

International Claims Complexity

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LOSS adjusting at a national level is difficult. It becomes more challenging for the adjuster when the international dimension is added. Good adjusters need not only technical experience, format training and qualifications, but also initiative and integrity in handling the complex situations that confront them daily.

The insurer and reinsurer rely on the loss adjuster to identify issues of policy coverage and quantum damage. They should also expect the adjuster to raise in a sensitive, diplomatic, professional, and often legally privileged manner, other factors and issues involved in consideration of the claim.

CLAIM IS PRIME CONCERN

The individual claim is the prime concern of loss adjusters and they should not attempt to pre-judge issues which properly fall within the domain of the insurer and reinsurer. Commercial continuity and loyalty, underwriting strategy, and the advocacy skills of the broker concerned are all factors outside the adjuster's role and should not influence any assessment of the claim. But the adjusters must be aware of any conflicts with regard to the outcome of the claim which may be present between the local insurer and the international reinsurer.

TEAM CO-ORDINATOR

The comprehensive examination requirements and practical experience needed to become a Fellow of the Chartered Institute of Loss Adjusters (FCILA) provides the chartered loss adjuster with a range of knowledge and skills. However, the complex nature of international claims often requires the focused involvement of additional specialist resources. Increasingly the adjuster is asked to co-ordinate a team of experts. This is a further sign of the project management and action-orientated skills required of the international adjuster.

The insurer or reinsurer will often approve the involvement of specialist expertise in cases related to:

Forensic investigation – where the cause of a fire needs closer expert investigation because of the suspicion of arson by the insured to defraud.

Insurers or a potential recovery against another party, e.g., neighbour or contractor.

Legal advice – where issues are concerned such as policy interpretation under local law, prospects of recovery against negligent third party, enforceability of contracts entered into by the insured, and retention of rights by a supplier of damaged stock.

Civil engineering – where the loss under a contract works policy may have arisen as a result of a faulty defective workmanship or materials.

FUNDAMENTAL QUESTIONS

The loss adjuster must seek to answer three basic questions:

Is the loss covered by the policy?

If yes, what should be the correct amount payable to the insured?

Can the amount paid be recovered from another party?

To answer these questions, the adjuster must be aware of political, geographical, cultural, legal, linguistic and international trade issues.

POLITICAL

An awareness of the political system in the countries involved is essential. While the media is a good starting point to keep abreast of political developments, the best way is to have a dedicated associate based in the country concerned.

Sometimes adjusters face political interference in the course of adjusting a claim. This can range from indirect barriers placed during the adjuster's enquiries to deliberate steps to refuse entry to the country itself. Claims arising from losses at state-owned organisations perhaps represent the greatest challenge. Issues of confidentiality and national security are raised which may limit the adjuster's access to information. This causes difficulties for example where reinstatement conditions apply and the replacement equipment may be of superior nature or higher output capacity than that which was damaged. Petrochemical and arms manufacturing are two areas generally requiring sensitivity.

INTERPRETATION

The question of jurisdiction under the policy is important as the meaning and effect of the definitions contained in the exclusion may be different depending on whether local or foreign law (e.g. UK) applies.

Interpreting a policy can be difficult especially if the country where the loss has occurred is undergoing internal strife. Attention has to be paid to both the circumstances of the loss and the situation in the country at the time of the loss if the policy excludes losses arising from civil war, civil commotion and insurrection.

The bomb explosion damage earlier this year in the financial district of Colombo, Sri Lanka resulted in considerable death, injury and damage. The death toll was near 100 and over 1500 people were injured by the blast and flying debris, especially glass. As a terrorist action the cause will be excluded under normal insurance circumstances.

Some organisations have taken out special terrorism and sabotage cover to protect against material damage costs. Adjusting severely damaged property amid security cordoned areas provides an element of protection, but the risk remains of repeated terrorist attacks. Dealing with employers that have suffered personnel loss and injury also requires compassion and tact. Helping organisations to resume business activity remains priority however, and the adjuster's training and previous claims management experience will be used as a resource to assist recovery of insured businesses. Differentiating loss of profit from an incident as against a general decline, e.g. Through a drop in tourist numbers, can present difficulties.

GEOGRAPHICAL

As well as man-made disasters and damage, the international adjuster will be involved with losses arising from the full range of insured perils including hurricane and earthquake.

Often the adjuster has to visit the site while destruction from the natural disaster is still being cleared and therefore the accommodation, communication and transportation aspects can be difficult and arduous.

LOCAL ASSOCIATES

International loss adjusters should ideally be able to rely on their local associates for advice on local conditions. Only a few, mainly UK, adjusting companies have full representation around the world. The level of representation varies with the extent of involvement in a particular country, the development of the economy and the sophistication of the local insurance industry.

The main operating options are:

- a wholly or majority owned subsidiary operating in the country;
- a minority interest in a local adjusting company;
- no ownership interest but a management agreement to provide technical advice to a local firm of loss adjusters;
- a local independent professional associate able to co-ordinate enquiries and support the activities of the international company.

LOCAL PRESSURE

The extent to which the international loss adjusting company works for reinsurers will have some impact on the option chosen. If the loss adjusting company concentrated principally on working for insurers in the country concerned, then it may find itself exposed to the 'local market syndrome'. This has been identified as involving a conflict of commercial interest placed on the local branch of the international loss adjusting firm. An on-going relationship with a direct local insurance company can be a source of concern where the loss is reinsured. The market and commercial interests of the local insurance company may vary from the interests of reinsurers. Pressure can be brought to bear by that insurer who may seek to influence the local adjusting office in the approach and consideration of the claim. Of that local adjusting office depends in the local insurer for a regular flow of assignment then the integrity of the local adjusting firm is placed under considerable pressure.

Conversely, international adjusting firms owned by insurers, reinsurers and brokers should declare the fact to local insurer and the policyholder. Such firms need to demonstrate to the local insurance company and the policyholder that they fairly and ethically in the consideration of the claim even if this might result in an increase in the claim cost.

LOCAL MARKET PRACTICE

Every market has developed its own particular approach to dealing with the issues such as policy interpretation. The adjuster needs to identify the local approach and precedents. These may be at variance with UK or US practice. When representing reinsurers, it is especially vital to establish the underwriting enquiries that may have taken place and the existence of any agreements regarding policy interpretation.

LANGUAGES

Although English tends to be the world-wide insurance language there is a recognition that fluency in other languages is a tremendous advantage for the adjuster.

English or American policy wording proposals and other documents may be translated into the local language and this often leads to problems regarding which version of the policy is legally enforceable. French, German and Japanese insurance wordings are often produced as the original document from which translation is then made into the local language (possibly via English, thus complicating matters even further). The age old argument of 'intention of the parties' is often discussed during the consideration of applicable policy terms.

LOCAL ENQUIRIES

Particularly in the Middle and Far East local enquiries often need to be conducted with the use of a translator. Interviews with the original insured, the reinsured,

employees, witnesses and outside agencies such as the police and fire brigade need to be considered.

Statements can be written either in the local language and subsequently translated for the record, or in English as dictated by the translator during the course of the interview.

Experience shows the need for and benefit to be gained from succinctly recording statements with key facts and details as soon as possible. The international loss adjuster's local associate should take advantage of his proximity to the loss and begin enquiries immediately.

Although using a tape recorder can inhibit some interviewees it does enable the interview to be re-examined at leisure, and listened to by others at a later stage. Source documentation such as invoices, stock records, internal budgets and strategy plans need to be examined and may need to be translated into English.

COMPUTING RECORDS

Although computers are in common use there are many businesses, especially in the third world, where manual paper records are the only system. If there is a pre-based record, however, it is good practice for the adjuster to download a complete copy of the insured's data during the first visit. The adjuster can then examine the captured records at his own convenience. This also minimises the risk of any subsequent tampering or interference with the insured's computer records.

MULTI-NATIONAL INVOLVEMENT

It is not unusual for the adjuster to be involved with parties in several countries where, for example, the loss is located in country A, the insured's head office is in country B, and the insurer/reinsurer is in country C. Suppliers and customers may be located in other countries where enquiries need to be conducted to verify issues such as authenticity of source documentation.

Given the global nature of business, the adjuster must have an understanding of international trade and the interdependence of countries.

Multinational policies will often provide cover to 'fill-in' or 'top-up' that provided by a locally admitted policy. Close liaison with the insured's risk manager and broker is important to identify all coverage and develop a clear timetable for bringing the claim to a conclusion.

An awareness of the industries which are developing and those which are declining is also important as this may be a factor in the assessment of motive especially with regard to a suspicious fire claim.

When considering a business interruption loss for multi-national operating from several countries, it is important to recognise that labour and production costs can vary significantly from country to country. Past experience has shown that often purchasing from a competitor can prove to be less expensive than the insured's own manufacturing costs. It can sometimes be possible to renegotiate purchase and sales. Contracts, particularly when the loss occurs at a subsidiary of a multi-national. Also, production from a sister company in a country with lower costs may result in the use of the loss location factory being changed, e.g. from manufacturing to distribution.

MANAGEMENT

Gaining an early awareness of the insured's internal strategy and forward business planning is invaluable. At a time of business disruption the adjuster will seek to provide guidance and support to the insured in decision making.

It necessary the adjuster should be willing to seek independent advice regarding the particular trade or industry in which the insured operates. Often a short assessment by an independent marketing consultant can provide useful information relating to the insured's market share, product positioning, competitors and future prospects.

FUTURE INVOLVEMENT

The internal adjuster is organised to respond rapidly and effectively to incidents

at overseas locations. UK-based international loss adjusters remain at the forefront in supporting the international insurance industry with claims adjusting services.

Dealing with overseas claims of increasing complexity will continue to require qualified and experienced chartered loss adjusters supported by their local associates around the world.

However, with the ever-developing loss adjusting expertise in local markets the role of the international chartered loss adjuster may continue to evolve towards that of 'team co-ordinator', particularly on large, complex claims.