QBE European Operations

UK casualty claims

Case studies | July 2014

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:

Trial Win- Court of Appeal

The claim **(Denton v T H White Ltd)** involved the installation of a milking parlour by our Insured, which allegedly caused harm to the claimant's herd resulting in low milk yield. In 2007 the Action was stayed on terms that the defendants would pay £200,000 plus costs in respect of certain admitted defects. Modifications were carried out on the parlour thereafter. In 2010 the stay was lifted and litigation continued with the claimant alleging that the remedial work was causing further harm to his herd.

All parties complied with directions and orders for the exchange of witness and expert evidence allowing for a trial to be fixed for January 2014. Six weeks before the trial the claimants served six additional witness statements. These were clearly served out of time, but the claimant sought relief from sanctions.

At a pre-trial review the judge granted relief from sanctions and permitted the claimant to rely upon the additional witness statements. He adjourned the trial so that the defendant could have a proper opportunity to answer that evidence.

In our view the judge's decision was plainly wrong. An appeal was duly made with Jackson LJ giving permission for the appeal to be heard in conjunction with 2 other cases concerning relief from sanctions. The Court of Appeal was concerned with litigants and the lower courts application of their guidance provided in their earlier judgment of **Mitchell v News Group Newspapers Ltd**

[2014] 2 All ER 430 in relation to applications for relief from sanctions pursuant to Civil Procedure Rules (CPR) 3.9.

All 3 appeals were allowed. Our case had illustrated an 'unduly relaxed approach to compliance which the Jackson Reforms were intended to discourage'.

The matter now proceeds to trial. The claimant's evidence served after the July 2013 Court direction cannot be used. Our part 36 offer made in 2010 provides us with excellent costs protection.

Favourable Settlement

The claimant, who was employed by the insured as a prison officer and PE instructor tripped over a wheel post attached to a nearby badminton court sustaining a serious knee injury, tearing the anterior cruciate ligament and surrounding structures.

The claim was pleaded under Regulation 12 of the Workplace (Health Safety and Welfare) Regulations 1992 which requires, so far as is reasonably practicable, that every surface in a workplace shall be kept free from obstructions and free from any article which may cause a person to slip, trip or fall. Investigations revealed that not all reasonably practicable measures had been carried out to reduce the slipping/tripping hazards. The area was however well lit and the claimant was aware of the presence of the stationary support posts. Liability was agreed on a 80/20% split liability basis in the claimant's favour pre-litigation.

Medical evidence submitted by the claimant stated there is a 20% to 25% chance of him developing osteoarthritis within the next 10 to 15 years and a 5% to 10% chance of him requiring a total knee replacement in the next 10 to 15 years. Special damages in excess of £213,000 plus general damages were sought, pushing the claimed value over £230,000.

The claimant's medical expert on questioning agreed that unrelated back problems and pre-existing degenerative changes to the claimant's knee limited his ability to carry on as a PE instructor and his intentions for alternative employment to a matter of months, not years as pleaded. Damages were agreed at £25,000 net of contributory negligence.

The claim serves to highlight the importance of questioning an experts opinion and the potential savings as a result. Based on the schedule of loss presented we can show a saving of damages of over £200,000.

Discontinuance with £75,000 Costs Recovered

The Claimant worked on a restoration project of Victorian wallpaper found within the Insured's college. She was a student at the time undertaking a Masters Degree in conservation. It is alleged that during October 2007- February 2008 when she was working on the wallpaper, arsenic was released from it and the Insured were in breach of their obligations under the Control of Substances Hazardous to Heath Regulations 2002 (COSHH). Her claim was issued in the High Court with a pleaded value in excess of £1million.

Investigations confirmed issues regarding the allegations made and causation. The claimant had been responsible for the COSHH assessment, had been trained in the safe use of work equipment used on the restoration project and was trained and provided with suitable and appropriate Personal Protective Equipment (PPE). We had evidential difficulties with lay witnesses, but were able to maintain a defence with expert evidence from a toxicologist, occupational hygienist, neurologist and a psychiatrist. We set out in detail why we considered the claimant would fail to establish any breach of duty or causation, and invited her to discontinue.

Following leading Counsel's input, the claimant made a Part 36 Offer to settle at £100k, which was rejected. We made it clear to claimant's solicitors that we would maintain our robust denial and did not consider that they had adequate funding to meet costs. The matter had been listed for a five day trial in July 2014.

The claimant has now agreed to discontinue the claim and meet the majority of our costs by way of a £75,000 payment.

Counter Fraud Success- Matter Discontinued

The claimant was walking down the two flights of internal stairs at the Insured's bus station when he allegedly slipped and fell fracturing his wrist. He alleged the stairs were wet and slippery.

The accident was not reported at the time to our insured. The claimant relied on a statement from a witness to confirm the circumstances of the accident and notes from hospital treatment. The letter of claim was sent 4 months post accident date by which time relevant CCTV footage had been deleted.

In accordance with the Occupiers Liability Act (1957) a common duty of care is owed to all visitors to ensure they will be reasonably safe whilst visiting premises for the purpose invited or permitted to be there.

At the time of alleged incident three cleaners were on duty and five customer service officers were also on patrol. The cleaners had a detailed specification to follow. The stairs are cleaned twice daily and spot cleaned as required.

We were not satisfied the claimant had proven his case in respect of the accident location or cause of the fall and invited him to provide further information.

The claimant alleged he reported the matter to a lady in the Insured's control room the day after. The staff rota showed no female was on duty at that time. The Operations Daily Log for that day also indicated there was no call recorded. The hospital notes also stated the claimant could recall why he fell.

The witness purported to see a gentleman slip and fall down stairs at the bus station. He advised the claimant was unknown to him at the time. Checks undertaken by our Special Investigation Unit (SIU) revealed the witness lived at the same address as the claimant's sister. We asked the claimant to sign a statement of truth confirming the witness was unknown to him. He refused to do so. Limitation for issue and service of proceedings has now lapsed and our file has been now closed.

This claim serves to highlight the excellent work undertaken by our adjusters, claims inspectors and SIU in identifying fraudulent claims.

Contribution Claim- Favourable Apportionment

The deceased sustained fatal injuries when he became crushed between a steel beam and static power lift (SPL) when trying to re-weld a faceplate onto a concrete stanchion. The insured were responsible for any steelwork and associated activities on site. They contracted out the work to subcontractors who were the employers of the deceased.

An error was noted with a section of the steelwork and referred to the insured's site manager. It was decided after inspection that this needed to be rectified. The employer then issued instructions about how the work was to be carried out. The deceased chose to ignore the safe system of work in place by not working with a buddy in accordance with the hot work permit. He was found unconscious in between the SLP and stanchion. He was unable to be revived and sadly passed away a short time later.

The claim was brought by the deceased's widow, acting as litigation friend for the dependent children against the employer (D1), site main contractor (D2) and the insured (D3). It was alleged the deceased was working to the insured's Method Statement and in the process they had failed to fully assess the task, identify the risk of entrapment and provide adequate training, and suitable work equipment.

Liability was denied by all three defendants with contributory negligence alleged in the alternative. The claimant discontinued her claim against D2, but proceeded against D1 and D3. Our defence was not without some risk. We looked to settle by way of a small contribution to avoid the costs of a 5 day trial.

The claim was settled at a Joint Settlement Meeting for £225,000 with QBE contributing the inclusive sum of £75,000 for damages and costs. This contribution towards the total represented15% of the total damages and claimant costs, resulting in a saving of £375,000.00 against the reserve held.

Trial Win

The claimant was a kitchen porter employed by our Insured. On 8 December 2009 he was involved in a heated argument with another employee. Given the behaviour exhibited by the claimant, security staff employed by the insured were called.

When the claimant saw the security staff he became verbally aggressive and physically attacked the security manager who then restrained him and called the police.

The matter was subject to an internal investigation. The claimant had been warned in the past about aggressive behaviour and advised further indiscretions would not be tolerated. He was dismissed for gross misconduct. The claimant submitted a personal injury claim alleging assault which had caused neck and shoulder injuries. Liability was denied on the grounds that security had properly assessed the situation at hand and applied appropriate restraint techniques and force. Proceedings were issued.

The claimant made a Part 36 offer to settle at £3,000 prior to trial. The offer was rejected and the claim proceeded to trial.

The claimant's advisors fell foul of 'Mitchell' issues and evidence from other witnesses was disallowed as it had been served late. The claimant's sole account was uncorroborated. We were able to call the security manager and two other employees who witnessed the incident. The judge had regard to the claimant's history, which was well documented and did not believe his evidence so dismissed the claim awarding full costs to the defendant.

This was not a large value claim, but a case where it was clearly unpalatable to settle purely on economic grounds given the evidence to hand. Needless to say the insured were delighted with the outcome. Including defence costs, the reserve saving was around £50,000.

Further information

If you would like any further information or advice on our claims service please contact the QBE Claims Team on **+44 (0)20 7105 4000.**

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