

A DOSE OF PREVENTIVE MEDICINE

Mitigating Unreimbursed Costs



CASE STUDY

International healthcare company Breaking Bad Pharmaceutical (BBP) is the maker of “True Blue Crystal,” which relieves depression. After FDA approval, True Blue Crystal quickly became a bestseller for BBP, with billions in annual sales.

About four years after the drug was introduced to the public, BBP began receiving legal complaints that True Blue caused a variety of heart problems and that the pharmaceutical company had failed to warn against such risks. Plaintiffs also included people who had ingested True Blue, had not suffered injury, but were suing for medical monitoring and preventive care. BBP quickly realized that their best-selling product could be their largest liability.



SNAPSHOT OF THE STORY:

- BBP was named in legal complaints stating that its drug “True Blue Crystal” caused a variety of heart problems. The company was accused of failing to warn of associated risks of use.
- Plaintiffs typically took other mood-altering drugs as well and had other health problems that put them at increased risk for stroke and heart attack, so BBP mounted a major defense, eventually deciding to create a national settlement program.
- Over a four-year period, BBP retained a national coordinating counsel, more than 30 law firms in various states, discovery vendors, testifying experts, jury selection consultants, and more. It became clear that costs would exceed the self-insured retention of BBP’s policies.
- The amount of data that BBP now contended with was causing issues. It was becoming difficult to manage, and even the simplest summary-level information was unattainable.
- Insurance coverage included a tower of excess policies on the Bermuda Form containing “integrated” or “batch” occurrence clauses.
- BBP needed to decide how to define the integrated occurrence and when to give notice to its insurance carriers.

THE CLIENT CHALLENGE:

On its journey through the mass tort landscape, BBP had an increasing need to obtain information from its disparate data. They also needed the ability to sort, analyze and draw insights from the data.

The main problem was that the data about True Blue cases resided in a number of locations, in both digital and hard copy, in various formats, and in varying degrees of quality. There were also innumerable data points to capture regarding the claimant, claims, lawsuits and medical history (injuries, symptoms, diagnoses, dates, doses, other health conditions, etc). Simply constructing a complete picture of the most basic information about the claims would be a challenging endeavor for BBP and its counsel. The issue had the potential to grow exponentially over time as the number of filed claims increased. Even if the data was gathered from all the sources, there would be no clear or easy way for BBP to sort, analyze or draw insights. Additionally, with many sources of data, the possibility for conflicts, errors and duplication became a concern.

At the very least, BBP would need to provide insurers with some information about the claims paid. Even the most cooperative excess carriers would require information sufficient to show that the self-insured retention (SIR) and underlying coverage was exhausted. If the excess carriers proved to be less cooperative, and BBP found itself in litigation with its insurers, then a more in-depth analysis of the data would need to be prepared.

Furthering the need for information, under the Bermuda Form terms, BBP had a degree of flexibility about how the integrated occurrence, or occurrences, was defined and when to give notice. However, once the occurrence is defined, and notice is given, the effect would be to aggregate all related defense and indemnity costs — past and future — into the defined occurrence(s) and allocate them to a single year of coverage.

THE KCIC SOLUTION:

Good data management is critical to minimizing the financial impact on a defendant in the tort system. BBP's management and legal counsel, in need of help, partnered with KCIC to collaborate on solutions.

KCIC started by consolidating the company's many sources of data into a single claims database on KCIC's Ligado Platform. This provided one secure place online where all relevant parties — including management, internal legal team, outside counsel, national coordinating counsel, insurers, and others — could access, interact with, and maintain all the information. The system's customizability allowed BBP to decide which users had access to view and/or update specific information on an ongoing basis, giving them more control over all of their data.

Transitioning to Ligado also provided company management and legal counsel with key insights and real-time reporting that allowed them to strategically handle claims. And, the intuitive user interface enabled individuals to interact with the data and find information quickly and accurately.

BBP needed coordination of their information logistics that would allow them to better interact with their data and extract reliable information.

All of this helped BBP prepare for impending insurance recovery efforts. They could now easily provide their excess insurers with accurate claims evidence. Further, in cases of dispute, BBP could provide the needed supporting documentation or, in the case of burdensome requests, could work with KCIC consultants to provide extensive backup.

KCIC was also able to lend expertise to help BBP make decisions regarding their insurance towers with Bermuda Form "integrated" or "batch" occurrence language. KCIC created a forecast of future claims indemnity and defense costs and compared the results to different occurrence definitions and policy allocation scenarios that were determined with internal counsel, using KCIC's interactive policy language tools. This allowed them to use all the available information to make the best decisions.



THE CONCLUSION:

KCIC helps clients like BBP leverage technology to their advantage — by gathering all the information in one secure place and providing an intuitive web-based user interface to enable access anytime, anywhere. Since Ligado is designed for the efficient management of information and real-time reporting, clients are able to better interact with and understand their claims.

Too often, mass tort defenders are so tied up in litigation management that they cannot step back to see and think strategically. In situations like this, Ligado becomes a stepping stone used to rise above the chaos and disorder.

Complementing the technology, KCIC has expert knowledge and decades of experience in the management of mass torts. This enables KCIC to consult with clients to help them make the best decisions for their businesses. As seen in this case, early intervention and organization can lead to many invaluable benefits down the road.

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