Horses for courses – appropriate consultant selection to minimise Claims Leakage

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Over the past decade, various sectors of the Insurance industry have struggled with increased competition, low investment returns, and a myriad of large losses affecting the industry; it is no surprise that Insurers have been forced to tighten their belts. The abundance of CAT events in Australia in 2019 and early 2020 also increases the volume of claims that need to be handled, adding pressure on all involved.

Today a new threat is upon us, in the form of a Covid 19 pandemic, the likes of which have not been experienced since the Spanish flu in 1918. The effect of the pandemic on Insurer’s economic performance is yet to be fully understood with mixed coverage still under assessment on a country-specific basis.

In order to curb the effects of the pandemic on the population, most governments have taken extraordinary steps to ‘lockdown’ their countries, and where possible provide stimulus packages to mitigate the financial harm that such steps inevitably cause. Unfortunately, in the meantime the ‘normal’ claims environment involving traditional perils continues.

Insurers must continue to think creatively to keep their businesses resilient to the potential financial impacts. We have observed Insurers commence a number of initiatives including:

• Returning to more strict underwriting approaches and risk profiling
• Reducing cover i.e. in the construction space there is an attempt to move away from LEG3 exclusions to the more restrictive LEG2 exclusion wording
• Being selective about what industry risks to write and/or pulling out of certain sectors altogether – D&O for example has been reported to be difficult in recent years, as has been the case in the Power and Mining sectors.
• Reducing head count
• Increasing the use of technology
• Bringing new products to the table – cyber for example
• Merging with competitors to increase market scale and power

One of the somewhat hidden issues however, is the difficult to track spectre of ‘claims leakage’, and how to minimise or remove it completely from complex loss, such that over payments are not incurred by Insurers. This is currently especially important as claims are adjusted in a pandemic environment where some Insureds will be under more stress than ever before.

The good news here is that the Adjusting fraternity is very well equipped to assist Insurers in determining the ‘right’ insurance response in extraordinary circumstances.
Claims Leakage

One interpretation of Claims leakage is the difficult-to-measure overpayment of claims caused by omissions in claim management and adjustment.

Claims leakage might manifest as a small quantum value across many volume claims due to a systemic issue, or could alternatively be a striking overpayment on a large and complex loss where a key omission in policy response may have occurred.

Often claims leakage goes undetected until an internal audit raises flags, or worse, the matter flows through to subrogation and a detailed review is made to test the veracity of adjustments for the benefit of the court.

A few typical examples of claims leakage include:
- Incorrect granting of indemnity to a claim where the ‘damage’ is actually a defect or the peril is not a policy trigger.
- Limited guidance to the Insured takes place at the early stages of a claim and subsequently a mitigation opportunity is lost and the consequential loss claim naturally increases.
- The damage is to uninsured property but paid by mistake.
- A superficial approach to claim audit where effort is not made to understand the supporting documentation, thereby allowing unrelated costs to fall to the claim.
- Misinterpretation of policy exclusions lead to certain costs being accepted to the claim.
- Root cause is not investigated correctly or early, thus a missed opportunity for determining a recovery avenue.
- How does CV-19 impact large BI losses which command in late 2019; does it impact?

Many of the above can occur if consultants are under time pressure and ‘skip through’ matters or there is a lack of insurance knowledge and/or experience that leads to incorrect decisions being made throughout the claim lifecycle.

The problem with claims leakage is that, by nature, it is not usually detected as it occurs. It can often be a case of the wrong Adjusters or consultants being appointed where they simply don’t know what they don’t know!

Furthermore, it can be very difficult—if not impossible—to measure across multiple claims and business lines. For this reason it is important to ensure that when a panel Adjuster is appointed to a loss, consideration is given to determine if this is indeed appropriate, or whether a more specialist Adjuster should be used. The autonomy of the instructing claims officer can often be the key in instructing the most appropriate Adjuster for the claim.
Specialist Adjusters

Insurers dealing with complex loss are already in tune with the necessity of appointing specialist Adjusters to complex loss to minimise claims leakage; indeed, many have technical panels already established and Adjusters shortlisted. Particularly if certain Insurers have an appetite for industrial risks where losses can run into the tens if not hundreds of millions of dollars, or are by nature complicated and difficult to investigate and understand, then specialist panels may be required.

If no technical panel is in place then Insurers will likely, through relationships and market knowledge, identify and use a select group of specialist Adjusters. This type of adjusting firm tends to employ individuals:

- from the industry who are tertiary qualified,
- who have industry experience (engineering or legal),
- are Chartered Adjusters,
- who work on a smaller caseload (because complex losses often involve many moving parts and complexities that simply require significant attention and time to resolve and manage); and
- who produce quality reports which may be submitted to Court or mediation etc.

Such expertise is not very prevalent and can on occasion be difficult to find. However, most Insurers appreciate that getting the right adjusting expert involved can save thousands if not millions of dollars from a complex loss. This can be via the deployment of early mitigation advice and consultants and/or accurate policy interpretation and exclusion application.

One of the key benefits for the use of expert Adjusters is the minimisation of claims leakage. Although Insurers have a good handle on Adjuster types and expertise, this is not necessarily the case for any subcontracted consultants that might be required to investigate very specific and niche aspects of a complex loss.

There is also a higher risk of incorrect Adjuster and consultant deployment during CAT events where the claims volumes swell, albeit that some of the claims remain complex, but the Insureds are in desperate need of assistance and response.
Consultant Selection

With the Specialist Adjuster appointed, Insurers will often rely on the Adjuster to determine the necessary expertise required in the investigation of complex loss.

Whilst claims can be similar in nature, no two claims are the same. With large/complex loss, often at the outset, there can be many important factors affecting policy coverage and quantification that require examination, including:

- Root cause – why did that machine suffer breakdown, how did the fire start and spread?
- Extent of damage – are we looking at consequential damage, wear and tear etc?
- Reinstatement – we can’t reinstate exactly as before because of various reasons including perhaps a change in legislation or heritage rules.
- Business Interruption – our loss is based on a mine plan budget and various sales contracts and accounting aspects.
- Business Interruption - the Insured may be experiencing additional losses from CV-19 factors which are uninsured because these losses do not stem from the original cause.
- Liability – legal or contractual liability may be involved.

In response to the above, Adjusters often need to consider the use of experts ranging from engineers and chemists, through to accountants and lawyers.

How do you identify if a consultant is needed?

Often it will be obvious when a consultant is required. Generally, the issue is one of "uncertainty" with respect to an aspect of the claim. If the answer is not obvious or agreed by all involved parties, then often resolution may well be via an expert.

On occasions the Insured may have already engaged their own consultant; this does not necessarily mean that Insurers will have access to the Insured’s consultant report, as it could be privileged or biased.

Chain of command

In order to keep the expert focused on the task at hand and for their findings to be controlled, it is important that the engagement of the consultant is managed correctly.

Consultant appointment should be recommended by the Adjuster, but approved by the Insurer, before it takes place.

Often if the matter is large in value and/or contentious in respect to policy response, then perhaps the consultant should be appointed via Insurers’ lawyers to retain privilege over the findings.

The consultant can also not always operate isolated from the Insured. If information is required from the Insured to assist in the investigation, then the consultant may be required to sign a Non-Disclosure / Confidentiality Agreement.

The chain of command should therefore look like the below:

![Chain of command diagram]
**Fundamental driver of consultant appointment**

The primary driver for any expert selection should be to spend money to ‘get the right answer’ and to determine the correct payment under the policy, assuming that indemnity is granted.

A consultant should not be appointed to ‘fight’ for a desired outcome. Ultimately such an approach compromises the consultant and their findings.

**Consultant misuse/mis-selection**

The best way to explain how misuse or mis-selection of consultants to claims and the possible outcomes is by way of example.

**Root Cause** – if a consultant is appointed to investigate the root cause of the loss and the subject matter is outside of their expertise, then the true root cause may not be identified. For example, if a claim involves the failure of polymer materials, the consultant needs to have this experience. It is not appropriate to have a metallurgist for example who knows ‘steel’, investigate the failure of a plastic. If the wrong answer is determined, then the recovery opportunity might be lost, or worse, there is a differing opinion between Insurers’ and the Insured’s consultants leading to dispute and discredit.

**Reinstatement** – often in industrial losses, the conservative desire by an Insured is to replace property that is visually affected by say chemical attack or fire, but also to replace equipment which may be unaffected but which is proximate. In the example of a refinery loss where the equipment involves piping, vessels, insulation systems, control systems and likely some exotic materials such as catalysts, it is inevitable that equipment will be replaced by repairers regardless of its working condition. In such cases it is important to appoint a suitably experienced and qualified petrochemical engineer to assist in scope review. If a ‘generalist engineer’ were appointed, then it is possible that the full replacement of equipment will be agreed albeit that its true function and status is not understood.

**Policy interpretation** – the same goes for the appointment of Adjusters or lawyers. Often the policy trigger may not be obvious, it could in fact be an excluded peril. Furthermore, if the policy is open to the claim, then how do various exclusions apply; do they apply? It is observed in construction losses, for example, that various policy exclusions involving defects etc can be subtly worded. Such issues could be avoided by ensuring a capable and qualified engineering Adjuster is reviewing the technicalities of the incident against the policy, which should avoid incorrect payments being made.
Consultant Selection

Important to any consideration of an expert is to ensure that the nature of the issue or problem is fully understood. Once this is in hand, then the scope of work for the consultant needs to be drafted along with some indication of the likely budget that might attach.

With an understanding of the issue to be advised, the Adjuster can either suggest a known consultant, or alternatively go through a search process which often requires careful interview of the consultant. This exercise is to ensure the consultants’ expertise and experience matches the nature of the problem requiring investigation or assessment.

It is also important to ensure that the consultant does not hold a conflict of interest, such as a previous relationship with the Insured, that they have worked on the project before, or may have already some involvement in the incident somehow.

Sometimes on complex loss the Adjuster is not simply looking for a single expert, but rather a multidisciplinary team that can bring both technical and commercial skills to the table.

CTA is very careful with its consultant selection process with an aim to find the ‘best available’ to deploy onto the claim.

Expert Witness code of conduct

If the matter to be investigated is contentious and likely to either be destined for, or already in, litigation, then the appointment of an expert witness becomes more serious and often subject to the court’s code of conduct.

Often such codes of conduct apply to any expert witness engaged or appointed:

a) To provide an expert’s report for use as evidence in proceedings or proposed proceedings;

or

b) To give a qualified opinion in proceedings or proposed proceedings.

Important, an Expert Witness is not an advocate for any entity and has paramount duty to assist the Court impartially on matters relevant to the witness’ area of expertise.

Essentially such Experts are ‘tools’ for the court and can be directed by the Court accordingly. Such codes of conduct can be found on the relevant Court websites.
Conclusion

Claims leakage can often result from cutting corners in the process of consultant selection and claims handling.

A key point of difference for Charles Taylor Adjusting is that, as a Specialist Adjusting firm focused on complex loss, we aim to get the right answers’ across various aspects of claims management and the adjustment by appointing the right horse for the course. We appear on some panels but mainly feature as a ‘nominated Adjuster’ to policy wordings. In this way, Insureds and Insurers have peace of mind that the early selection of a suitable Adjuster is already in place should disaster occur.

Beyond our own in-house expertise, CTA prides itself on holding deep industry contacts such that only the very best experts are considered for complex loss, where the risk of claims leakage can be real. These consultants are tried and tested and managed by CTA Adjusters to ensure efficiency and sound outcomes.
Our Expertise:

Charles Taylor Adjusting has qualified engineers on staff throughout all Australian offices with diverse backgrounds ranging from "big picture" Project Engineering / Construction right through to detailed design work. Our Engineering Adjusters hold Adjusting qualifications and are members of the Australian Institute of Chartered Loss Adjusters (AILCA), the Australian & New Zealand Institute of Insurance and Finance (ANZIIF), or other UK-based professional bodies of equivalent or higher standards.

We ensure outcomes are concisely reported to Insurers to match their requirements in documenting the circumstances of the loss in a clear and logical manner, allowing them to reach a conclusion in respect to policy response.

About Charles Taylor Adjusting

CTA is one of the leading loss adjusting businesses in the market. We provide loss adjusting services across energy, marine, aviation, property, casualty and special risks along with average adjusting services for ship owners. The business primarily focuses on larger and more complex commercial losses arising from major insured incidents and claims. CTA is a business of Charles Taylor.

Charles Taylor is a global provider of professional services and technology solutions dedicated to enabling the global insurance market to do its business fundamentally better. Dating back to 1884, Charles Taylor now employs approximately 3,100 staff in more than 120 locations spread across 30 countries in Europe, the Americas, Asia Pacific, the Middle East and Africa.

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