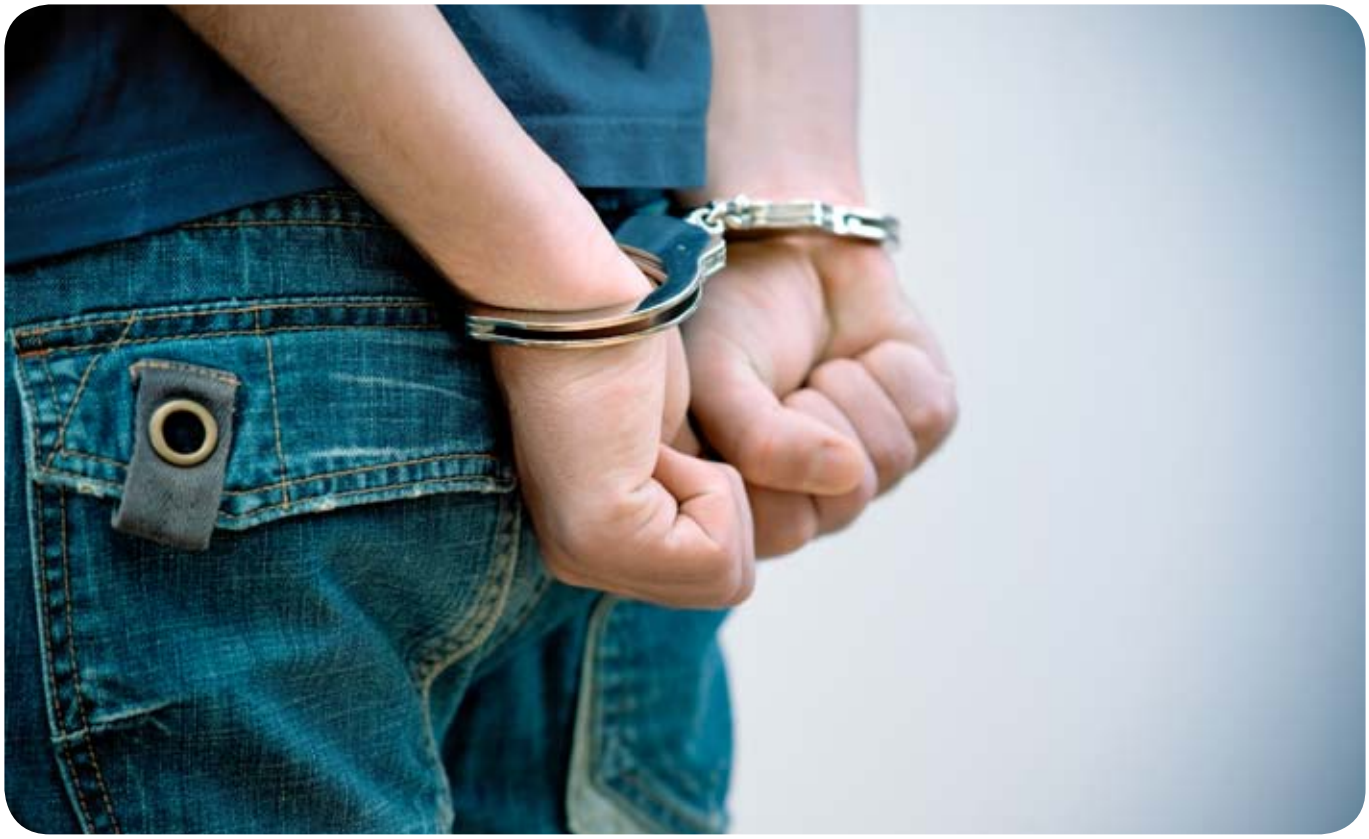
QBE's response

As a result of the intelligence gathered and inconsistencies encountered, QBE denied liability and commissioned covert surveillance. This confirmed some potential disability, albeit far below the extent alleged.

On revealing this evidence, the claimant offered to settle the claim for £25,000 plus costs, which we immediately rejected.

Following further evidential disclosure, the Claimant's solicitors proposed to drop the claim with each side to bear its own costs. Again, we rejected this offer and subsequently, recovered all our costs from the claimant.

QBE



Learning points

Was this fabrication or exaggeration and does either need to be established in a criminal court?

There was exaggeration at play here and arguably fabrication. Whether that would satisfy a criminal court may be academic. From a claims defensibility perspective, if the claimant's solicitor has sufficient doubts as to his client's credibility before a court hearing, a damage-limiting exit strategy will quickly follow as it did here.

Pivotal to our decision to defend this claim were the inconsistencies in contemporaneous accounts of how the injury was sustained.

The quality of accident and investigation reports often determine whether or not to defend a particular claim. An inadequate investigation may render the case effectively lost, long before the claim is actually pursued, irrespective of potential fraud.

The decision to commission surveillance is rarely made for routine claims. Surveillance is expensive and often inconclusive, so there needs to be a tangible cost benefit. Where there is strong evidence of fraud or exaggeration in higher value cases, it may well be justifiable.

The lack of a task specific risk assessment is not necessarily fatal to a defence. It does however put the employer on the back foot, giving claimants' solicitors all too easy points on which to build their case.

The client's pro-active Absence Management process provided an early warning of potential fraud. Even for non-fraud cases, having good Absence Management processes is vital for ensuring that claims for loss of earnings are minimised.

Further guidance on the points raised above can be found in the Technical Guidance section of our website at: http://www.qbeeurope.com/risk-management/document-management.asp

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