

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 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.

Robust defence and high quality claims handling

Précis: In May 2004 an explosion at a plastics factory resulted in nine fatalities and serious injuries to 45 others. The explosion was caused by vaporised LPG escaping from a corroded pipe, which accumulated in a basement and ignited. The HSE successfully

prosecuted the owners of the plastics factory who were found to be in breach of health and safety laws. A public enquiry followed and Lord Gill concluded the incident was an 'avoidable disaster' due to poorly maintained pipe work.

The owners of the plastics factory settled each deceased and injured person's claim, paying damages, costs and interest totalling about £12 million. They then sued our insured as supplier of the LPG for a contribution on the basis they owed a 'duty to take reasonable care' for the safety of persons on or in the vicinity of the premises. It was further alleged our insured had 'specific duties to advise' the owners of the plastics factory that they needed to investigate the condition of the underground pipe work, including an exploratory excavation.

The insured's defence countered that the circumstances of the case did not fall within, and were not comparable to, the distinct and recognisable situations in which the courts have imposed a duty of care. Both parties accepted that it was 'reasonably foreseeable' pipe work could corrode and that if LPG escaped it could cause an explosion. We maintained there was not sufficient 'proximity' between our insured and the injured parties, as they did not have control over or responsibility for the underground pipe work.

At trial the Judge ruled in favour of our insured. It was held they did not owe duties of care to the injured/deceased persons. It was the owner's failures of duty that caused the tragedy. The insured was simply the supplier of LPG. Accordingly the owners of the plastics factory failed in both their liability and causation arguments for contribution.

QBE, together with our panel solicitors, have been dealing with this case for nine years and throughout that time have fully supported our insured.

Counter fraud success – Discontinuance of claim

Précis: The claimant, an employee of our insured, allegedly injured himself in the course of his work. He stepped on the top tread plate of a lorry to secure his load when the plate gave way causing him to fall 4ft to the floor, landing on his back. As a result of the accident he sustained an injury to his lower back and leg and was unable to return to work.

Investigations confirmed a defect in the vehicle involved in the accident.

On receipt of the claimant's medical evidence, concerns were raised about the alleged extent of the claimant's injuries and ongoing disabilities. Our medical investigations revealed no evidence of spinal instability or nerve root compression to explain the claimant's symptoms. Unsubstantiated allegations were received that he might be working on his own fishing boats whilst off work and receiving statutory sick pay. Rehabilitation had been arranged, but he failed to engage with our providers.

Surveillance footage obtained was in direct contrast to the claimant's alleged ongoing disabilities. It showed him climbing on and off fishing boats and undertaking activities he alleged he could no longer perform.

We put the claimant to proof that the accident happened as alleged. Our solicitors were instructed to send the claimant's solicitor and ATE insurer a letter to advise them that we believed the claim to be fraudulent. Our stance resulted in the claimant issuing proceedings along with a signed schedule of loss amounting to £450,000. Thereafter we revealed the existence of our surveillance evidence. The claimant's solicitor came off record and we were advised that the claimant had issued a notice of discontinuance.

We are seeking recovery of our costs to date from the claimant and will pursue appropriate sanctions against him to demonstrate and help publicise our tough and robust stance on dealing with fraudulent claims.

Favourable settlement

Précis: The claimant was involved in an accident at work when his foot got caught in some loose cables beside a conveyor belt. He fell heavily with his right arm becoming trapped in the conveyor belt. Investigations showed loose cables had been identified as a tripping hazard in a risk assessment over two years previously, but had not been properly dealt with until after the claimant's accident. Liability was admitted due to an unsafe place of work.

The claimant was able to return to work four months post accident, albeit on reduced capacity. His soft tissue injuries to the cervical spine resolved within 18 months. Ongoing complaints related to injuries to his dominant right upper limb and to nerves in the spine.

Medical evidence suggested the claimant might be handicapped on the open labour market given the marked ongoing restrictions. The pleaded claim amounted to over £830,000, including significant future loss of earnings and care costs.

Enquiries with our insured confirmed the claimant was carrying out normal duties, including the pushing and pulling of a two tonne igloo on a roller bed. Our insured helpfully supplied CCTV footage of the claimant at work. This evidence enabled QBE make a realistic Part 36 offer of £30,000 to the claimant, which was accepted.

The settlement reflects how significant savings against a pleaded value of £830,000 can be achieved when examining reported complaints and disabilities within a medical report.

Favourable settlement

Précis: The claimant, an employee of our insured, was involved in an accident at work in 2009 when lifting a heavy object. The claimant sustained an injury to his back and underwent a spinal fusion.

Investigations found the insured to be in breach of Manual Handling Regulations. Liability was admitted with arguments of contributory negligence as the claimant had failed to adhere to the training provided. He accepted contributory negligence of 25%.

Medical evidence submitted confirmed the accident had accelerated a pre-existing degenerative spinal condition by 5 – 10 years. The claimant could not return to his pre-accident role and would be fit for light/sedentary duties only. He was therefore at a disadvantage in the open labour market. A significant future loss of earnings was submitted by the claimant. Given the nature of the medical evidence presented by the claimant damages were estimated to be £230,000. Our expert opined the accident caused a 1 to 2 year acceleration and any increase in pain was due to a road traffic accident (RTA).

Discussion with the claimant's solicitors allowed us to discredit their medical evidence given their expert had not taken into account his pre-existing spinal problems and subsequent injuries and disabilities from the RTA. Damages were agreed at £10,000 net of DWP benefits of £23,727.64. The claim demonstrates the importance of obtaining the right medical expert and using that evidence in the negotiation of damages on a claim where significant risk exists for a large settlement.

Successful defence – matter abandoned

Précis: Our insured was sub-contracted by the main contractors of a property renovation in Central London to transport and crane in components parts of a generator. The insured had hired the crane from a hire company. During the lifting process the crane malfunctioned and caused serious damage to one of the component parts.

A property damage claim totalling £385,000 was presented to our insured for breach of contract and negligent use of the crane. We countered that the crane was operated by experienced personnel and the lift was properly planned and executed. Furthermore a forensic examination of the crane pendant used to control the lift showed foreign debris caused a control valve within the pendant to stick open, which caused the lift to continue despite the operator commanding it to stop.

The contract between our insured and the main contractor stipulated that any claim for damage had to be made in writing and/or proceedings issued within 12 months of the incident. The main contractors did not comply with this term of the contract.

We advanced a complete defence, including reliance upon the 12 month contractual limitation and successfully persuaded the main contractor not to pursue the matter. Management of this claim was conducted in a sensitive and open minded fashion which assisted our insured to maintain their ongoing commercial working relationship with the main contractors.

Successful defence – matter discontinued

Précis: The claimant was employed by the insured from 2001 to 2007 and claimed excessive noise exposure led to noise-induced hearing loss (NIHL). The Noise at Work Regulations 1989 and 2005 applied.

Investigations proved noise levels were recorded at 80 – 85 decibels in the areas in which the claimant worked whilst in the insured's employ. This afforded the insured a defence to the claim to 2006, but the defence was weaker for the period 2006 to 2007 as the evidence in support of training was unclear. However:

- Hearing protection was available in dispensers throughout the factory
- He was advised to wear hearing protection by his GP
- He was wearing hearing protection during an incident which led to his dismissal.

In the circumstances, it was decided to run the case given there was a full defence for the period to 2006 and any breach of duty thereafter was not causative as the claimant knew to wear hearing protection and wore it. Engineering evidence was supportive of our stance.

The matter was listed for trial in July 2013. The claimant's solicitor discontinued prior to trial.



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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