QBE Business Insurance

UK casualty claims

Case study | First Quarter 2016

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

Favourable settlement - Medical expert opinion challenged

The claimant was involved in an accident at work when he was crushed by a steel bundle. He injured his chest and developed Post Traumatic Stress Disorder (PTSD). Protective proceedings were issued with the claim pleaded at just under £500,000.

Psychiatric evidence submitted by the claimant opined the PTSD had rendered the claimant unfit for future work. However, subsequent psychiatric records showed his PTSD had improved to such a level that he was discharged from any further treatment after 16 sessions of Cognitive Behaviour Therapy (CBT).

We made a Part 36 offer of £50,000 gross of 25% contributory negligence. Our offer was rejected and the claimant's solicitor refused to enter into settlement negotiations.

Approximately two years after the accident, the claimant was sectioned. We established that post-accident and following the conclusion of his CBT the claimant's cousin and a friend had been involved in a fatal road traffic accident and that his ex-partner had committed suicide.

Part 35 questions were put to the claimant's psychiatric expert as we felt other life events were the true cause of the ongoing PTSD and subsequent inability to work. The claimant's expert revised her opinion and agreed it was possible that other life stressors were responsible for the psychiatric deterioration and ongoing problems.

The claimant having seen the revised opinion accepted our Part 36. He is now responsible for our costs since expiry of that offer. The robust stance adopted in regards to valuation of the claimant's claim and our further investigations allowed us to challenge the original expert medical opinion. We estimate that this challenge has resulted in a saving of £250,000 on damages and costs.

Trial Win

The claimant alleged that excessively wet flooring in a communal staircase following cleaning caused him to slip and sustain various soft tissue injuries. Investigations showed signage was in place to warn of the cleaning in process, the floors were constructed of a non-slip surface, the task had been risk assessed and a safe system of work was in force at the time of loss. Liability was denied and the matter proceeded to court.

The Judge accepted that the communal stairway 'could possibly' be considered to be an unventilated area and that on this basis there had been a technical failure given that the risk assessment specifically stated that dry mopping should follow wet mopping in unventilated areas.

With the breach noted, we challenged the claimant on causation. The Judge was satisfied that the claimant was an unreliable historian and that his evidence was not credible, thereby concluding that the claimant had not satisfied causation on the balance of probabilities. The claim was dismissed with no order as to costs.

Claim discontinued - Costs to be recovered from after-the-event (ATE) insurer

The claimant alleged he was involved in an accident at work in which he slipped on ice injuring his left knee.

Investigations revealed the accident was not reported to our insured at the time. Liability was denied and the claimant put to strict proof regarding the accident circumstances and causation. During investigations, a work colleague came forward to report he had witnessed the claimant injuring his knee while playing rugby the day before the alleged accident.

Despite attempts to prove the rugby injury was the real cause of the knee complaints we were unable to find any medical records for an attendance on the day before the accident.

Further investigation revealed the website of the claimant's rugby club had photographs of him playing for them whilst wearing supporting strapping on his left knee. The claimant is a Polish national and so we pressed for permission to obtain his Polish medical records. Those records revealed the claimant had a long pre-accident history of left knee problems which included surgery in 2008.

Our medical expert considered the claimant's A&E attendance records following the alleged workplace accident. He opined that the clinical findings on examination at that time were more consistent with the injury having occurred quite some time before the attendance, rather than within the hour or so prior. His presenting symptoms were more consistent with the injury being attributable to playing rugby the day before. Both experts agreed in their joint statement that the claimant's knee injury was caused by the rugby incident rather than the alleged accident at work.

A month before a two day trial was due to commence, the claimant made a "drop hands" offer. This was rejected and the claimant subsequently filed a Notice of Discontinuance.

The CFA/ATE policy pre-dated 1 April 2013 and so we are entitled to recover defence costs in full. We estimate global savings achieved in the amount of £125,000 against pleaded damages and costs.

Claim discontinued - Claimant ordered to pay our costs

The claimant was employed as a flight attendant. She alleged that turbulence on the approach to landing resulted in her being thrown into the air and falling to the floor, sustaining facial injuries.

Her case was that the cabin crew were negligent on the basis that, before she was secure in her seat, one of them indicated to the flight crew that the cabin was secure by moving a Cabin Slide Indicator (CSI) to white.

Our insured disputed that the CSI had been white at the time that the plane hit turbulence but that in any event the position of the CSI did not influence the course flown by the pilot.

At the liability trial the Judge heard evidence from several of our insured's employees, none of whom had seen the CSI on white at any stage before the accident. The Cabin Services Director's evidence was that he did not move the CSI to white before the unexpected turbulence, there was no reason for him to have done so, and, in fact, he did so after the turbulence. The flight crew were emphatic that they were not under the impression that the cabin crew were securely seated with their seatbelts fastened at the time that the turbulence struck. The information at their disposal and the nature of the cloud ahead was such that they had no reason to suspect that it posed a risk of significant turbulence. However, even knowing that the cabin crew were not securely fastened in their seats, they would not have acted any differently.

It was no part of the claimant's case that the decision to fly through the cloud was negligent and none of the experts suggested that it was.

On the third day of the trial the claimant discontinued her claim against our insured and was ordered to pay our costs.

Proactive handling prevents formal proceedings

Whilst working as a football club steward escorting away fans through the club car park the claimant was hit on the head by a brick thrown over the fence from an unknown person. He developed post concussive syndrome with alleged vision problems, memory loss, tinnitus, word finding difficulties, anger issues and anxiety. The claimant did not return to his employment and was seeking damages for both past and future losses.

The claimant alleged that the route taken was a departure from previous practice, that there was an inadequate number of stewards and following the accident the perimeter fencing that surrounded the car park has been replaced with a higher specification providing greater security and protection.

Extensive enquiries were undertaken during which the insured were reassured that we had a strong defence on liability and that no concession should or would be made.

Despite the threat of legal proceedings these were not served. The claimant's solicitor recently advised they were no longer instructed on the case.

Despite the burden of strict liability imposed on our Insured as employer we were able to work closely with them in securing a significant amount of evidence which convinced the claimant's solicitor that our insured had complied with their statutory duties. This has resulted in averting a potentially expensive claim. The insured was delighted with the result as they were convinced from receipt of the letter of claim that they were not at fault. Our robust defence of the claim supported their views.

Completed March 2016
Written by QBE EO Claims.
Chris Reidy (contact no: 0113 2906677
e-mail: christopher.reidy@uk.qbe.com).