QBE European Operations

UK casualty claims

Case studies | January 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:

Trial Win and recovery of costs

The Claimant, a student at the Insured University, brought a claim for damages when she severed a tendon in her thumb while using a clicking knife to cut leather. Her allegations concerned a failure to properly assess the risk of her using a clicking knife, to adequately train her in the use of said knife, and to supervise her while using it. A firm denial was maintained on the basis that the Insured had properly assessed the risk, had trained the claimant in the safe use of the knife and the task was being supervised at the time of the incident.

Multi track Proceedings were issued and a schedule of loss claiming £48,000 in past losses along with undetermined future losses for earnings, care, DIY and services was submitted. Her particulars of loss alleged the injury had left her disadvantaged on the open labour market due to a permanent loss of function of her left dominant hand.

The judge found in favour of our Insured, agreeing that they had properly assessed the risk, that the Claimant had been trained, and that the supervision was sufficient. Costs were awarded in our favour.

The Insured and Brokers were very pleased with the result.

Favourable settlement

The Claimant was employed by the insured as a cleaner. Whilst using a ladder to assist in cleaning ceiling lights the claimant lost his balance and fell resulting in a tibial plateau leg fracture.

Liability was admitted as our investigation identified an unsafe system of work. The ladder was too small for the task and the surface on which the ladder footings rested was considered too slippery.

The Claimant did not return to work due to a poor surgical outcome following internal fixations and plating of the fracture. The orthopaedic expert advised that he would only be suitable for semi-sedentary office type work. He would not be able to do any heavy manual work or any job involving walking long distances. His role as a cleaner would therefore be difficult. It was envisaged that he would developed significant post-traumatic osteoarthritis of the knee, and would require a minimum of two total knee replacements in the future.

Psychiatric evidence was also obtained due to the Claimant developing reactive depression, which was eventually diagnosed as an adjustment disorder. Surveillance was obtained and was supportive of the Claimant's claim, namely that he was house bound and lived a solitary existence.

We pressed the Claimant's solicitors to serve a provisional schedule of loss together with medical evidence so that negotiations could begin before service of proceedings. They were initially reluctant to do so, but following discussions the Claimant submitted a claim for £203,512.

We negotiated a settlement of £75,000. Costs were agreed at £14,650.

Due to our proactive approach litigation was avoided and significant savings were achieved on both damages and costs.

Trial Win and recovery of costs

The Claimant worked as a picker/sorter at the Insured's warehouse. He allegedly sustained a Work Related Upper Limb Disorder (WRULD) and Repetitive Strain Injury (RSI) as a result of repetitive and strenuous head and neck movements when viewing display screens on sorting lines.

A breach of duty was alleged at common law and under various Health & Safety at Work Regulations, including the Display Screen Regulations. The matter was consolidated with another very similar claim and both claims were heard together.

Investigations showed our Insured use the same display screens and system of work at multiple large depots throughout the UK. There was a concern about a floodgate scenario developing should these claims prove to be successful. A denial was issued on the basis that the work didn't involve excessive moving of the head, that the screens could be looked at by a movement of the eye, there was adequate training and that causation could not be established. Proceedings were issued and the matter was heard at trial.

The claims were successfully defended on breach and causation. Both claims were dismissed with costs. The presiding judge ruled the job didn't involve repetitive, stressful neck movements and the risk of RSI from the screens was not foreseeable.

Successful fraud detection

The claimant drove to and parked up at a retail park in Doncaster. He claimed to have gone shopping and upon his return was sat in his car when a gust of wind blew our Insured's advertising sign onto his vehicle. We received a medical report from his solicitor with an offer to settle the injury at £3,800.

This matter was investigated with our Insured. A manager at our Insured's premises advised that he was present when the signage fell, that the vehicle was unoccupied at the time and that the Claimant did not return to his vehicle until 10-15 minutes after the incident.

We contacted the Claimant's own motor insurer to find out if he had reported it to them and what he said had happened. We managed to obtain a recording from the first notification call in which he advised them on a number of occasions that he was not in the vehicle at the time of the incident.

The claim was immediately referred to IFED by our Special Investigations Unit (SIU). IFED arrested the Claimant and questioned him about his claim. Due to the weight of evidence against him, he immediately confessed and received a police caution. As a result, the personal injury claim was withdrawn.

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

Trial win and costs recovery

The Claimant was employed by the Insured who arranged a team building activity day, which was run by an independent contractor (D2). Part of the day was a space hopper race, during which the Claimant fell and sustained injury to her shoulder.

Investigations into the matter showed the activities were fully risk assessed, that tuition and guidance were given and that no member of staff was compelled to take part in the activities. Witness evidence was obtained from three members of staff who were present on the day in question. One witness was involved in the risk assessment of the event. All three confirmed that they had received instruction on each event, and that there was no pressure to take part.

The Claimant issued proceedings against the Insured only, alleging that they had failed to properly risk assess the event, that she had been given no training and that she had not been provided with any PPE. We joined D2 as Part 20 Defendants.

The matter proceeded to trial, where the Claimant maintained that she felt compelled to take part in the space hopper race, not least as several members of her team were sitting out due to health conditions. She maintained that she had received no training. Ultimately, the judge found that the Claimant must be mistaken given the weight of evidence against her in respect of training and compulsion to participate.

The claim and the Part 20 claim were both dismissed. The judge agreed that it was reasonable for us to join D2 as a Part 20 Defendant, and so in addition to recovering £9,500 of our own costs, the Claimant has to indemnify us for the costs of D2.

The Insured was very happy with the result.

Favourable settlement

The Claimant sustained a back injury whilst in the course of his employment when he pulled a pig carcass along the ground. The carcass was well in excess of the Manual Handling Regulations 1992 weights guidelines. Liability was admitted, subject to contributory negligence

He returned to work post-accident but his employment was eventually terminated due to his injuries and inability to carry out his duties.

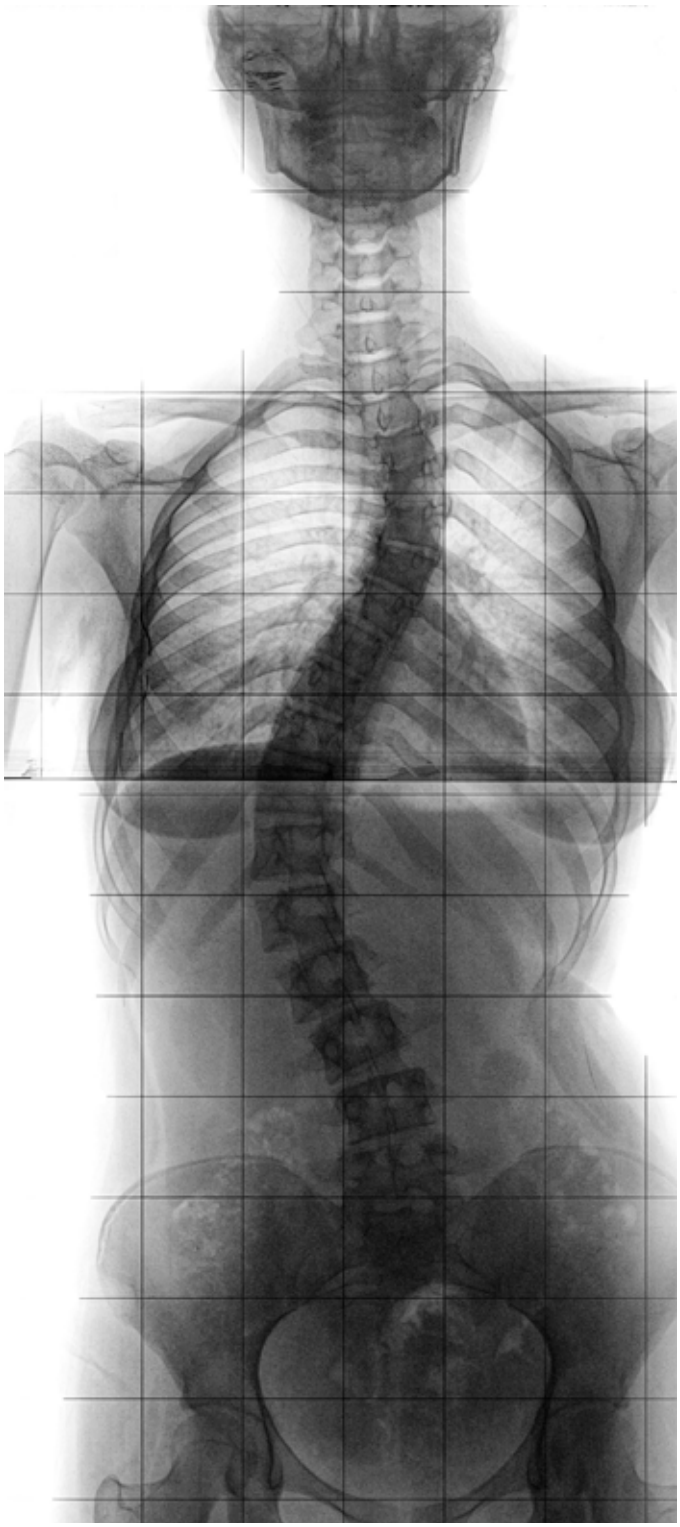
The Claimant relied on evidence from an orthopaedic surgeon and neurosurgeon. There were numerous inconsistencies in the Claimant's evidence but the main thrust of it was that the accident had accelerated a pre-existing condition by 10 years. Claims were submitted for loss of earnings and care for this period.

We obtained favourable medical evidence which questioned the mechanism of the injury and limited the period of acceleration to a maximum period of 12 months. We also obtained surveillance which demonstrated that the Claimant was not significantly handicapped. This evidence was disclosed to the Claimant along with a £25,000 Part 36 offer. The offer was rejected and the Claimant continued to maintain the accident caused an acceleration period far beyond the opinion of our expert.

Just prior to trial the Claimant submitted an offer of £30,000. We rejected this and maintained our quantum position. The Claimant reluctantly accepted our Part 36 offer made a year earlier. Claimant's costs were limited to the date when the Part 36 offer could have been accepted. He agreed to pay our costs in full from that date.

The DWP were asked to review the NHS charges and CRU benefits. This resulted in CRU being reduced from £14,135 to £1,355 and NHS charges going down from £4,865 to nil.

Costs of £27,500 were recovered from the Claimant leading to significant overall savings.



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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