QBE European Operations

QBE UK casualty claims

Case studies | March 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:

Recovery of outlays

Précis: We correctly identified a 3rd Party as the "at fault" party and put them on notice of our intention to recover our outlays at completion of an Employers Liability claim. No appropriate response was received despite sending chaser letters.

We instructed Legal Panel Solicitors to recover our outlay of just over £10,000 from our insured's maintenance contractor. The contractor initially denied liability but our Panel Solicitors stressed to the contractor that their defence was unsustainable. A full recovery of outlays was secured.

Discontinuance on drop hands basis following allegation of fraud

Précis: The Claimant alleged that he tripped over a metal scale on a walkway in the course of his employment at our insured's steelworks, going over on his ankle.

It was accepted that the walkway was in a hazardous condition. However, as there were no witnesses and our claims team considered there were some suspicious aspects to the claim we denied liability and put the Claimant to strict proof.

A witness subsequently came forward to indicate that the Claimant had told him that the ankle injury had occurred the weekend before the alleged accident at work, when the claimant was drunk at home and fell down some stairs.

We offered a time-limited drop hands discontinuance; making it clear we would proceed to trial if it was not accepted. The offer was accepted on the last day allowed, resulting in a saving against damages and the Claimant's costs reserve of £40,000.

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Success at trial - costs awarded

Précis: The Claimant kept her own horse on 'do it yourself' livery with our insured who also kept sheep. She was riding in the woods belonging to our insured and fell from her horse, alleging it had been startled by a sheep. Allegations were brought in negligence and under the Animals Act 1971.

Following investigation we decided to deny the claim.

Proceedings were issued and based on the evidence; we maintained our denial and decided to run the case to trial.

The claim was dismissed with costs in our insured's favour. The court held that it would be an onerous and unacceptable duty to impose on a land owner to not only fence one's own animals in but to fence other's animals out. The Claimant was an experienced horse owner who knew the risks associated with riding. The decision in our insured's favour resulted in a saving of £250,000 against the reserve.

This decision has wider implications for riding schools and equestrian centres that offer 'off road' hacking. The Claimant was seeking a 100% risk free environment and expected this in return for livery. The judge appreciated the very real public policy issues and that the 'desirable activity' was a risk sport that carried with it a possibility of injury.

Claim settled for 70% of pleaded claim at Joint Settlement Meeting (JSM)

Précis: The Claimant slipped on oil on the galley floor on board an aircraft and sustained a significant injury to her right knee. We promptly and thoroughly investigated liability, agreeing with our insured that breach of duty would be established. An early admission of liability meant that costs could be contained.

The Claimant was unable to continue working as cabin crew for the client, but she could return to work in a sedentary or semi sedentary role. The main issue in dispute was the pleaded claim for future loss of earnings and particularly whether she could return to full time hours and what her residual level of pay should be.

Prior to the JSM our claims handler investigated the nature of the work to which the Claimant had returned. Internet investigations identified the work was likely to be of a reasonably manual nature and contrary to the views of the medical experts. At the JSM the Claimant opened with an offer of £275,000. A final compromise figure of £193,385.26 was agreed against our estimated evaluation of £233,250.

Favourable settlement

Précis: The claimant (age 56) was employed by our insured as an HGV driver and was injured while he was collecting a load of salt from a salt mine. As he attempted to pull a tarpaulin sheet across the back of his wagon, the strap pulling the sheet was jammed because the loader, an employee of the mine owners had buried the rope under the load of salt. The Claimant pulled the rope hard and it suddenly became free and he fell backwards suffering a serious head injury.

The Claimant sustained a brain injury, suffering from short term memory loss, loss of taste and smell, headaches, dizzy spells and some personality changes. There were arguments of contributory negligence in that the Claimant was not wearing his hard hat, had attempted to pull the strap free when he was leaning back in such a way that he overbalanced, and he did not use the platform provided to try and release the straps.

As the employer, our insured owed a non-delegable duty of care to the Claimant. In addition there had been no proper risk assessment and a failure to instruct the Claimant properly in safe loading procedures. Despite these difficulties it was successfully argued that a 3rd Party had some responsibility for the accident as it had control of the site and it was their loader who covered the strap with salt. This created an unsafe situation which had attracted some adverse comment from the HSE.

Proactive management of Legal Panel Solicitors by our claims handler allowed this claim to settle prior to proceedings thereby reducing costs. The 3rd Party agreed to pay one third of the claim with our insured paying two thirds. Damages were agreed at £150,000 in total plus Claimant's costs of £37,000 resulting in saving of £188,000 against the reserve.

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Success at trial - costs awarded

Précis: The Claimant, an employee of our insured, was making a tanker delivery to a third party site. He alleged that while he was there it was necessary for him to climb on top of the tanker in order to tighten the manhole lids, and while he was climbing back down the ladder, the handrail came down of its own accord, trapping his finger. Breach of the Provision and Use of Work Equipment Regulations 1998 and the Work at Height Regulations 2005 were pleaded and it was alleged the ladder and the handrail were defective and/or unsuitable for purpose.

We investigated the matter and denied liability on the basis that:

- the Claimant had been instructed not to climb on top of the tanker while at third party sites,
- there were processes in place for doing this before the tanker left the depot,
- the handrail was in good working order and was entirely suitable for purpose.

Our decision was contested and proceedings issued. Legal Panel Solicitors agreed with our liability decision and ran the matter to trial.

The claim was dismissed as the Judge found that the Claimant had been trained not to climb on top of the tanker, that our client had no knowledge that it was the Claimant's practice to do so, and that there was no evidence to suggest that the handrail was faulty or in any way defective. The Court ordered the Claimant to pay our costs in the sum of £4,116.20.

Success at trial - costs awarded

Précis: The Claimant attended our insured's riding stables. She fell whilst mounting her horse and sustained serious injury. The Claimant's main allegation - that the saddle slipped because it was not properly secured - was disputed. Our insured argued that rather than follow the mounting instructions given, the Claimant tried to throw her right leg over the back of the horse without placing her left foot in the stirrup and thereby lost her balance and fell.

We decided to deny liability and proceedings were issued. Following subsequent discussions with Legal Panel Solicitors and Counsel, we decided to run the matter to trial on liability. We were not able to reach an agreement on quantum prior to trial to narrow the issues.

The trial judge found this was an accident in the truest sense. He accepted our insured's evidence that the saddle did not slip. He agreed this was an example of the sort of thing that can happen occasionally to riders mounting and was really nobody's fault.

This is another example of the judiciary being prepared to find that accidents do happen and riders voluntarily accept the risks ordinarily associated with the sport. The outcome resulted in a saving of £95,000 against the reserve held.

Favourable settlement

Précis: The Claimant alleged to have suffered Hand Arm Vibration Syndrome (HAVS). We investigated the matter and duly admitted liability. Prior to proceedings the Claimant submitted a schedule of loss in the sum of £191,000.

We considered the schedule and medical evidence and decided the valuation of the claim by the Claimant and his solicitors was overstated. Negotiations proved unsuccessful. Legal Panel Solicitors considered there was a chance the Claimant might receive over £200,000 having regard to unemployment difficulties in the region in which he lived. Nevertheless the claim was ultimately settled for £30,000.

This case shows our Claims Adjuster's ability to correctly value a claim and not bow to the pressure of an over inflated schedule of loss.

Denial of Liability and discontinuance following allegations of fraud

Précis: The Claimant alleged he fell from a ladder when he was inspecting a heavy fuel oil tank on a ship and sustained injury to his shoulder. We investigated the matter and successfully denied liability on the basis that:

- the Claimant did not report the accident to the client for over one year post accident, he only mentioned the accident when his future employment was being discussed,
- the Claimant had a pre-existing injury to his shoulder,
- there were reports from colleagues hearing the Claimant advising it occurred outside of work, he no longer wished to be at sea and was therefore building a claim,
- the Claimant was actively seeking alternative employment during his sickness absence, as the client was approached for a reference from a prospective employer.

We challenged the allegations made by the Claimant and put them to strict proof in regards to accident circumstances and medical causation. The claim was discontinued by the claimant.

The claim was discontinued by the Claimant resulting in a saving of £80,000 on our estimated valuation should it have succeeded.

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