QBE European Operations

UK casualty claims

Case studies | January 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 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.

Trial win

Précis: The claimant, an employee of the Insured, suffered a near miss incident whilst working trackside. It was alleged that the Insured failed to undertake a track safety briefing and was operating an unsafe system of work.

Our investigation revealed documented proof of a track safety briefing given to the claimant and his colleagues on the day of the incident. This evidence was refuted by the claimant who alleged it was doctored. Liability was denied and proceedings were issued.

The claimant returned to work immediately following the incident and carried on with normal duties. When changes to his shifts occurred two months post-incident he allegedly developed a Post Traumatic Stress Disorder causing him to stop work altogether. The claim was pleaded up to £50,000.

Whilst off work and in receipt of SSP, the claimant was arrested and charged by the British Transport Police for track theft. He was later convicted of this offence and sentenced to nine months in prison. The claimant alleged he was trying to regain confidence to enable a return to work. His medical expert was not made aware of the arrest at the time he examined the claimant. When

he was informed of it, he altered his views given the misleading information provided to him by the claimant, who had said he would never be able to return to track work.

Prior to trial the claimant made a Part 36 offer of £10,000 plus costs which we rejected. A few days prior to trial his solicitors confirmed that they no longer represented the claimant. The case was struck out by the Court for failure to attend the trial. Costs were awarded in favour of the Insured. We are in the process of recovering our outlay.

Trial win

Précis: It was alleged that our Insured failed to ensure an unmanned access road at a remote location was free from ice and that, as a result of this the claimant, an employee, slipped and fractured an ankle. The vehicle provided was also alleged to have been unfit for purposes when it became stuck. A breach of Regulation 12 of the Workplace Regulations was pleaded and thereafter a breach of PUWER.

Our investigations identified that:

- The claimant failed to inform the site supervisor of his attendance. Had he done so a risk assessment for the task and site would have been downloaded to the claimant's Personal Display Assistant (PDA)
- The claimant was familiar with the location
- He had access to rubber straps with spikes to put over his footwear but had chosen not to use them
- He was supplied with a shovel and salt to grit the area concerned and had done so without incident
- The works vehicle supplied was not defective in any way. It was a 4x4 with roadworthy tyres and was suitable for providing safe site access.

Liability was denied and proceedings issued thereafter.

At trial the Court found in favour of the Insured. The Judge accepted our evidence. He added that he considered it was impractical to expect the Insured to keep the whole or part of the access road clear of black ice given the very light and irregular footfall of the accident location. Costs were awarded to the Insured to be assessed if not agreed.

This favourable outcome resulted in a saving of £47,000 against the reserve and demonstrates a robust approach to defending claims when the goal posts are constantly shifted by third party solicitors.

Favourable settlement

Précis: An employee of the Insured allegedly suffered a neck injury when lifting a box at work. He claimed that this led to the onset of fibromyalgia.

The alleged accident was not reported at the time. However, investigations identified that a breach of duty would be established given the absence of a risk assessment and lack of manual handling training.

Both medical experts agreed the claimant had fibromyalgia but our medical expert advised that the claimant's ongoing symptoms and disabilities were solely as a result of a pre-existing degenerative neck condition. In light of this evidence, medical causation was disputed.

Proceedings were issued. The claim was pleaded at £999,000 with a Part 36 offer from the claimant of £450,000. The matter was listed for a four day trial.

We made an offer of £40,000 plus CRU to the claimant. The offer made no allowance for the fibromyalgia and afforded us costs protection should a Judge rule a temporary exacerbation of his

pre-existing degenerative neck condition was established. This was in keeping with our medical expert's opinion. We rejected an invitation to a JSM and advised our offer was final. The claimant's solicitors accepted our Part 36 offer on the last day of the 21 day period that the offer was open. Costs are still to be agreed.

The settlement reflects how significant savings can be achieved against pleaded values when examining past history and reported complaints within medical records.

Favourable settlement – Counter Fraud success

Précis: An HGV driver employed by the Insured was injured when he slipped on discarded magazines in a recycling bay. The Insured knew the bay was overloaded yet instructed the claimant to make the drop in any event. Liability was conceded for a breach of the Workplace Regulations 1992 and Management of Health & Safety at Work Regulations 1992.

The claimant's employment was terminated following the accident due to a prolonged absence from work. His alleged ongoing disabilities and restrictions rendered the claimant unfit for any driving or heavy manual labour type work. This position was supported by his medical expert. Damages were sought for future loss of earnings and disadvantage on the open labour market. His schedule of loss totalled £145,000. Our medical expert opined the claimant was fit for HGV duties by nine months post-accident. The DWP assessed the claimant as fit for work as of thirteen months post-accident.

We made a Part 36 offer of £27,500 net of interims and CRU charges to afford us costs protection. The claimant countered with an offer of £100,000 net of CRU benefits.

Given expert medical opinions differed in respect of the claimant's fitness for work we decided to put the claimant under observation. Favourable surveillance footage was obtained showing the claimant working as a HGV driver. When pressed, his current employer confirmed the claimant's job title was 'HGV driver' and he worked overtime on a regular basis. This evidence was disclosed to the claimant's expert and he accepted the claimant was not an honest historian.

Following a proposal by us to amend the defence and plead fraud, the claimant accepted our Part 36 offer out of time. He is therefore liable to pay the defence costs incurred post expiration of our Part 36 offer. A saving of at least £120,000 has been made in respect of damages and the claimant's costs.

Matter discontinued – Counter Fraud defence

Précis: The claimant allegedly injured elbow ligaments when he lifted a bag of overalls from a cage during the course of his employment with the Insured. It was alleged that the bag was ripped and overfilled. It was also claimed that the cage was bent

in at the side, restricting the claimant's ability to lift the bag from within the cage in a safe manner. A breach in the Manual Handling Regulations 1992 and PUWER was pleaded.

The key points identified in our investigations were as follows:

- The claimant had received manual handling training
- The Insured had systems and procedures in place to ensure any risks associated with lifting a bag were reduced to the lowest practical level. These included the requirement not to carry out any work if a cage was defective
- The cage and bag were not defective or damaged
- During the post-accident demonstration by the claimant, he initially said he lifted the bag from the cage before altering his version of events saying the bag 'slipped' when he lifted it from outside the cage
- Post-accident statements referred to the claimant getting ready to lift the bag from the workshop floor and therefore not from within a cage
- The Insured weighed the bag post-accident to check the weight and it was not considered heavy/overfilled. The handle was also not ripped
- The A&E attendance record simply referred to the claimant lifting a 'very heavy object' and 'it slipped'. There was no reference to him making contact with the cage
- The claimant suffered an injury to the same arm the previous night whilst working in his second job with another employer, when he tried to move a pallet without using lifting aids. This was confirmed by the HSE who advised that a RIDDOR was completed
- The claimant alleged that the injury the night before was 'minor' and he felt fine by the following morning. CCTV footage from the other company however indicated a more serious injury. Their accident report referred to the claimant's arm making a 'popping sound'.

Liability was denied and the claim was treated as one that exhibited fraudulent behaviour.

The claimant offered to settle at £5,000. We rejected this offer. He then offered to discontinue if we agreed not to seek costs. Once again we rejected the offer being made and maintained that we would continue to defend to trial. The claimant subsequently discontinued, resulting in a saving to date of £35,000. We are seeking recovery of our costs. Needless to say the Insured is delighted with the outcome.

Trial Success – Claimant failed to beat our Part 36 offer

Précis: The claimant, an employee of the Insured, sustained a fracture to his dominant wrist and hand when a machine part fell, striking the claimant. Investigations identified that the Insured failed to suitably risk assess the task at hand and minimise the risk of injury to the lowest possible levels. Liability was admitted with arguments of contributory negligence.

Ongoing symptoms and disabilities rendered the claimant unfit for work. This was supported by his treating expert. A diagnosis of Complex Regional Pain Syndrome (CRPS) was made by the claimant's medical experts and supported his argument that future employment prospects were now limited.

Our expert rheumatologist did not accept there was any evidence of CRPS and concluded the claimant was fit for light duties, with the possibility of full time work after a year. Given our expert's comments, surveillance of the claimant was carried out. The evidence obtained cast some doubt on the level of ongoing symptoms but was not conclusive. Our medical expert stated that it would be for the Court to decide if the claimant's alleged pain and disability were exaggerated consciously. The respective rheumatologists for both sides produced a joint statement in which they remained far apart in their views. The claimant served a schedule of losses totalling £400,000.

A Joint Settlement Meeting (JSM) was arranged in an effort to reach an amicable settlement prior to trial. Our best outcome would be a ruling that the symptoms resolved within six months. However, there remained a real risk that the Court might be persuaded by the claimant's own medical evidence in which case the schedule of losses could be awarded in full.

The JSM failed to resolve the claim and so we made a Part 36 offer of £63,000. This was based on our assessment of the claim but with an added element built in to afford us costs protection. The offer was rejected and the matter proceeded to trial.

At trial the Judge preferred our medical evidence to that of the claimant and awarded £3,000 gross of 40% contributory negligence. Costs were awarded in our favour from the date that our earlier Part 36 offer had expired. The Judge noted that if psychiatric evidence in support of the claimant had been disclosed, he might well have made a much larger award.

This case demonstrates how important it is for us to fully appreciate and take a balanced approach to risks properly identified when determining a resolution strategy, whilst maintaining a robust position wherever appropriate. Based on the conflicting medical evidence and the risks identified the Insured and QBE consider this to be an excellent result.

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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Written by QBE EO Claims.
Chris Reidy (contact no: 0113 2906677,
e-mail: christopher.reidy@uk.qbe.com).