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—Private Prosecution—£300,000 Saving

QBE's Special Investigation Unit (SIU) achieved further success in its fight against casualty fraud when a private prosecution under the Fraud Act 2006 resulted in a 12 month custodial sentence.

In November 2008, Gary Kittle fell from a ladder while at work. He alleged the ladder had not been properly lashed or footed. Investigations were carried out and liability denied.

The claimant asserted that he had not worked since the accident and that he was unable to climb ladders, preventing his return to his pre-accident job or any other form of work.

Given the disparity between our evaluation and the claimed amount, we undertook further investigations . This decision was vindicated when surveillance evidence showed Mr Kittle involved in heavy manual work (roofing) and also push starting his works van. The evidence proved that he was grossly exaggerating his level of injury and incapacity.

A Case Management Conference required Mr Kittle to provide additional pre-trial details and pay a Court fee of £1,500. The Court's directions were subject to an Unless Order, breach of which would result in the claim being struck out. Mr Kittle failed to adhere to the court directions. The claim was struck out with Mr Kittle ordered to pay the Defendant's costs in excess of £25,000.

With the civil aspect to the claim concluded, QBE issued a private prosecution against Mr Kittle for attempted fraud under the Fraud Act 2006. On 2nd October 2015 at Guildford Crown Court, Mr Kittle pleaded guilty to attempting to defraud QBE. The Court heard how Mr Kittle suffered an injury at work but then got greedy and grossly inflated his claim by alleging that he could no longer work. Surveillance evidence from The Cotswold Group showed otherwise. Judge Critchlow spoke about the need for litigation being open, transparent and honest, or the system would be

undermined. The Judge sentenced Mr Kittle to an immediate 12 months custodial sentence.

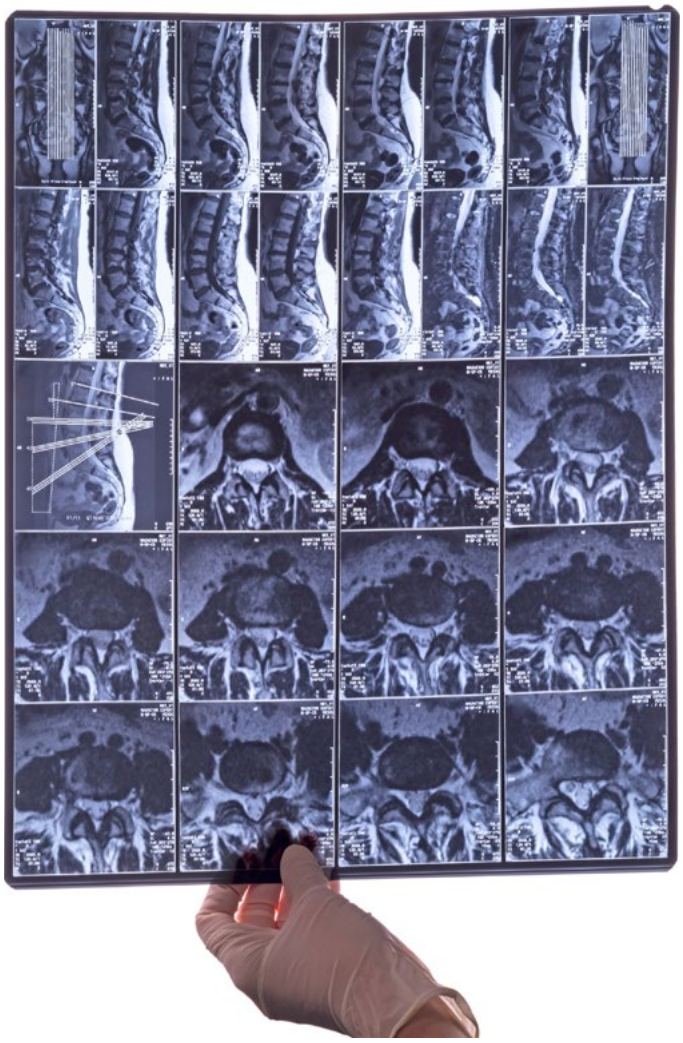
Nathan Snowden-Merrills, General Counsel of our client Mark Group adds: "This case is an excellent example of how an insurer can really make a difference. I'd like to thank QBE's claims team whose expertise and tenacity have led to this successful prosecution and a robust defence of Mark Group's financial position and our reputation as an employer."

Matt Lacy, Director of Casualty at QBE commented: "Insurance fraud, once the exclusive domain of personal motor, is now on the increase in Employers' Liability. This latest case comes on the back of other well-publicised attempts to defraud our clients and QBE of substantial amounts of money. The continued success of our Special Investigations Unit underlines their experience to identify attempts to defraud and a dedication over the long term to collate all available evidence and bring the perpetrators to justice. "

Trial Win

This is an employers' liability claim where the claimant alleged to have sustained a back injury whilst moving a care home resident. It was alleged that the insured failed to provide adequate training, advice or equipment. It was also claimed that the resident's room was too small and that previous complaints were ignored.

The claimant's manager at the time of the accident provided a statement. This witness gave invaluable evidence to refute the claimant's allegations. Records obtained from Social Services showed the room was of sufficient size and that appropriate lifting equipment was provided. Liability was denied and the matter proceeded to trial.



At trial, the claimant put forward a dramatically different account of her accident. The court ordered that judgment be reserved until exchange of written submissions. It was ordered that the claimant file and served submissions first in order to allow an opportunity for her to determine if she was relying on the facts provided in her oral evidence or her written statement.

The judge held that the claimant's account of the accident given on oath led to him believing that, on the balance of probabilities, the claimant did not sustain her back injury until after all manual handling had ceased. He also acknowledged the lack of pleadings in respect of the allegation that the room was too small. The claim was dismissed. We are now in the process of recovering our own costs.

Favourable settlement—Claimant's credibility challenged

The claimant alleged that he suffered an accident at work claiming that he strained his spine whilst involved in an allegedly unsafe lifting operation when he was momentarily required to take the weight of an extremely heavy brake drum assembly. It was alleged that no adequate work equipment was provided for the task and that his colleague had lost his grip on the brake drum when the two of them were attempting to lift it.

Breach of duty was admitted. Investigations showed the system of work being followed was undoubtedly unsafe. The accident was not reported at the time by the claimant or his colleague. The claimant continued to work after the accident and it was not until many months after that he went off on sick leave. It was therefore questionable whether the accident occurred as alleged or at all and on this basis we focused our efforts on causation.

All medical, works and benefits records were obtained. We highlighted inconsistencies between these and the claimant's case, both in terms of the chronology of the reported debilitating back condition and the alleged and actual restricted mobility.

The claimant nevertheless put forward a robust case to shore up his credibility. He provided a report from an orthopaedic expert stating that the accident had resulted in a dramatic acceleration of back degeneration. The claimant also served supportive psychiatric and care evidence. We managed to exclude any evidence from pain consultants.

Surveillance showed the claimant either not venturing out of his house at all or making use of a wheelchair or crutches when doing so, consistent with his case that he was crippled and would never work again.

We arranged a whole spine MRI scan. This did not reveal any abnormality to justify the alleged profound disability, but despite this the claimant's orthopaedic expert maintained that the accident accelerated back degeneration by 18 to 20 years. We took other steps to investigate the claimant and challenge his credibility. Ultimately we pieced together a picture made up of numerous items of evidence which, although not decisive individually, together cast real doubt on the credibility of his case.

The claimant served a Schedule of Loss quantifying his claim at approximately £1,000,000. We proceeded to a JSM where the claim was settled for £180,000 inclusive of benefits of £50,555.

Proactive Claims Handling

The claimant was employed by the Insured as a Production Operative. Whilst cleaning a piece of machinery, the claimant slipped or stumbled causing his arm to land on a V belt. The momentum pulled his arm into the pulley wheel. He sustained a significant injury to his upper arm leading to an amputation at mid-point of the humerus.

Investigations revealed the insured's system of work was unsafe. They implemented various post-accident safety measures to provide greater protection to their workers. Liability for the accident was admitted.

The HSE has visited the insured and issued two prohibition notices. The claimant was under the care of PACE rehabilitation services. He wished to explore the use of prosthetics but as he did not have enough strength in the remaining stump and shoulder muscles he was undertaking an intensive physiotherapy program. When the claimant suggested he wanted to trial a myoelectric arm we made a pre-med offer to see if we could draw him into early settlement discussions, noting the costs involved with such a prosthetic. The claimant was 56 years old and unlikely to be able to return to his former role. He was disadvantaged on the open labour market. We were faced with a significant claim for future loss of earnings, care and prosthetics.

Our offer elicited the response we were hoping for in that it led to negotiations which resulted in us agreeing settlement at £450,000. We consider this to be an excellent result. We have avoided the costs and delays associated with medical experts, costly prosthetics and kept the claimant's costs to 13 months of billable time.

Discontinuance—Costs recovered in full

The claimants, who were ground staff for the insured, were injured when they were attacked by a group of opposition fans at a football game. A fight broke out just as the match was concluding. It was alleged that the fans had been behaving in an unruly manner throughout the match and had been intimidating other spectators.

Allegations centred on insufficient staffing levels, fans being permitted to consume alcohol during the match, the insured failing to take action when the unruly behaviour was reported to them and the failure to ensure that SIA accredited staff were on hand to assist.

We established that the claimants were trained not to intervene where it became apparent that they could not resolve the situation without becoming physically involved. It was argued that the claimants had ignored instructions and got involved in the melee despite being told over their headset to stay back. The insured provided witness evidence from the head of security that operated the control room confirming that no issues had been noted with the opposition fans before the incident. We were also able to prove that prior to the match potential risks were assessed with the police and appropriate procedures were put in place. The fans involved were not specifically identified as a risk and therefore the insured could not have anticipated that a fight would have broken out.

A week before trial the claimant's solicitors offered to discontinue proceedings on the basis that we bore our own costs. As significant costs had been incurred we declined this offer and requested our costs in full. This was accepted by the claimant's solicitors.

HSE Prosecution—Limiting fine and costs to Magistrates Court

The insured manufacture ingredients sold on to pet food manufacturers. The company's turnover is over £60 million, with its parent company's turnover being in excess of £200 million.

In 2012 there were two incidents at the same plant. Firstly a maintenance fitter was exposed to hydrogen sulphide causing him to collapse. While suffering no long term problems, the exposure levels were commensurate with those immediately dangerous to life and health. Three months later six employees were exposed to chlorine gas as a result of mixing hydrochloric acid with a hypochlorite solution. Inhalation can cause severe damage to the lungs though fortunately again there were no longer term health problems suffered by those exposed.

The HSE were very critical of the insured. Allegations included inadequate consideration of the risk of exposure to chemicals/gas, reactive procedures, inadequate risk assessments, a lack of method statements and insufficient training. A failure to provide respiratory protective equipment, inadequate extraction systems and not taking notice of previous near misses were also cited.

We were able to proactively deal with the case, being involved at an early stage. After arranging legal representation of the insured through the requested PACE interview, the Case Summary and Basis of Plea were agreed prior to the matter going before Nottingham Magistrates Court on breaches of Section 2 of the Health & Safety at Work Act 1974 in respect of each incident.

Whilst there was a significant risk that the matter would be committed to Crown Court for sentencing we were able to persuade the Magistrates to award the maximum fine available (£20,000 for each offence) and deal with the matter there and then to include assessing prosecution costs rather than exposing the insured to a far bigger fine in the Crown Court.

Completed October 2015
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6007CC/INYOURDEFENCE/October2015