QBE European Operations

UK casualty claims

Case studies | July 2015

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:

Pro-active claim management

Our insured leased commercial premises from the claimant and operated a Chinese takeaway. The leased premises comprised a single ground floor unit within a two storey, seven-unit building.

Our insured was working in the kitchen, using a wok to heat cooking oil. While left unattended the wok for whatever reason became unstable, fell off the burner and poured heated oil across the flames of the burners causing an explosive incident. The fire spread rapidly and destroyed the entire building. The local authority and fire service deemed the remaining structure hazardous and directed it to be fully demolished within 24 hours. Our insured later admitted to the fire service and others that four gas burners were ignited at the time, that the wok was old, misshapen and did not sit squarely on the burner. It was also accepted that the wok was ¾ full with three litres of oil, and left unattended while the insured performed other tasks within the kitchen. The claimant sued our insured for the cost of reinstating the building, clearance and loss of rent. The claimant estimated build costs alone to be £2,200,000. We identified early on that the claim was likely to succeed against our insured and that our policy responded to the claim.

We arranged a Joint Settlement Meeting (JSM) three months after receipt of the claim. At the JSM we persuaded the claimant to settle on the basis of diminution in value plus the other losses rather than the reinstatement cost. This resulted in us securing settlement for £225,000. Our insured had a counter-claim for business loss arising out of the claimant's breach of covenant for failing to insure

the demised unit. We persuaded the claimant to pay the insured £50,000 out of the settlement funds.

Our proactive approach enabled us to negotiate the claimant's costs shortly after the JSM in the sum of £12,500. Our own costs including fees for a surveyor (whose report substantiated our approach to quantum) were less than £8,000. Our insured was delighted with the result achieved on the claimant's damages and that we had managed to secure funds against the counter claim enabling our insured to re-start the business at different premises.

No further claims had been submitted in connection to the fire but as there was evidence that the fire had physically damaged other surrounding property we persuaded all parties to agree a confidentiality agreement.

This represents an excellent outcome, secured within a short time scale.

Claim dismissed at trial

The claimant was a labourer working under the direction and control of our insured. He slipped on ice while walking back to his caravan on site. A claim was brought under the Occupiers' Liability Act alleging that the Insured failed to take reasonable care to see that he would be safe in using the compound. Our enquiries concluded that the insured had taken all reasonable steps to make the area safe.

Despite being a seemingly minor incident, the claimant suffered a rare and life-threatening complication leading to an above the knee amputation of his left leg.

We were EL Insurers. Our insured had a separate PL policy with another insurer. There was a dispute as to which policy engaged.

The matter was taken to a liability trial. The judge was asked to consider the 3 following issues:

1. Did the accident happen in the car park or as the claimant was leaving his caravan?
2. If the accident happened in the car park, were the insured in breach of duty under the Occupiers' Liability Act?
3. If so, was there contributory negligence to any extent on the claimant's part?

The judge dismissed the claim on the basis that the insured were not in breach of their duty (as an employer) as on the evidence presented they had no reason to appreciate that the car park posed such a degree of risk that remedial measures were required.

The claim was substantial and the judge advised had he ruled in favour of the claimant no contributory negligence would have been awarded. On a full liability basis this claim had a potential to be valued at £785,000 for damages, £100,000 for Claimant's costs and £50,000 for defence costs. The claimant has chosen not to appeal the judgement given it was a finding of fact.

The dismissal of the claim represents a substantial saving. We are seeking recovery of our outlay from the claimant.

Favourable settlement

The claimant sought damages following an incident at work when he suffered a knee injury after slipping on snow/ice. A breach of duty was admitted following our initial investigations and the claimant put to strict proof in respect of causation.

Medical evidence confirmed a ruptured quadriceps tendon, which required surgery, extensive physiotherapy and use of a knee brace. The effects of the injury caused a psychological reaction in the form of an adjustment disorder with depressed mood and an ongoing disability. Chronic pain was mentioned by both reporting experts. The claimant was not fit to return to lorry driving or able to undertake heavy manual work. It was considered unlikely due to his age (63 at date of loss) and qualifications that he would find suitable alternative work. Damages were sought in excess of £140,000

Shortly after the accident the insured entered into administration and the claimant made redundant. We argued this fact along with a pre-existing heart condition meant the claimant was unlikely to find suitable alternative work in any event.

The claimant's solicitor had not sought to exploit the chronic pain element of the claim but we were concerned that if the matter proceeded towards litigation, claimant counsel would capitalise on it and in doing so significantly inflate the claim. Following negotiation damages were agreed at £40,000 gross of CRU prior to proceedings being issued.

Trial Win

The claimant was a lawful visitor to the insured's building society when she slipped as she exited the premises and injured her spine. A breach of the Occupiers Liability Act 1957 was alleged.

Investigations revealed it rained on the date of the accident. However our insured had taken all reasonable care to ensure that the premises were safe. There was a large mat at the entrance to the branch, a 'Caution-Wet Floor' sign was erected near to where the claimant slipped and there was constant mopping of the floor by the staff throughout the day. All customers were reminded to take care by staff during transactions. Statements were taken from the staff on duty with responsibility for the cleaning and inspection. Liability was denied.

At trial the District Judge found that all reasonable precautions had been taken and on this basis found in favour of our insured.

This resulted in a saving of £60,000 against the reserve.

The clear and concise statements obtained by our claims inspector proved crucial in the defence of the claim.

Successful recovery

The claimant slipped on ice in the car park of our insured's railway station. She fractured both arms and went onto to develop Complex Regional Pain Syndrome (CRPS).

The claimant alleged the insured had been negligent and breached its duty under the Occupiers Liability Act 1957 as a result of their failure to grit the station. Investigations identified that our insured contracted facility services to a third party. The contract included specific instructions to grit the incident location in winter.

Given the severity of the injuries and development of CRPS a decision was taken to settle the claim promptly and deal with recovery aspect thereafter. On settlement of the claim a full indemnity was sought from the third party contractor. We successfully recovered our outlay in full totalling £75,404 as well as the legal costs we incurred pursuing the recovery.

Our prompt settlement meant we were able to contain and limit the losses on what could have been a very expensive claim given the development of CRPS. We did not wish to get into protracted liability negotiations with the third party as doing so may have increased damages and costs in the civil matter.

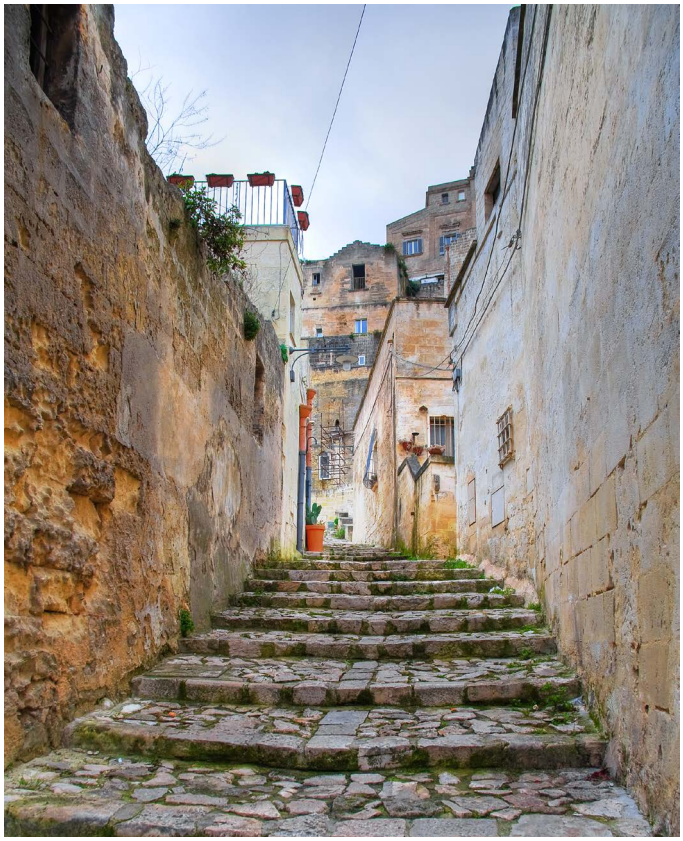
Claim withdrawn

In the early hours of the morning the claimant was making his way home when he allegedly tripped on a defect in a back alley. A claim was made under the Highways Act 1980 with the alleged cause being a missing gully cover.

The injuries sustained as a consequence of the alleged accident included a heart attack, three strokes and brain damage.

Our insured were the highway authority responsible for the maintenance and repair of the locus. Our enquiries established that the insured had a statutory defence to the claim as well as a strong defence on causation. A review of medical records established considerable doubt as to the circumstances of the alleged accident, suggesting instead that the claimant had collapsed as a result of intoxication rather than any defect. The medical records also identified that the claimant had an extensive history of alcohol dependency and substance abuse. These findings lead to further enquiries which revealed a link between the claimant and a previous claim against the insured brought by his brother under remarkably similar circumstances.

Liability was denied and the claimant was invited to confirm in open correspondence that the claim was withdrawn. Representatives for the claimant accepted this.



The claim had manifest causation issues in terms of both the circumstances of the accident and the cause of the claimant's injuries. Nevertheless it also had significant economic potential and it is pleasing that we have been able to secure its withdrawal at such an early stage.

This resulted in a saving of £125,000 against our reserve.

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