

SPOTLIGHT SUCCESS STORY

GALLAGHER
BASSETT | TRANSPORTATION

UNIQUE, BUT COMPENSABLE WORKERS' COMPENSATION CLAIM

BACKGROUND

If you are in the transportation business you are all too familiar with the many legal and regulatory challenges associated with your company's operations. These challenges include a lack of predictability in our judicial system; chronically inflated medical costs; plaintiffs are much more apt to commence litigation quickly; an industry driver shortage; an aging workforce; enhanced regulations; and aberrational jury awards, all of which cut into profits and growth.

In this quarter's *Spotlight Success Story*, we feature a case involving a motor carrier client that had a large liability exposure that ultimately morphed into a unique, but compensable, workers' compensation claim.

The Facts: In early fall of 2020, Gallagher Bassett (GB) Transportation's Major Case Unit (MCU) absorbed 386 high-profile, high severity open claims from an insurance carrier client that was exiting long haul trucking. When the program was transferred to GB, a few of these claims were found already reserved at the \$1 million combined single limit. One such claim involved a fatality incident involving a seasonal worker employed at a pumpkin patch.

The accident occurred when our policyholder, a truck owner/operator, also an employee of the pumpkin patch, attempted to drive his vehicle forward through a field, after he was told by a co-worker that he was clear to drive forward with a fresh load of pumpkins in the trailer. Regrettably, the operator and co-worker did not notice that another employee had stepped between the trailer and tractor. Sadly, the operator of the truck ran over the employee and the employee was killed.

The Demand: The plaintiff attorney originally made a policy limits demand, \$1 million.

HOW DID GB TRANSPORTATION DRIVE THIS SUCCESSFUL OUTCOME?

01

Expertise: The MCU Resolution Manager, reviewed the complete transfer file from the former insurer and saw an entry buried in the claim file's notes. The note mentioned that defense counsel had opined 15 months earlier that workers' compensation should be the exclusive remedy for the deceased and apply as a complete bar to the liability claim being pursued by the estate. Despite this, the claim file reflected that the prior insurer had attempted to resolve the liability claim by paying their policy limits to the estate.

02

Experience: The MCU then further explored the proper recovery for the family of the deceased.

03

Communication: At the direction of the MCU, defense counsel then took steps to obtain the workers' compensation policy issued to the pumpkin patch. Upon receiving and reviewing that policy, the MCU discovered the policy covered all persons who were: "harvesting by contract using hand labor exclusively and drivers," making both our named insured, trucking company, and the deceased effectively co-employees under the policy.

04

Strategy: The MCU then authorized a motion for summary judgment based on workers' compensation exclusivity. Plaintiff counsel did not oppose the motion and instead, non-suited the trucking company after receiving it.

SUCCESSFUL OUTCOME

Our MCU experts digested the nuances of the claim file's notes and found the path to a successful resolution, not only for the insurer GB represented, but also for the family of the deceased. The family of the deceased was ultimately afforded the correct recovery under the correct policy, all the benefits afforded under the workers compensation policy of the pumpkin patch. Our MCU then notified our client insurer that we were taking down the \$1 million reserve and closing the claim.

MAJOR CASE UNIT ("MCU")

GB Transportation's MCU is a claims handling center of excellence that is dedicated solely to its clients' most significant claims. Each MCU Resolution Manager carries a workload commensurate with the complexity of the cases they are handling.

BEST PRACTICES

- Partner with an experienced transportation claims administrator and industry focused defense counsel.
- Identify and leverage the strengths of your case.
- Partner with your defense counsel on litigation strategy as early as possible, embracing their legal insights and how those insights merge with the facts and parties to the case.
- Identify and understand contract terms in place for the motor carrier and any premises owner, shipper, broker and leased operator.
- Understand the distinctions between workers' compensation as an exclusive remedy and the recoveries associated with a traditional tort claim.

CASE HIGHLIGHTS

Type of Accident: Fatality

Jurisdiction: New Mexico

Attorney demand: \$1,000,000

Defense counsel case evaluation: Defense and MCU determined that the sole remedy for the estate were workers' compensation benefits, ultimately non-contested by the estate lawyer.

Resolved For: \$0

Want to learn more about GB Transportation? Contact us.