QBE Business Insurance

IN YOUR DEFENCE

Q3 2016

Made possible

QBE

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 of our claims handling approach which demonstrates us putting QBE's vision of being "the insurer that builds the strongest partnerships with our customers" into practice:

Third Party Property claim (£250,000 plus Costs) withdrawn Pre-action

This claim arose out of an escape of water which caused substantial damage to the Claimant's gym premises. It transpired that a section of pipework in the restaurant above the gym had failed.

Property insurers for the Claimant sought recovery of their £250,000 outlay plus costs from our Insured, relying on an expert's report which concluded that the pipe joint failed due to delamination.

Our Insured confirmed that they manufactured the pipe but did not accept the allegation that it was defective and not fit for purpose due to a manufacturing defect. They produced millions of metres of the same pipe without it ever having failed. The packaging clearly stated such piping should not be used within a pumped hot water circulation system. The insured strongly suspected either poor installation or use in unsuitable conditions.

We obtained our own forensic engineering evidence which cast doubt on the claim. It suggested poor workmanship and incorrect usage of the product were to blame. Liability was denied but this was challenged.

The Claimant agreed to our proposal of a joint inspection and report by a materials expert. The only sensible interpretation of that evidence was that the pipe had failed due to faulty installation and/or misuse related to the conditions to which it had been exposed. There was no evidence of manufacturing defect.

The claim was withdrawn. This was a particularly satisfying result as the Claimant's solicitors had repeatedly contended that our tactics were misguided and would be very costly for our clients. We remained calm in the face of such aggression. Any commercial settlement would have required a notable outlay and accordingly the result represented a considerable saving for QBE and our Insured.

Drops hands offer accepted following Inquest findings

Our Insured are a private security company, who had a contract to provide night shift security staff at a hospital.

Nursing staff asked our Insured to assist with an aggressive patient. Our Insured's employees were unable to help the patient or calm him down. The police were then called and with the assistance of our Insured's employees, the patient was restrained. The patient later died of a cardiac arrest.

Concerns were raised that one of our Insured's employees had placed their knee on the Deceased's back, whilst attempting to assist the police with the restraint. This gave rise to the potential of positional asphyxia to have occurred.

The matter was heard at an inquest before a jury. Careful preparation for the inquest was undertaken. This included a conference with the Insured and obtaining a detailed witness statement on behalf of the Operations & Compliance Manager, to combat any potential Prevention of Future Deaths Report. The jury concluded that nursing care was lacking and that the police officers failed to communicate with each other or the patient prior to the restraint taking place. They found that the Insured's security staff acted only under the direction of the police officers present.

Proceedings had been served and then immediately stayed, prior to the inquest. As the inquest made no findings against our Insured we decided that the most appropriate way forward was to make a "drop hands" offer to the Deceased's family. This was eventually accepted. We estimate that a successful civil claim against our Insured would have resulted in damages in the region of £75,000 but with costs in excess of £250k given that they would have been entitled to recover the cost of representation at the month long inquest.

The Insured's Operations Compliance Manger contacted us afterwards to state:

> "The whole process was one which was managed efficiently and no area was left to chance. The communication was excellent and we were informed regularly of any changes and updates. I personally was given great guidance on behalf of the company and have learnt a lot from this case. I feel the company have been represented in a professional manner and that the outcome although it was a tragic incident, was a correct outcome".

Claim redirected following robust denial

The Claimant sought damages following an accident when tarmac was being loaded into the rear of his flat bed lorry. He attempted to pull a broom from beneath the tar, the broom's handle came away from the brush causing the Claimant to fall approximately 2.5 metres over the side of the lorry and strike his head on the ground beneath. The Claimant sustained a closed skull fracture with intracranial injury, fractured right thumb and on-going head, neck and back pain with left sided facial numbness.

We disputed liability on the basis that the Claimant and his colleague were under the direction and control of a third party contractor at all times. The evidence we obtained revealed the works had not been planned properly by the contractor, that there was inadequate supervision and inappropriate equipment was being used. The Insured had a non-delegable duty of care to the Claimant but in view of the circumstances our strategy was to redirect the claim to the contractor and invite them to deal with the claim.

Our approach was not without risk to the Insured given they were the Claimant's employer. However, insurers for the contractor eventually confirmed that they had admitted liability and that they would not be pursuing a contribution/recovery action against our Insured.

Our robust position has resulted in the Insured and QBE avoiding a substantial claim.

Trial Win

The Claimant sustained a fractured pelvis when she was kicked by her horse at Aintree Racecourse. It was alleged that her horse kicked out due to a noise produced by our Insured's vehicle. The vehicle in question was a recovery truck which had arrived to collect the broken down horse box next to the Claimant's horse box.

Our investigations revealed the horse appeared to be agitated before the arrival of the recovery vehicle and that no significant noise occurred. Pre-warning was also given of the arrival of a recovery vehicle within the owner's enclosure. Witness evidence was served from the driver of the recovery vehicle and the two owners of the horse box which was recovered. We denied liability and so Proceedings were issued.

At trial, the Claimant, her husband and two independent witnesses provided oral evidence in support of her allegations against our Insured. There was a discrepancy in the Claimant's independent witness evidence as to when the noise occurred. Our Insured's driver and the owners of the broken down horse box provided oral evidence in our Insured's defence.

The Judge ruled in favour of our Insured noting that:

1. He was not able to find on the balance of probabilities that there was a noise which spooked the horse;
2. If he is mistaken and there was a noise, that on the balance of probabilities it did not come from the Defendant's vehicle; and
3. Even if there was a noise from our Insured's vehicle, it would have been unexpected and so the driver could not have warned the Claimant.

The Claimant's claim was valued at £19,087.65 and in addition costs and disbursements were £17,000. Therefore a saving of approximately £36,000 was achieved in this QOCS case.

50% contribution secured from NHS trust

The Claimant injured his left shoulder during the course of his employment with the Insured. Liability was not in issue. He underwent several surgical procedures following his injury and was able to return to work albeit on light duties.

During the final operating procedure the surgeon decided to abandon the planned procedure and carried out a near total acromionectomy (resection of the distal end of the acromion). This left the Claimant with a permanently disabled left shoulder, resulting in his employment being terminated.

The Claimant wanted our Insured to pay his claim in full and refused to bring the NHS in as co-defendants despite the clear post-operative worsening his shoulder condition. His solicitors suggested we launch a recovery claim against the NHS Trust on completion of their action. We declined that option and brought the Trust in to the main action, so as to make full use of the Claimant`s case against the Trust (it later transpired that he had made a formal complaint against the Trust). The Trust admitted clinical negligence but denied our allegation that the negligence was so gross as to amount to a Novus actus interveniens (an intervening unforeseeable event that worsens the claimant's loss).

The claim was pleaded in the final schedule at £600,000. Damages were agreed at £310,000.00 split 50/50 between defendants. Even though the Trust had been in the action for a relatively short period of time we persuaded them to pay 50% of the Claimant`s costs of the action. By the time costs are agreed/assessed, the contribution claim against the Trust will have netted approximately £240,000.00 in damages and costs.

Claim struck out at trial, with costs awarded

The Claimant was employed by the Insured as a lorry driver. He alleged that as he was in the process of pushing a loaded cage towards his HGV, he felt discomfort in his right calf. He alleged that the cage weighed 80 kilograms, that there was a lack of assistance available and that the cage was defective.

Liability was denied on the basis that no defects were identified with the cage, that 80 kilograms was a fairly modest weight for a loaded cage, that the Claimant was an experienced employee and that he had been trained to seek assistance where required.

Witness statements were taken from the Insured's employees confirming that the cage was not excessively heavy, that additional assistance was available if required and that the Claimant was rushing as he wanted to get back for a meal.

A few days before Trial, the Claimant's solicitors made a Part 36 Offer to settle in the sum of £4,100. We rejected this and put forward a counter offer for the Claimant to discontinue with us bearing own costs. The Claimant's solicitors rejected this.

The claim was struck out at Trial as the Claimant failed to attend and his solicitor could not make contact with him. The Judge awarded our costs in the sum of £7,455.

The claim had been pleaded up to £15,000. We valued damages at approximately £5,000.

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