



Zurich Claims Quarterly Journal

Winter 2018

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Welcome

**James Nicholson**

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I am delighted to bring 2018 to a close with this Winter Edition of Zurich's quarterly Claims Journal, the second edition in the 'Journal' series which has focused specifically on the Property, Construction and Energy lines of business.

As the end of the year rapidly approaches, our expert claims teams remain open for business, continuing to work hard supporting you – our customers – throughout the winter months.

Collaboration and engagement with the wider insurance sector (and indeed beyond) remains a fundamental priority for Zurich, whether that be in the form of sharing knowledge and learnings from our claims experiences, providing thought leadership or using our expertise to drive positive change.

Wherever you are reading this from I very much hope you enjoy the content.

We would welcome any feedback you may have or recommendations for topics you would like us to cover in future.”

Yours,
James

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I'm pleased to add my welcome to our winter 2018 Claims Journal. You can view past editions of the Claims Journals [here](#).

Throughout the year we have been focused on our 4 strategic pillars; customer, innovation, people and simplification. There have been many examples but I'd specifically like to mention the 13 large loss scenario workshops we have undertaken in collaboration with our customers, service providers and brokers, as well as our claims professionals attending numerous new business and renewal meetings with our underwriters. This demonstrates Zurich's commitment to claims and is proof that as a business we view claims as an instrumental part of our overall proposition.

Whilst servicing our customers claims is an absolute priority, so too is our ability to influence and shape the wider insurance sector. As a team we have representation with the ABI, most recently providing our insight on Modern Methods of Construction (MMC), the Women's Innovation Network (WIN), the Claims modernisation programme which is part of the London Market Target Operating Model, and of course providing thought leadership to you such as this very journal.

It is not just us who thinks we are doing a great job. In June this year the efforts of our Property, Construction and Energy claims team were recognised by the British Claims Awards who awarded us Claims Team of the Year.

We hope you enjoy the Claims Journal which includes articles on a wide variety of topics, including fire, subrogation and contribution, and a look at the various forms of 'business interruption' coverages.

Finally, we look forward to working with you next year and I'd like to take this opportunity to wish you a happy Christmas and a prosperous 2019.”

All the best,
Charlie

Fire – Why it's such a burning issue for Property Insurance



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For more than a decade the total number of fire related incidents in the UK was on a downward trend, however, in recent years we have seen an increase. In 2017 the Fire Rescue Service attended to 170,519 fires, which was a 9 percent increase on the previous year. It is not only the frequency that is concerning, but also the severity of these fires, with many resulting in significant damage or total destruction of premises. Whether the contributing causes of the increasing severity is driven by the Fire Rescue Service's focus on protecting human life and then containment, different methods of construction, austerity impacting on risk management controls, and others, are all debatable to the individual loss and understandable.

What is clear is that if you suffer a large fire loss, it will have a significant impact on your organisation, and your ability to meet the needs of your customers and clients. The best way to mitigate this is to avoid the loss in the first place, and to that end, my team have provided some insight from our experience of handling large fire losses and the most frequent causes or contributors to severity that we are observing, namely:

- Contractor Hot-works
- Arson
- Carelessly discarded smoking material
- Listed buildings



Hot Works Fires – Is the issue reaching Boiling Point?

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Fire and explosions caused by hot works is nothing new for the insurance industry. The risks and potential consequences have been known to Insurers for years, yet the industry as a whole has not come up with any meaningful way to combat the issue, reduce the risks faced by policyholders, ultimately save lives and reduce the severity and frequency of claims.

Since the beginning of 2017, Zurich Insurance UK has been directly involved in nearly £300m worth of losses as a direct result of hot works. In the UK, the complex nature of the buildings or the technical work that tenants have undertaken mean claims costs can rise steeply. Whether it is a luxury hotel, a cancer research facility or a listed building, nuances such as these can lead to the claims process being long and drawn out as multiple complex issues are tackled.

The other aspect to consider with hot works is the subrogation of the third party responsible for causing the fire. It is easy to assume that Insurers/ policyholders will have a simple journey to make a subrogated recovery against an identified third party, as they are responsible for causing the loss and consequential damage. This could not be further from the truth and in fact, from Zurich's experience, these claims usually encounter some form of barrier which prevents a full or even partial recovery. Some of the issues affecting subrogation that we have found in our experience are:

- Subrogation waivers
- Contractor is named as a Joint-insured under the policy
- Third Party's 'Hot Works' warranty invalid
- Uninsured contractors
- Third Party insurance policy limits

There are some potential solutions to these issues, but none are straightforward or easy to implement. Before the hot works begin, a risk assessment should be mandatory to ensure there are no obvious hazards that could lead to fire spreading. For larger commercial premises, an independent fire watch could be employed and incorporated into the overall cost of the project. This would be difficult to implement and potentially increase costs but would ensure a fire is detected and dealt with in the correct way before it has a chance to spread. Policyholders should also take steps to ensure any Contractor they are employing has a Public Liability policy with adequate Limits and ensure that the Contractor is complying with the terms of their 'Hot Works' permit under the policy.



Arson or deliberate fire setting remains the main cause of fires in the UK

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Statistics suggest that up to 40% of all fires are deliberately set and given such attacks lead to the destruction of valuable commercial and community assets, the problem can reasonably be viewed as a self-inflicted scourge of UK society.

In recent weeks, a number of Zurich policyholders, whether operating in the private or public sector, have experienced catastrophic losses and become the latest victims of the arsonist.

Those incidents have emphasised that any organisation must remain continuously vigilant and diligent in assessing its vulnerability to arson, as part of a fully integrated approach to risk management.

It is certainly the case that with a suitably robust approach, arson can be prevented or at least its effects controlled, often at relatively modest expense.

In previous years, the onset of shorter days, the Halloween, trick or treat and Guy Fawkes season, coinciding as it does with the October school half term holiday, has seen a spike in arson attacks but it would be naïve to consider deliberate fire raising as in any way seasonal or the exclusive domain of disaffected or bored youths, responding to peer pressure.

Rather, my own experience is that some of the largest fire losses have arisen through the actions of a disgruntled employee with a perceived grievance around a redundancy or disciplinary issue or as a result of fraudulent arson, perpetrated by a policyholder seeking the financial windfall provided by a substantial insurance claim. In either instance, the individual's enhanced knowledge of the lay out of the premises, can create a significant additional risk.

Any arson risk assessment needs to start with the nature of the business and its occupation of the premises and thereby vulnerability to the unwanted attention of, amongst others, protest and campaign groups. Currently, a topical example would be a company involved with the fracking industry.

Unoccupied buildings, particularly if a long term feature, create their own issues, requiring a stringent discipline around premises security and the removal of trade waste and combustible materials from within or outside the buildings.

The arson risk can certainly be mitigated by denying the arsonist easy access to the site and materials that may fuel a fire. That would include introducing and maintaining good housekeeping practices, such as controlling the amount of external pallet storage and keeping them a minimum 10m distance from the premises. Likewise, using waste skips with metal lockable lids.

Transportable plastic (wheelie) bins should ideally be kept indoors whenever the business is closed and if impossible then they should be kept in secure enclosures or secured, a good distance away from the buildings, with padlocked chains.

Inner city, high crime or isolated locations introduce additional risk features, which can be mitigated by good quality perimeter and building security.

The real quality of industrial relations with employees and the impact the business has upon its neighbours, who may be affected by problems such as high levels of noise or traffic, must also be considered.

It is a sobering thought that incidents of arson are often highly opportunistic and a consequence of unexpected circumstances, such as a missed or delayed waste collection or the sickness absence of a caretaker but there can be little doubt that the arsonist will readily seek to exploit any weakness in the protection of the property, often with the most catastrophic consequences.

Fire: Carelessly discarded smoking materials



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What's the problem?

With many people kicking the smoking habit, have businesses stopped factoring this as a significant risk?

NHS statistics show that 14.9% of adults are classed as smokers, which is down from 19.8% in 2011. And yet our claims experience shows that the number of fires emanating from carelessly discarded smoking materials are remaining static, and the severity of these losses are increasing.

Fires resulting from carelessly discarded smoking materials are often challenging to prevent and control as they can sometimes smoulder for hours before the fire itself becomes evident and can be tackled. This can then lead to significant damage to our insured's premises, having a major impact on their business's operations.

What's there to protect you?

There are regulations that are in place to assist you in ensuring that you have the correct controls in place, and utilising Risk Engineers/Surveys are also an effective way of challenging that you have appropriate measures are in place. For example:

- Formal programmes of control in place surrounding smoking
- All employees being engaged directly or indirectly with supporting good housekeeping practices regarding the smoking/non-smoking policy
- Clearly designated smoking and no smoking areas
- Any non-compliance of these policies resulting in disciplinary action

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Fires resulting from carelessly discarded smoking materials are often challenging to prevent and control as they can sometimes smoulder for hours before the fire itself becomes evident and can be tackled.”

What happens when it goes wrong?

Case study

Fire in a semi-detached house belonging to a Social Housing Landlord. Forensic investigations revealed the cause as a carelessly discarded cigarette, which had ignited rubbish near a plastic vent on the wall of the property. The cigarette burnt through the rubbish before spreading through the vent into the wall structure and igniting the cavity-side timbers of the timber frame wall. The fire was initially undetected as it spread throughout the property eventually reaching the roof space. Thankfully, no one was injured but there was significant damage to the property.

What can you do to help us?

At Zurich, we always seek to recover your loss if fault or blame can be ascribed to another party. We will therefore consider:

- The full circumstances of the events leading to the fire (who, what, where, when)
- Is it possible to identify the person who carelessly discarded the smoking materials?
- If so, do they have Contents policy? (the Contents policy may have a legal liability section that could cover reimbursement of your uninsured losses and our outlay)
- Was the property recently constructed or undergone renovation, repairs etc. If so, does it comply with Building Regulations etc.?
- Was the fire able to spread throughout the property, and if so what fire stopping was in place?



What additional impact does a building being listed have on a fire claim?

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Any incident of fire has the potential to cause extensive damage to a building or its contents. With a significant event, the distress caused can be high and the length of time to complete repairs can be significant. With this in mind, what additional impact does a building being listed have on a claim?

Before considering the answer to this question, it is perhaps helpful to understand what is meant by a listed building and the obligations that are imposed upon the owner.

A listed building is one that is placed on a list maintained by either Historic England, Historic Environment Scotland, Cadw (in Wales) or Northern Ireland Environment Agency, depending upon the location of the property. The listing is either due to its architectural or historical interest or close historical associations with significant people or events.

For any demolition, alteration or extension to a listed building that affects its character as a building of special architectural or historic interest, listed building consent is required. Any application is submitted to and determined by the local planning authority and there are statutory requirements to take into account the desirability of conserving them. It is a criminal offence not to seek consent when it is required and being unaware of a listing is not a defence. If in any doubt, contact your local planning authority.

Listed building consent usually takes approximately 8 weeks to be determined. However, it is often the time and cost taken to complete the work required within the consent that can add significantly to the project. (In one recent case dealt with by Zurich's Major Loss Team, a heritage oak parquet floor was water damaged. The cost of saving and reusing the existing timber was in excess of £100K more than the cost of repair using non-heritage timber. In addition, the repair processes involved extended the reinstatement timeframe).

The above case simply highlights the extra material costs that can be incurred when reinstating damage to a listed building. As a property owner, this additional cost needs to be factored in when assessing a sum insured. Similarly, the work required adds to the reinstatement timeframe and this needs to be factored in to any business interruption maximum indemnity period. A failure to appreciate these points could lead to an unexpected level of underinsurance. Seeking professional guidance can help to avoid unnecessary and unwanted surprises.



Subrogation and contribution in construction claims

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Modern construction projects draw upon the unique skills of an often huge range of contractors, suppliers and consultants, in order to deliver the 'finished product'. All of these firms have varying exposures to risk dependant on the works they have been contracted to complete, and consequently they need appropriate insurances to cover these risks.

Most Contractors' All Risks (CAR) policies are intended to cover the financial interests of a range of these stakeholders, insofar as they relate to the subject matter of the policy, which would typically be the physical works under construction.

The benefits of such an approach are twofold – making it easier for customers to manage complex risk with a single insurance policy. It can also reduce the opportunity for dispute to arise between two firms as to who should deal with the fallout from an insurable event – especially important if they are still working together to deliver the project.

Whereas this is great news for Insured parties claiming under CAR policies in the first instance, it can often cause challenges for Insurers later down the line when looking at the opportunities to recover their money under the legal principles of Subrogation and Contribution, and to minimise the impact on claims experiences.

Jargon Buster

Subrogation

When an Insurer, having paid a claim, adopts the rights of an Insured party in relation to the subject matter of the claim. For example Insurers pay a claim for water damage caused by defectively installed pipework, and subsequently look to the sub-contractors who installed the pipework causing damage to settle their costs.

Contribution

The right of one insurance policy to share costs with another policy covering the same interests (where both respond).

Whereas your typical insurance policy will specify a single named insured, a CAR policy often provides a more lengthy definition of the term 'Insured', which would typically include:

- 1) The Employer
- 2) The Main Contractor
- 3) For their physical on-site works only:
 - i. Sub-contractors, manufacturers and/or suppliers of any tier to 1 & 2
 - ii. Architects, engineers and/or consultants

The wide scope of this definition allows cover for losses that are incurred by any of these parties, but there are limitations. For example off-site based work (including manufacturing and designing) is commonly excluded by only including sub-contractors in the definition for their on-site works. This serves to ensure the policy is not exposed to claims that would more appropriately fall to a professional indemnity policy – especially important given the fact CAR policies are primarily concerned with physical damage to contract works.



Insurers' face significant challenges when pursuing subrogation or contribution relating to CAR claims, because the complex nature of the business relationships often lead to assertions that the relevant parties are considered to fall within the definition of an Insured. Naturally insurers will be precluded from seeking recovery from a party who has caused a loss, if they are deemed to be covered under the policy under which the claim was paid in the first place.

It's therefore necessary to carefully examine the relationship between the firms by way of the contracts put in place between them, which will stipulate which party is responsible for arranging insurance. Such contract terms are crucial for insurers in examining whether there may be another policy that can be called on to contribute. The contracts will often contain indemnities that impose a requirement to pass on costs incurred in certain scenarios – for example a sub-contractor may contract to repay the main contractor for third party liabilities caused by their negligence.

This can be complicated even further by the complexity of modern insurance arrangements – different types of exposure (such as damage to contract works, or third party liability claims) can be insured under separate policies, with different insurers and differing terms (including the scope of who cover is afforded to, exclusions and policy limits). Covers are available in the form of project specific policies, annual policies, owner controlled policies and others, and can of course be taken out by parties at varying points in the supply chain.

Insurers will often have to review complex and lengthy contractual documents to determine firstly whether a claim is valid in the first instance, and secondly whether there may be another more appropriate policy (either for the claim to be lodged in its entirety, or for a proportion of the loss to be shared). It's absolutely crucial that we work closely with customers to understand the policy under which a claim should be lodged in order to prevent any prejudice to the customer or insurer's position.

In addition a CAR policy can include a variety of clauses that can act to modify how a particular policy will respond in such scenarios, such as:

- **Primary Insurance/Other Insurances Clauses**

These clauses will state, often quite plainly, that where more than one policy is effected, the policy in question will respond first.

- **Difference in Conditions/Limits Clauses**

These are typically found on annual covers. When taken out, usually reflected by a reduced rate of premium, they specify that the policy in question will only provide cover in respect of the difference between it and other policies that may have been effected (such as where a primary claim falls below a deductible or above a policy limit).

Although these issues are complex and can present challenges, they also provide an opportunity for insurers, brokers and customers to work together to understand the insurance programmes in place at an early stage in order to further the goal of minimising the impact of a major incident.

Is paying for physical damage the end of the story?

It is a common – but understandable – misconception that property insurance only covers physical damage. Although that is usually the case at the core of a Property, Construction or Energy policy, additional covers are common and when dealing with physical damage claims we often receive claims for costs associated with consequential losses. These claims can be somewhat more difficult to deal with as the cover is generally less well understood. The key to successfully managing these claims is by creating effective communication and cooperation with all of the parties involved.

Property – Contingent Business Interruption



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Traditional Business Interruption (BI) provides cover to the Insured for interruption to the business caused by damage to their property, and can be in the form of loss of profits or additional expenses. Contingent BI is intended to reduce the impact of an incident that may occur to a key supplier by providing crucial financial support.

As businesses increasingly look to get the best value, supply chains are getting more convoluted – it's entirely possible for them to have suppliers placed around the world. It's therefore more and more difficult for businesses to identify their potential loss exposures. As a result it's vital for Insurers and customers to work together when arranging a policy to fully understand the supply chain and set appropriate policy limits.

Suppliers with a direct relationship to the customer will be a "direct" supplier under the policy, and an extension for "indirect" suppliers can be purchased. Alternatively you can have "named" or "unnamed" suppliers – the latter being needed when a customer may be averse to providing an exhaustive list of suppliers.

A common difficulty when dealing with CBI claims is a reduced flow of information, which can make it difficult to understand how long the customer will be affected for. We recommend that customers have a designed emergency plan in place with suppliers to mitigate the lack of control.

It's important to fully assess whether an incident at a third party premises would trigger cover under a customer's policy, and consequently whether an alternative contractual remedy may be available to customer (on Insurers in the form of recovery opportunities). This can be difficult to investigate without access to the loss site and it's therefore crucial for insurers to work closely with customers to resolve these issues.

Energy – Loss of Production Income



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Loss of Production Income (LOPI) insurance helps protect customers from the inability to produce hydrocarbons following the occurrence of a covered Physical Damage claim. Its main characteristic is that its basis of settlement is not one of Indemnity, in that the unit price of the commodity is agreed at the inception of the policy, and payments are made in line with this agreement rather than the actual price at the time of the loss.

Explaining LOPI can be difficult because there is an argument to say that any residual oil contained in the reservoir can still be extracted once the issues caused by the Physical Damage claim have been resolved, meaning the Customer will extract it all eventually. LOPI cover provides protection during the indemnity period to the extent that Oil and Gas companies still face their financial obligations, and cannot be deferred to when production is back up and running.

An additional concern is the length of the licenses held by the Companies, which is taken in to consideration when budgeting for the future.

It is worth noting however that in some instances there will be a loss that Customers will never recover due to licences expiring too soon after the loss for the production to be made up within the remaining period of the licence.

The Adjustment of LOPI claims can be very challenging especially when some production is still possible. The Customer is usually entitled to a maximum daily indemnity amount for those days during which it is necessary to shut down production completely. However, when partial production is possible, it is crucial to calculate the 'but for the loss' number – which is the quantity of hydrocarbons the Insured would have produced but for the loss.



Construction – Delay in Start Up



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Delay in Start Up insurance (DSU) provides indemnity for the loss of revenue suffered when a construction project is delayed due to damage to the contract works. Indemnity is calculated by assessing the length of the delay period and this will usually be subject to a deductible of a certain number of days.



There is a common misconception that DSU insurance will provide cover for any delays to a project, however, this is not the case – indemnity under the DSU section of a policy requires there to be cover for physical damage to insured property. Issues can often arise when a project already experiencing delays suffers further setbacks as a consequence of physical damage to the works. Expert advice is sometimes required in these situations in order to determine how much of the delay is attributable to the loss, and how much is due to delays unrelated to the damage.

In these types of situation, communication between insurers, their appointed experts, brokers, and most importantly, the customer, is key to ensure that issues related to DSU claims are resolved as quickly as possible. Insurers and their experts will need to assess how the construction schedule was progressing before the incident occurred in order to establish how much the insured event has delayed the project. It is important for insurers to communicate the information that they require and why they require it so that indemnity can be calculated and paid in a timely manner.

Given the complex nature of DSU insurance there is always a chance that issues will occur on delay related claims. However, we have found that by opening up clear communication with the parties involved and taking a collaborative approach to resolving any issues, we are able to achieve amicable solutions so that customer's projects are back up and running at the earliest possible opportunity.

Conclusion

Although consequential losses are typically excluded by policies covering physical damage, some of the most significant claims we see fall under additional covers such as BI, LOPI and DSU. As we've seen the challenges can be complex but the key is to work closely with customers to quantify, understand and mitigate them, both at the point of claim and prior to the loss occurring in Zurich's Large Loss Scenario Workshops.

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Given the complex nature of DSU insurance there is always a chance that issues will occur on delay related claims.”

What is Normal Action of the Sea?



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On face value, it may surprise you to read an article relating to the Sea written by a Construction Claims Adjuster. However, a Normal Action of the Sea Clause should be incorporated in to any policy with a risk exposure relating to wet works – the definition for wet works being “works in connection with water”. I’m drawing from my experience in seeing these clauses in Contractor’s All Risks (CAR) policies.

Often, a Normal Action of the Sea Clause has two limbs; one referencing the likelihood of occurrence, the other referencing the intensity using a scale like the Beaufort scale. The Beaufort scale was created in 1805 by Francis Beaufort and measures wind speeds rather than sea state, but it’s the most recognised and used measurement of its kind. As you can see from the below diagram, the Beaufort scale references: wind speed, probable and probable maximum wave height and sea state/effect to name a few.

Force	Knots	MPH	K/Hr	Wave Ht	Descr	Effects on water
0	<1	<1	<1	0 Ft 0m	Calm	Flat
1	1-3	1-4	1-5	0-1 Ft 0-2m	Light air	Ripples without crests
2	4-6	4-7	6-11	1-2 Ft .2-.5m	Light breeze	Small wavelets; crests of glassy appearance
3	7-10	8-12	12-19	2-4 Ft .5-1m	Gentle breeze	Large wavelets; crests begin to break, scattered whitecaps
4	11-16	13-17	20-28	4-6 Ft 1-2m	Moderate breeze	Waves 1-4 ft. becoming longer, numerous whitecaps
5	17-21	18-24	29-38	6-9 Ft 2-3m	Fresh breeze	Moderate waves taking longer form, many whitecaps, some spray
6	22-27	25-30	39-49	8-13 Ft 3-4m	Strong breeze	Larger waves, whitecaps common, more spray
7	28-33	31-38	50-61	13-19 Ft 4-6m	Moderate gale	Sea heaps up, white foam streaks off breakers
8	34-40	39-46	62-74	18-25 Ft 5-8m	Gale	Moderately high waves of great length, edges of crests begin to break into spindrift, foam blown in streaks
9	41-47	47-54	75-88	23-32 Ft 7-10m	Strong gale	High waves, sea begins to roll, dense streaks of foam, spray may reduce visibility
10	48-55	55-63	89-102	29-42 Ft 9-12m	Storm	Very high waves with overhanging crests, sea white with densely blown foam, heavy rolling
11	56-63	64-73	103-117	37-52 Ft 12-16m	Violent storm	Exceptionally high, foam patches cover sea, visibility more reduced
12	>63	>73	>117	>46 Ft >14m	Hurricane	Air filled with foam, sea completely white with driving spray, visibility greatly reduced



As with many clauses there are different variations, some more restrictive than others, some clearer than others. Here are three examples:

1. *"The Company shall not be liable under Item (a) of the Policy in respect of Loss or Damage to the Insured Property solely caused by the normal action of sea.*

Definition of normal action of the sea:

Normal action of the sea means the state of the sea or any other body of water which:

- a) *Manifests itself up to No.9 on the Beaufort scale based on information from the local Meteorological Office; and*
- b) *The state of the tides current and wave action of the sea or any other body of water, which must be statistically expected to occur once during a 50 year based on information from the local Meteorological Office"*

This version of the clause clearly states that an event has to reach at least nine on the Beaufort scale as well as satisfy the likelihood of occurring only once in a 50 year period, both of which are to be evidenced by Meteorological data. The above clause also refers to events solely caused by the normal action of the Sea – as such, claims with an additional cause of loss would be exempt from this exclusion and therefore covered under the Policy.

2. *"It is agreed and understood that otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon, the Insurers shall not indemnify the Insured for loss or damage directly or indirectly caused to the contract works or Insured's property due to normal actions of sea or normal tidal actions which shall be deemed to mean the state of the sea or tidal water which must statistically be expected to occur once during a 25 years observation period or normal tidal action accompanied by wind speed not exceeding factor 7 on the Beaufort Scale."*

This example provides more restricted cover insofar as the exclusion will apply for loss or damage directly as well as indirectly caused by normal action of the Sea. However, the two limbs of frequency and intensity have lower values (Beaufort scale 7 vs 9 and one in 25 vs one in 50) so adverse weather need not be so bad in order for this exclusion to bite.

3. *"Any loss or damage affecting the insured property arising as a consequence of normal wave action, ocean swell or currents shall be excluded from cover. In this context, the occurrence of loss or damage caused by:*

- a) *Earthquakes*
- b) *Tsunamis*
- c) *Conditions of waves, ocean currents and adverse meteorological conditions and/or storms which the Insured sub (i) can reasonably demonstrate to the satisfaction of the Insurer(s) that said conditions have exceeded those corresponding to a return period of 20 years will be considered abnormal and not excluded.*

For the purpose of this exclusion, the parameter to be used to determine the return period for storm conditions will be the significant wave height in accordance with data registered at an agreed wave-action monitoring buoy.

Lastly, this example provides more comprehensive cover than the first example but less comprehensive cover than the second example stating "arising out of a consequence of normal wave action" which is in between "solely caused" and "caused directly or indirectly". The Beaufort scale isn't even mentioned in the second limb, only wave height is referred to. Therefore, this part of the exclusion is not as strict, yet it does state the measure: "an agreed wave-action monitoring buoy".

As you can see from these examples, there are plenty of different ways of saying similar points – namely that we'd like to exclude frequent adverse weather events. It's necessary to have a form of a Normal Action of the Sea clause as there is an increased exposure with wet works policies and its purpose is to exclude lower level and more frequent adverse weather events so the risk can be smaller and therefore the Insurance premium can be lower.

Various meteorological data is available to prove the Beaufort scale and produce and/or extrapolate data to determine frequency to see whether or not an exclusion is applicable but it is important to make sure the wording of the Clause is as clear and specific as possible to avoid ambiguity and ensure that the Customer knows exactly what is covered and what isn't.

Litigation Funding



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There are powerful and global forces operating on the litigation industry including its sources of funding. Factors such as technology, competition, liberalised legal systems and participants interconnected networks are increasingly important and have already changed the industry profoundly.

In this article, the first in a series on the subject for the Claims Journal, we introduce the Litigation Funding industry, identify the global trends and explain the broad implications for Zurich and our customers as participants of the international insurance market.

What

Litigation Funding is where a third party provides financial resources to enable litigation to proceed. If the case is successful, the funder will receive a percentage of the damages recovered (claimant) or a multiplier of the investment made (defence). If unsuccessful, the funder will lose the investment and may provide cover for adverse costs. The terms of the funding arrangement will be detailed within a Litigation Funding Agreement.

Who

Recipients will use funding in conjunction with conventional financing to manage litigation risk. They include individual claimants, commercial entities, law firms and class action vehicles in their capacity as a claimant or defendant, with funding provided on a single claim or portfolio basis.

Equally, there is a dynamic (and diversifying) market of litigation funders. These are a mixture of private and listed companies who typically specialise in the funding of litigation and ancillary services.

How

The products and services provided by these firms are diverse and growing:

- single case, portfolio or class actions funding
- after the event insurance (ATE)
- adverse cost order funding
- risk assessments, consultancy and advice
- cover for ATE premiums and provision of security for costs

Finally, the vehicles offering finance to funders are evolving. The attractiveness of the industry to these parties is clear, given the persistently low-yield global investment marketplace. Funders are backed by the full spectrum of money markets, from institutional investors and hedge funds to private equity and high net worth individuals.



The rapidly evolving nature of the market, combined with a lack of established regulatory and reporting frameworks means that accurately capturing the current state of the industry is difficult.”

Justification

The reasons why claimants pursue funding, and the legitimacy to do so, are clear. They include the desire to manage litigation risk, protect against adverse cost orders, maintain cash flow and provide access to justice for parties unable to fund litigation.

Funding for law firms can enable them to pursue lucrative (but higher risk) contingency fee strategies, accelerate the payment of fees and provide access to non-bank/partner financing. Recipients can also include barristers, insolvency practitioners and in-house counsel.

The decision to provide finance will typically follow an extensive due diligence exercise. This process is not entirely different from a claimant’s decision to pursue a case initially, namely:

- factual and legal merits of the claim
- favourability of jurisdiction and enforcement
- defendant(s) solvency and insurance cover
- estimate of quantum, duration and the appeal process

Current landscape

Given the infancy of the industry in its globally interconnected form, data, which are reliable and comparable, are hard to find and verify. What is clear however, is that it is unquestionably growing – estimated by The Law Reviews to be in the 10’s of billions USD up from an estimated USD3.5bn in 2016.

The map below represents our assessment of the litigation funding industry in countries of interest to Zurich and our customers in the UK.



United States	Mature market, increasingly competitive, growth opportunities exploited, developing legal and regulatory frameworks
United Kingdom	
Australia	Developing market, growing competition, growth opportunities clear, legal and regulatory frameworks considered
Singapore	
Germany	
Hong Kong	
Spain	Embryonic market, little/no competition, unknown growth opportunities, non-existent legal and regulatory frameworks
Brazil	
Switzerland	
Dubai	

Global trends

The rapidly evolving nature of the market, combined with a lack of established regulatory and reporting frameworks means that accurately capturing the current state of the industry is difficult. The amount of commentary does however enable us to identify broad global trends:

1. Industry considered **mainstream** in Australia, US and parts of Europe
2. The model is **more accepted, understood and applied**
3. Funders **leveraging global networks** and exporting knowledge into new territories
4. **Increasing variety and creativity** of products and services being offered
5. **Legislative environments increasingly favourable** with previous barriers being restricted/removed
6. **Largely unregulated** industry with pockets of self-regulation
7. Expectation for **additional scrutiny and action** from law makers, regulators and governments
8. Rules around control, disclosure, adverse costs and security **continuing to advance**
9. Rapid **innovation and influence of digital technologies** to finance funders
10. **Expanding base of investors** for funders – from crowd funding and crypto currencies to institutional investor

Implications for Zurich and our Customers

The scale and speed of these developments necessitates our attention and we expect an increasing global presence of litigation funders supporting claimants, defendants and law firms. This will have broad implications for Zurich and our customers' business across almost all lines and exposures:

- Subrogated claims against a liable third party and a funded law firm (Property, Marine)
- Claims pursued by third parties against our customers (Product Liability, Public Liability, General Liability, D&O)
- Class actions against our customers, notably for matters of public interest (Environmental Liability, General Liability, D&O, Professional Liability)
- Actions against employees by shareholders seeking collective redress (D&O, Crime)
- Customers who suffer data breaches and subsequent claims (Cyber)

Therefore, we need to closely appraise how this will impact our customers' claims, risk profile, policy terms, conditions and limits and our partnerships with legal firms. Monitoring the evolving legal and regulatory landscape will also be important.

With experience of funded cases in Australia, US and Europe we have already seen how the presence of a funder can affect negotiation dynamics, lead to cases being sustained for longer and at a higher cost and support the development of class actions, particularly in securities and climate change cases.

Outlook

A more detailed analysis of this topic will form the bases of future articles within the Speciality and Casualty journals. In conclusion, we outline five areas of development that will bring the most impact to Zurich, our customers and all parties involved in the management of insurance claims.

1. Claimants and law firms adopting portfolio funding strategies
2. Continued liberalisation of legal frameworks in emerging markets for funding
3. Funders grow and leverage global networks, increasing prevalence of cross-jurisdictional cases and enforcement
4. Use of digital technologies to source alternative forms of litigation funding (crowd sourcing and crypto currencies)
5. Increasing complexity of laws and regulation on liability for costs, disclosure, control, privilege and confidentiality



Our customer proposition

Our Zurich UK Claims Commitment



Protecting your ability to compete

At Zurich, our claims service is a priority, that is why we continually strive to provide a market leading claims proposition that reflects our customers' changing requirements.

Working together for the best

The claims service is an integral part of the Zurich proposition and we are renowned for offering reliability, speed of service and expertise when a claim happens, to get you back on your feet and to stay in business.

That's why we make a commitment that our claims service will be:

- **personal** to each customer, working closely with you using our combined knowledge of your organisation, people and business
- **effortless**, as we know the easier it is to claim, the more content you will be
- **clear**, so you know exactly what you need to give us to progress your claim. Straightforward communications are vital to settling claims quickly and smoothly
- **collaborative**, working together, sharing a common goal to conclude the claim as quickly as reasonably possible and to keep you in business.

Our Claims Commitment ensures that you know where you stand every step of the way. It involves us working closely with you and supporting you all the way through a claim.



It's here in blue and white

Whatever the size of the claim, our Claims Commitment ensures that we will work closely with you and settle accepted claims (building upon our 99% claims paid record), as fast as possible whilst robustly defending you against unwarranted claimants.

In respect of the larger and more complex claims

When you claim:

- a **dedicated claims expert** will contact you as quickly as possible and within 24 hours
- if appropriate, we will appoint a dedicated **third-party expert** as quickly as possible and within 24 hours.

If it is clear what caused the incident, we will provide our **initial view** on policy liability within 48 hours.

If Zurich and your business agree the claim will potentially cost more than £250000, we will:

- arrange and hold a **conference call or meeting** within 5 days of the claim being notified. This call or meeting will include you and relevant stakeholders, such as your broker and any third-party experts. We will discuss and agree a claims strategy which includes the communication plan and our combined agreement on how best to resolve your claim.
- let you know the **additional documentation** and expert evidence we need to assess your claim, no later than 7 days after you first notified us.
- give you an **initial view** about paying your claim within 72 hours of receiving all the information we need.
- **pay you an interim amount**, if required or requested, within 72 hours of us agreeing to pay the claim. We will always try to put you in the best financial position possible.
- **pay the final amount** within 72 hours of us receiving the documents we need, unless we've agreed and documented otherwise in release or settlement papers.

For all claims we will:

- **respond to all communication** from you and your broker promptly
- **give specific customers access** to our claims relationship team to assist you generally on all claims matters
- once coverage is confirmed, **pay the claim promptly** upon receipt of supporting documentation
- work with you to **produce the accurate claims** information and the data you need

When making a claim you also have access to:

- Our award winning fraud protection team
- In house claims inspectors to investigate EL claims on site
- In house pre and post loss rehabilitation team
- In house forensic motor engineering team.

Why choose Zurich?

Zurich is a leading multi-line insurer that serves customers in global and local markets. With over 55,000 employees, and a wide range of general insurance and life insurance products and services, we have the size, strength and scale to support you. We serve individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

To find out more about our Claims Commitment, speak to your Zurich contact today.



Large Loss Scenario Workshop

Large Loss Scenario Workshops help protect our customers' ability to compete.

Certainty is the number one priority for any customer responsible for insurance procurement. Certainty of the skills and expertise of individuals responsible for underwriting their risk and handling their claims. Certainty on the nature and extent of policy coverage and programme structure. Certainty of the roles and responsibilities of key decision makers throughout the duration of their partnership with an insurer. Certainty that Zurich will deliver on its commitment and protect their ability to compete.

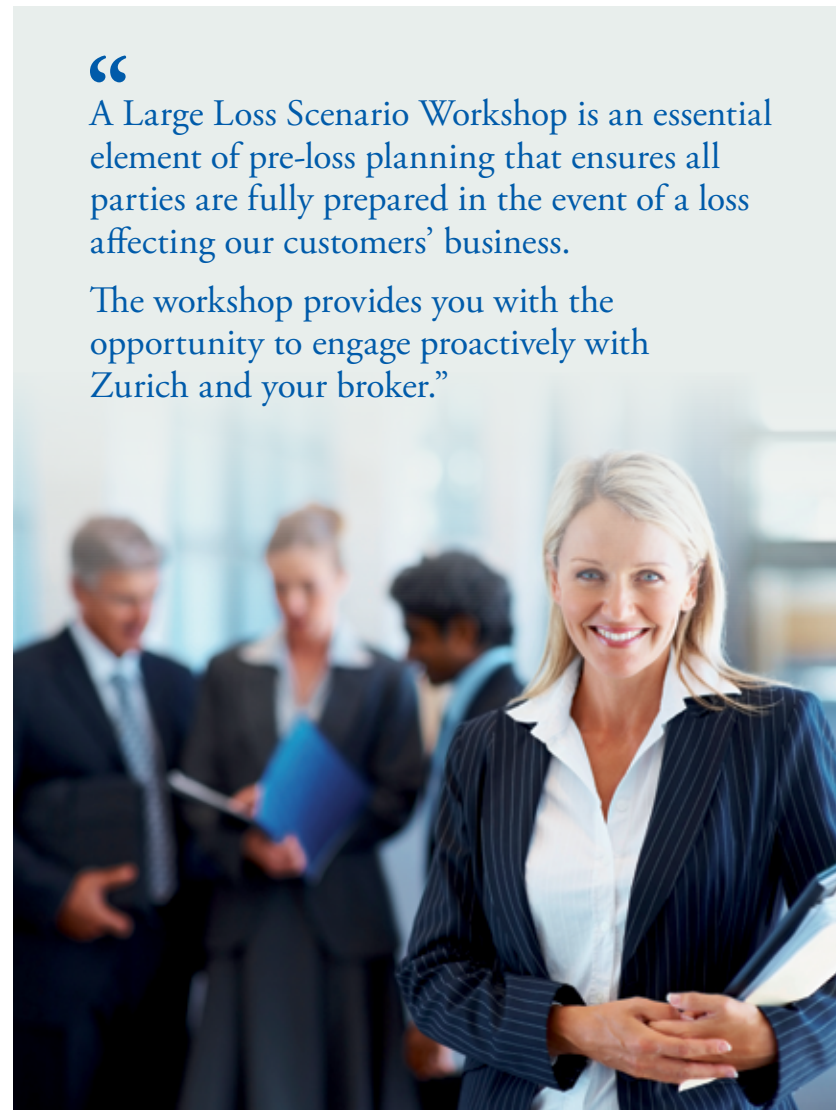
By using Case Studies that are bespoke to the challenges a customer may face; Zurich, the broker and the customer will jointly agree a defined set of workshop objectives in conjunction with other critical service providers such as loss adjusters and lawyers.



“

A Large Loss Scenario Workshop is an essential element of pre-loss planning that ensures all parties are fully prepared in the event of a loss affecting our customers' business.

The workshop provides you with the opportunity to engage proactively with Zurich and your broker.”





Protecting our customers' ability to compete

Our Claims Commitment

Zurich Insurance plc is authorised by the Central Bank of Ireland and authorised and subject to limited regulation by the Financial Conduct Authority. Details about the extent of our authorisation by the Financial Conduct Authority are available from us on request. Our FCA Firm Reference Number is 203093.