QBE European Operations

UK casualty claims

Case studies | July 2013

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.

Success at trial – costs awarded

Précis: The Claimant intervened when his friend was detained on suspicion of theft by our insured's security guard. He alleged he was assaulted by the 2nd Defendant (member of the public) and unlawfully deprived of his liberty by the 1st Defendant (our insured), leading to a claim for personal injury and false imprisonment.

Liability was denied on the basis that the 1st Defendant and the 2nd Defendant had acted entirely appropriately. The Claimant had acted in an aggressive manner when attempting to intervene in the detaining of a thief who had been caught shoplifting and was in possession two very large knives. Had the 2nd Defendant not intervened it was likely that the security guard would himself have been assaulted by the Claimant and his friend with both men then escaping with stolen goods.

The claim proceeded to trial. Following final submissions the Judge confirmed that he had no hesitation in striking out the claim. He found the Claimant to be dishonest and that it was quite clear that he had attempted to prevent his friend from being arrested. He believed the 1st Defendant and the 2nd Defendant to be entirely credible witnesses.

Costs were recovered in full.

Success at trial - back injury claim

Précis: The Claimant was employed by our insured as a car transporter and whilst returning vehicle loading skids to their housing position, he sustained a back injury. It was alleged that his posture was hampered by an overhanging vehicle at the rear of the transporter and the claim was brought pursuant to the Manual Handling Operations Regulations 1992.

Our detailed investigations revealed no defect with the skids and our insured was able to demonstrate a robust system of inspection and maintenance on the transporter vehicle. There was sufficient space for the Claimant to safely manoeuvre the skids without hindrance and he was extensively trained in the safe use of the transporter and handling of skids. Liability was denied and proceedings were issued.

The Court found in favour of our insured. The Judge concluded that the cause of the Claimant's accident was his own failure to follow his training and thus dismissed the claim. Permission to appeal to the Court of Appeal was refused. This favourable outcome resulted in a saving of £130,564.73 against the reserve.

Success at trial – claimant failed to beat our Part 36 offer

Précis: The Claimant was an employee of our insured and sustained injury when she walked out onto a ramp and hit her head on the arm of a cherry picker. She stated the cherry picker was overhanging a designated walkway.

Liability was admitted for failure to provide a safe means of access. Contributory negligence was however alleged as the Claimant admitted she was not looking where she was walking at the time of accident.

The Claimant's orthopaedic expert held the view that the accident caused a two year acceleration of pre-existing degenerative changes in her neck and back. Her psychiatric expert stated that she suffered from a Post Concussional Syndrome following the accident. The pleaded claim was up to £100,000.

Our medical experts concluded that the Claimant sustained a mild head injury with some concussion and may have jolted her neck in the accident, but any symptoms would have resolved within a very short period of time. She was significantly depressed prior to the accident and this depression did not seem to have worsened.

We made a Part 36 Offer of £10,000. This was rejected and the matter proceeded to trial when counter offers made by the Claimant were rejected.

The Judge accepted that the effects of the accident were short lived. He agreed with our expert that the physical effects only lasted a few months and psychiatric symptoms, which prevented her from working and caused her to experience symptoms in her neck and back, were not attributable to the accident.

The Judge awarded the Claimant £1,650. She therefore failed to beat our Part 36 damages offer and is liable for a significant element of our costs.

The favourable Judgment demonstrates the benefits of taking an early view on quantum and being proactive in making a prompt Part 36 offer, which put the Claimant on risk as to costs.

Liability denied – claim no longer being pursued

Précis: The Claimant alleged that whilst having a riding lesson at the client's stables, she was given a horse which was not her usual horse. The horse spooked, and she fell from it suffering a severe head injury. A breach of the Animals Act 1971 was claimed.

We investigated and established that there was no reason for our insured to have foreseen that this horse, which was steady and reliable, would react as it did. Expert evidence obtained was supportive of our position and liability was denied. After considering our repudiation the Claimant's solicitors declined to act further for her and closed their file.

The Claimant was earning £70,000 a year before the accident. She subsequently lost her job in circumstances which were arguably due to the accident. The claim had a potential value of £1.3m plus costs.

Surveillance had identified a potential fraud and or exaggeration of alleged injuries and disabilities. Video footage showed the Claimant engaged in energetic long distance cycling on a number of occasions. Details of her LinkedIn profile suggested that she was actively marketing herself as a business consultant. Had the case been pursued, we would have measured the Claimant's pleaded claims of disability against this evidence.

Favourable settlement - spinal injury

Précis: The Claimant was injured at work when a scaffold board collapsed. He was genuinely incapacitated and medical evidence suggested he would probably never work again. Investigations confirmed our insured was liable. We nevertheless established that the scaffold board was defective and secured an 85% contribution from the scaffold board supplier. The claim was pleaded at £500,000.

Expert medical evidence was obtained, which confirmed a poor prognosis. It suggested the Claimant's spinal problems were not caused by the accident and/or that it had only accelerated symptoms. The Claimant's expert was of the opinion that all symptoms were caused by the accident, hence the large claimed valued. Our expert was a spinal specialist, while the Claimant's expert was a knee specialist. We promptly made a Part 36 offer at £50,000, our contribution being £7,500, and this was accepted.

On a case against an employer, in which the employer had primary liability, the settlement reflects instruction of appropriate medical experts and excellent negotiation skills, which resulted in very significant savings against a pleaded value of £500,000.

Favourable settlement - fracture to left elbow

Précis: The Claimant was bucked from a pony at our insured's riding school. Allegations were brought under the Animals Act 1971.

We appointed an expert and, when observed, the horse in question behaved in the exact manner as alleged by the Claimant. Witness evidence also confirmed the horse was known to buck.

Liability was agreed on a 65/35 basis. We used the argument that the Claimant was considered a novice rider who had consented to the risk of injury, albeit the horse was known to buck and this was her first time riding the horse in question.

The case was valued in excess of £500,000. The Claimant sustained a comminuted fracture to her left elbow. The distal humerus was badly shattered and she had a significant amount of metalwork inserted. She requires an elbow replacement. Her range of motion is restricted and subsequently she suffered a mild impingement syndrome in her shoulder. The Claimant brought her Local Health Authority and treating surgeon into proceedings very late alleging clinical negligence on their parts.

The Health Authority and Treating Surgeon admitted negligent treatment for the majority of the Claimant's injury and agreed to allow our insured out of proceedings in return for a £25,000 contribution. The claim was settled in 2013 for over £700,000 plus.

Favourable settlement – following helpful surveillance

Précis: The Claimant, an employee of our insured, suffered a serious fracture to the shoulder when he fell while accessing the top of a grit skip.

Investigations confirmed a breach of the Management of Health and Safety at Work Regulations. There was an unsafe system of work in operation and a lack of training on the particular task concerned. Liability was admitted.

Medical evidence showed the Claimant was suffering persistent pain and reduced shoulder movement which restricted his ability to perform certain tasks. He was medically retired at the age of 63.

The Claimant alleged that, but for the accident, he would have worked until 66. His personnel file indicated an intention to retire at 65, but no positive witness evidence could be offered either way. The claim was presented at £144,000 plus costs.

We suspected some overlay and secured surveillance which demonstrated that the Claimant was more able than the pleaded case, though it was clear there remained a significant genuine claim. We made a protective Part 36 offer of £64,000. The Claimant made a counter ffer at £72,500 plus costs, but we stood by our original offer.

Upon disclosure of the surveillance evidence the Claimant accepted our offer.

Favourable settlement - as a result of early rehabilitation intervention

Précis: In June 2010 a recycling operative employed by our insured fell from height suffering multiple fractures, including a fractured pelvis that required surgery to stabilise.

The case was referred to our in-house Rehabilitation Team six months post injury who determined the case would benefit from an initial needs assessment. We were able to assist the Claimant in his recovery and through liaison with our insured supported a phased return to work that was more positive than medical expectations.

The Claimant not only managed to return to a modified job role quicker than expected through the intervention of rehabilitation services, but he also managed to return to his pre-injury duties leading to estimated savings of £60,000.

Our insured is a relatively small company not used to implementing phased return to work plans so was grateful for our in-house rehabilitation intervention and advice.

Favourable settlement - maxillofacial and orthopaedic back injuries.

Précis: The Claimant was struck by large wooden scaffold boards when they fell from a forklift truck and sustained significant maxillofacial injuries and orthopaedic back injuries. He has not returned to work since the accident in 2011. The claim was reserved at £350,000.

The Health and Safety Executive (HSE) investigated the matter and issued our insured with two improvement notices. Following detailed liaison and attendance at a PACE interview, we persuaded the HSE not to bring a formal prosecution under Section 2 of the Health and Safety at Work Act 1974. The HSE was impressed with the significant changes our insured had implemented to working practices since the accident. Our insured was delighted with this outcome as a prosecution could have affected ongoing and future business and/or tenders, thereby impacting upon the ongoing viability of the business generally.

We obtained our own medical expert evidence from a spinal surgeon and maxillofacial surgeon. Surveillance affected the Claimant's credibility. It confirmed he was able to undertake activities he alleged he was unable to do. The claim was settled in the sum of £85,000 after detailed negotiations.

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.**

Completed 25 June 2013 – written by QBE EO Claims.
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