QBE European Operations

UK casualty claims

Case study | April 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:

Fraud Success - Gross exaggeration

Lift doors closed on the Claimant, a visitor at the Insured's shopping centre. Several hours later she reported the incident to the Insured, alleging she was trapped when the doors would not release.

The Insured's CCTV footage showed that although the doors came into contact with the Claimant, they immediately re-opened when sensors detected an obstruction. We denied liability and the Claimant then issued legal proceedings.

Medical evidence was submitted advising she had bruising and abrasions to her shoulders, with ongoing hip, neck, shoulder, back and wrist pain.

We showed the footage of the incident to the medical expert. He advised that the Claimant's account of the accident as given to him at the examination was factually incorrect and that she had exaggerated the force of the lift doors when she recounted the incident to him. He stated that it was unlikely that an individual would be injured in the incident, that the index accident could not have caused the injuries described in his original prognosis and that there must be an alternative explanation for the Claimant's level of symptoms.

One month before trial the Claimant's solicitors issued a notice of discontinuance and we were awarded costs.

Favourable settlement

The 53 year old Claimant was employed by the Insured as a Scaffolder. In the course of his work he fell through a defective scaffold board sustaining spinal injuries that rendered him paraplegic.

Investigations identified that primary liability was likely to be established albeit with good grounds for a significant reduction for contributory negligence. We adopted a robust stance towards legal liability but recognised that we were unlikely to successfully defend the claim if it reached trial.

Special Damages were claimed at £3.2m million. We obtained a report stating that in addition to the reduction in life expectancy due to the paraplegia, the Claimant was a smoker with a prior history of throat cancer and raised cholesterol. These were all factors affecting how long he was likely to live.

At a Joint Settlement Meeting (JSM) quantum was agreed at £1m. The Claimant's Solicitors claimed costs at £170,000. These were also agreed at the JSM in the sum of £93,710.

This was a very significant claim with complex issues. We are delighted with the savings achieved and that settlement occurred within 21 months of the accident.

Trial win

The Claimant was employed in a role that involved cleaning medical instruments before putting them in trays which were then placed in washing units. She alleged that repetitively lifting heavy items in cramped working conditions had caused an exacerbation of an asymptomatic degenerative condition in her shoulder. It was alleged that she was unable to work for two years as a result of this injury. Her claim was pleaded as limited to £50,000.

Liability was denied and the matter proceeded to trial.

Denyer HHJ at Bristol County Court found that the Insured could not avoid the manual handling operation. He was satisfied that appropriate risk assessments had been completed and documented. He accepted that the Claimant had received adequate training and that suitable supervision and additional assistance was provided as required. The claim was dismissed. Costs were awarded in our favour.

Claims of this nature are notorious for opening floodgate litigation so the Insured was obviously delighted with the outcome.

Favourable settlement and HSE fine

The Claimant was struck by machinery being operated by a colleague. He was trapped between the moveable machinery and other work equipment. He sustained an open fracture of his right femur and severe vascular injuries that despite extensive surgery eventually led to an above-knee amputation. He also suffered an open fracture of his left femur.

Both the claimant and his colleague who was operating the machinery had only been employed by the Insured for 6 weeks at the time of the accident. A lack of supervision was considered the primary cause. Liability was admitted with contributory negligence agreed at 5% as the Claimant was not paying attention to his surroundings.

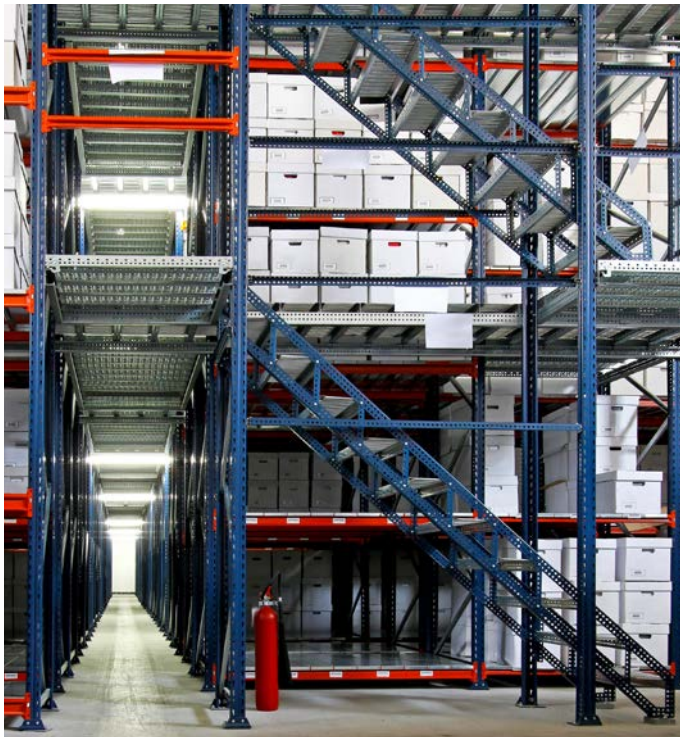
The Insured was prosecuted by the HSE for various breaches of health and safety legislation. The Insured was fined £20,000 and ordered to pay costs of £8,045. We were able to keep the case away from the Crown Court where the fine would have been unlimited.

The Claimant submitted a £3m schedule of loss. He claimed for expensive prostheses, significant accommodation costs and transport requirements as well as an extensive care regime. A JSM was arranged to narrow the issues and attempt to settle the matter without the involvement of the court given the obvious costs implications of a lengthy quantum trial. Through robust negotiations and well placed offers we were able to achieve settlement of damages at £1.6m, a saving on the Claimant's schedule of over 47%. The Claimant's solicitor's costs are awaited.

Our handling of the civil and HSE elements of the claim resulted in a lower than expected HSE fine for the Insured and a seven-figure saving on the Claimant's pleaded damages.

Trial Win

The Claimant suffered a severe cut to her heel, allegedly from catching it on the sharp underside of a metal step whilst descending a ladder. She was employed by the Insured as a warehouse operative. Part of her role required her to use a ladder in order to obtain labels to replenish a printing machine.



There were no witnesses to the accident, the steps had not been inspected for defects and the task of obtaining the labels had not been risk assessed. As a result of the accident, the procedure to obtain the labels was changed. There was concern that a court would accept that the accident was foreseeable.

Despite our reservations we denied liability on the basis that the Claimant had been trained to maintain three points of contact on the ladder, and so should not have allowed her heel to get into a position to be cut. Additionally, the steps had been constructed by a specialist company for the purpose in which they were being used.

At trial, the Claimant proved to be an entirely unreliable historian and gave a version of events totally different to her pleaded case. She could not explain how her heel came to be caught. The Judge found that the Claimant had not proven her case in light of the version of events she gave in the witness box and so he did not have to consider liability.

Discontinuance at trial with costs contribution

The Claimant was a visitor at the Insured's railway station when she slipped and fell on the platform. She sustained lacerations and bruising to her legs. It was also alleged the accident led to a miscarriage within 48 hours of the accident.

It was claimed that the cause of the accident was an accumulation of water on the platform and that the Insured was in breach of the Occupiers' Liability Act 1957. It was raining at the time of the accident and, although the platform was covered by a canopy, the platform edge was wet as a result of rain blown onto it by strong wind.

CCTV footage showed the Claimant rushing for the train which had pulled into the station before the she had arrived on the platform.

Liability was denied on the basis that the Insured had a reasonable system of inspection and cleaning in place. Wet floor signs could not be displayed on the platform as this would pose a tripping hazard as well as creating the risk of a sign falling onto the tracks. We maintained that the Insured could not have done any more to prevent the platform edge becoming wet in adverse weather. We also alleged that the Claimant had been negligent in taking insufficient care for her own safety as she was rushing to board the train. It was further denied that the accident had caused the miscarriage.

The case proceeded to trial. On the morning of the trial the Claimant discontinued her claim, agreeing to contribute £7,000 towards defence costs.

Trial Win

The Claimant resided within a new residential complex in East London. The Insured was contracted to provide security solutions which included the installation of an automatic bollard system.

The bollard system was installed and handed over to the client with no further maintenance contract entered into with the complex's residential management agency. Six months after installation and handover the Claimant's vehicle was damaged by the bollard. The Claimant alleged the Insured supplied a defective system and negligently installed it. The claim was for £5,330 and fell within the small claims track. The Insured denied these allegations and felt very strongly that the claim against them should be defended.

Investigations were carried out and liability denied on the basis the system was tested and found to be defect-free at the time of installation. Furthermore there was no reason for the Insured to return at a later date in the absence of any request to do so by their client. Proceedings were thereafter issued against the Insured.

We defended the claim to trial. The court dismissed the claim. The Judge was satisfied that there was no evidence of neglect and accepted there could be no claim in contract given the absence of a contract between the Insured and the Claimant. Costs were awarded in our favour.

Needless to say the Insured was very pleased with the result.

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