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Time is ticking – Information requests and the time element of insurance claims following a physical damage event

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W+K TURNING POINT COMPETITION



Overview

The *W+K Turning Point competition* has been established to promote international thought leadership across key sectors – mining, power generation, gas and renewables – via the lens of risk and insurance.

The annual prize aims to inspire the leading professionals across the industry to submit novel and inspired thinking in a publishable format to challenge how the customary world of transactional insurance products will need to evolve to meet accelerated change in the technologies and industries that insurers are underwriting.

Finalist Trudie Moeller from CCI in Singapore partnered with Sam Barker from W+K's national Property, Energy & Infrastructure team to write this insightful paper considering the opportunity to implement best practice for information requests relating to the time element of an insurance claim following a physical damage event to support the progress and success of the claim for parties.

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Introduction

One of the first things that an expert is asked to do is set out what information, in the form of documents, is required to assist in evaluating the time element of a claim. This is captured in a Request for Information (RFI), sometimes referred to as an Information Request (IR) or Document Request List (DRL).

Requests for information on insurance claims following an event can be received by Insureds with varying degrees of success. The reaction can be dependent on several factors including the existing relationship between the parties involved, the circumstances of the claim, and the point in time of the request. For example, if the request is late in the claims process, it may be regarded as tiresome and may be onerous for the Insured to respond to, or in the worst case, oppressive. This can be detrimental to the progress of a claim, and to relationships between stakeholders.

When an Insured purchases an insurance product, it's necessary to understand how that product will operate if there is an insurable event. The starting point is proof, and this informs much of the indemnity process. The Insured must establish it is entitled to indemnity under the Policy, which carries an obligation to provide documents and data in support.

There might be barriers to this, not least the pace of underwriting, whether the market is hard or soft, cultural beliefs, and the significant challenge of the Insured having an ongoing construction or engineering project to finish. Specific to Australia is Section 13 of the Insurance Contracts Act 1984 (**ICA**) requiring both the Insurer and the Insured to act towards the other, in respect of any matter arising under or in relation to it, with the utmost good faith¹.

Early understanding of the information required to establish entitlement to cover under the Policy, and scope of the indemnity, can avoid delays or disputes down the line. The rationale for developing this white paper is to roadmap the information gathering process and consider what best practices Insurers can adopt to help their clients when placing insurance, and during the claim process.

It will not be possible to come up with an all-encompassing standard operating procedure to manage information requests. Every claim context varies, and every Insured varies. One Insured may have a dedicated experienced team to manage insurance claims, while other Insureds may have no experience in insurance claims.

Methodology

The methodology and findings of this paper are grounded in lessons learned from case studies and intended as best practice which seeks to synthesize and orient the lessons learned from stakeholders. Input from an Underwriter and Broker has been provided on the good faith aspect.

Findings & recommendations

Influencing factors on the success of information requests

Factors that can influence how information requests may be received and acted on, are considered as follows:

- a) The appropriateness of the request. (*)
- b) The size of the request. (*)
- c) The clarity of the request. (*)
- d) The timing of the request.
- e) The experience of the person receiving (or delivering) the request. (*)
- f) The existing relationships between the parties involved (both the stakeholders to the construction or engineering contract, and the insurance contract).
- g) The commercial sensitivities between the parties.
- h) Who owns the information.
- i) The circumstances of the claim.

- j) How the request is communicated. (*)
- k) The capability of the person receiving the request to provide, or obtain, the information.
- l) The effort required to fulfil the request. (*)
- m) The ease of data transfer. (*)
- n) Categorisation of the data transfer. (*)

In addition to the above, it is important to note that the Head Contractor usually has access to the necessary information (and also the ability to mitigate a physical damage event).

The information gathering process can be aided by the operation of the cover being explained to the relevant parties so the commercial benefit in reaching early agreement is appreciated.

Information typically required

There is typical information that may be required to assess the time element of a claim, and this can be generically set out early, even at policy inception, so that the Insured better understands the product and has the information to hand in the event of a loss. Based on the writer's experience and research, making the following documents available to the Insurer early can streamline the claim.

1. General Arrangement Plans of the site.
2. A description of the Damage resulting from the event.
3. Photographs of the area, pre-event and post-event.
4. Details of the cause of the loss (including expert reports that can be shared on under cover of Common Interest Privilege, if necessary).
5. Details of the full scope of reinstatement works.
6. Detailed sequence of the reinstatement works in the form of a daily timeline.
7. A copy of the construction or engineering contract.

8. The detailed contract baseline Master Project Programme.
9. The narrative report accompanying which defines the key assumptions for the Programme.
10. Monthly updates of the Master Project Programme.
11. Detailed Commissioning Programme.
12. Any detailed Subcontractor Programmes.
13. Detailed baseline Reinstatement Programme.
14. Monthly updates to the Reinstatement Programme.
15. The As-built Programme, as and when available.
16. A copy of the Project Controls Plan.
17. Monthly Progress Reports.
18. Procurement details for the replacement of all damaged items.
19. Relevant minutes of meetings.
20. Detailed weekly construction progress reports.
21. Details of any expediting measures employed, and measures considered but not employed.
22. Details of any design modifications or enhancements included in the reinstatement.
23. Weekly labour timesheets / expenditure records.
24. Details of any working restrictions implemented during the reinstatement works.
25. Delay notification letters and supporting details of all Extension of Time claims.
26. Technical Queries and responses.
27. Variation Orders / Change Orders.
28. Project Instructions.

Appendix I sets out this information in further detail, and it is recommended that this list is developed as Best Practice and amended as appropriate for the specific requirements of the claim.

Two pieces of information are of particular importance to assessing the time element – Progress Reports and Programmes. It is of most benefit to both parties if this information is provided contemporaneously².

Project monitoring can assist risk management, provide transparency on the construction progress, allow early preliminary assessment following an event and early decision making, which is of particular importance when decisions are being made around Increased Costs of Working³.

Typically, Special Conditions might appear in policies related to the provision of Progress Reports⁴, but this may not include a specific requirement for provision of the Programme.



Two pieces of information are of particular importance to assessing the time element – Progress Reports and Programmes.

It is recommended that a similar condition is included for provision of the Programme (or Schedule)⁵ as follows:

Endorsement

It is agreed and understood that otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon, the Insured shall submit to the Insurer or the Insurer's nominated representative:

at the inception of the Policy, the Construction Programme(s) in Native File Format;

each and every month, the contemporaneous Construction Programme(s) updated with progress of and changes to the Insured works in Native File Format; and

each and every month, the contemporaneous Progress Report(s) and meeting minutes documenting and recording the progress, planning and scheduling of the Insured works.

Definitions

Native File Format

The data file from the computer program used to produce and update the Construction Programme, containing all logic links and interdependencies between activities. For example, Microsoft Project (.mpp), Primavera (.xer), Asta Powerproject (.pp). It is further understood that electronic computer files in Portable Document Format (.pdf) are not considered Native File Format.

Construction Programme

The programme used to forecast the completion date of the Insured project and to plan and organise all the activities, materials, resources and works Insured.

Good Faith

The nature of the relationship between the Insurer and the Insured is one of utmost good faith. In Australia, this is enshrined in law by section 13 of the ICA. It carries an obligation that the parties deal with each other fairly and honestly and requires the parties to act with commercial standards of decency and fairness⁶.

A request for information to substantiate a claim on a Policy is consistent with this duty, provided the request is relevant and justified. The Insurer is fully within its rights to require information from the Insured that is relevant to the Insurer's decision to accept or deny indemnity.

With that said and consistent with the intent of this paper, an Insurer can avoid unnecessary animosity between the parties or potential good faith issues by:

- i. presenting the request in a table with an explanation to justify the request;
- ii. ensuring the request goes to an issue relevant to triggering the insuring clause and/or an exclusion and/or substantiating the extent of indemnifiable losses;
- iii. avoiding fishing expeditions for information that seeks to effectively underwrite the Policy at the time of the claim. It is important to recognise that requests seeking to uncover information that was not requested or irrelevant at placement may be criticised.

Provided the request serves a legitimate purpose and is relevant to the Insurer's indemnity decision, it is unlikely to fall foul of good faith. Recognising the inherently stressful nature of a property damage claim can go a long way. This is an important empathetic factor in stakeholder management and communications which is beyond the scope of this paper.

Conclusion

Requests for information on insurance claims following an event can be received by Insureds with varying degrees of success, and various actors can influence the success of information requested.

The factors which considered to be within the expert's gift to influence, in part or whole, have been set out within this paper, and the recommendations flowing from this paper are as follows:

- 1) To implement Best Practice guidelines for requesting information from Insureds, articulating with every request why the information is required. An outline of the typical information required is included within the Appendices.
- 2) To include a Special Condition within the Policy for regular provision of the Programme.

Adopting a Best Practice model based on the recommendations in this white paper can assist in streamlining the claims process, increasing efficiencies and managing the commercial relationship between the Insured and Insurer.



Adopting a Best Practice model can assist in streamlining the claims process and increase efficiencies.

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¹ Section 13(1) of the Insurance Contracts Act 1984

² This means that the information originated at the same time as it occurred. For example, a reinstatement programme developed before or during the reinstatement may be considered contemporaneous. A reinstatement programme prepared retrospectively after the reinstatement works have completed is not considered to be contemporaneous.

³ <https://cci-int.com/dsu-and-increased-cost-of-working-a-stitch-in-time/>

⁴ Page 196, Delay in Start-Up Insurance, Research Study Group 254B, The Insurance Institute of London and Chartered Insurance Institute

⁵ The words Programme and Schedule are the same in a construction project context - "Programme" can be used more frequently in Commonwealth countries, and "Schedule" is often used more frequently elsewhere internationally.

⁶ CGU Insurance Ltd v AMP Financial Planning Pty Ltd (2007) 235 CLR 1, 12.

⁷ A Guide to the project Management Body of Knowledge (PMBOK® Guide) Sixth Edition

Appendix

	Information Required	Further Details
1	General Arrangement Plans of the site.	Ideally with the affected areas shown.
2	A description of the Damage resulting from the event.	This may be in the form of one, or several, Damage Assessment Reports.
3	Photographs of the area, pre-event and post-event.	This may be included within the Damage Assessment Reports.
4	Details of the cause of the loss.	This may be in the form of a Root Cause Analysis or Event report.
5	Details of the full scope of reinstatement works.	This may be detailed within the reinstatement programme, referred to below at Item 10.
6	A detailed sequence of the reinstatement works in the form of a daily timeline.	This may be detailed within the reinstatement programme, referred to below at Item 10.
7	A copy of the construction or engineering contract.	
8	A copy of the detailed contract baseline Master Project Programme.	
9	Detailed monthly updates of the "master" project programmes from 6 months prior to the event and monthly through to completion.	
10	Detailed baseline reinstatement programme and monthly updates to the reinstatement schedule through to completion.	If the information is maintained as a separate document to the Master Project Programme.
11	Detailed commissioning programme.	If the information is maintained as a separate document to the Master Project Programme.
12	Any detailed Subcontractor programme from 6 months prior to the event and monthly through to completion.	
13	The As-built Programme, as and when available.	Once the Project has achieved Completion.

	Information Required	Further Details
14	A copy of the Project Controls Plan	If the document exists, it is a primary resource for the Planning Manager. It may be a subsidiary management plan of an overarching Project Management Plan. The document and/or information contained within may have a different title. The purpose of the document is to set the operational context for the Project and outline procedures and responsibilities for the Project execution. The document may set out the programme types and their relationships, responsibilities for the development of each programme, the frequency of updates, and the review and approval procedures.
15	A copy of the document which establishes the criteria and the activities for developing, monitoring and controlling the programme.	If the document exists, it is a primary resource for the Planning Manager and is the supporting narrative document to the Programme. It may be a subsidiary management plan of an overarching Project Management Plan. It may be referred to as the Basis of Programme, Schedule Management Plan or otherwise. The information required is the key assumptions and principles in the construction and management of the programme including the key milestones, the key planning assumptions and constraints, and communication of the critical path.
16	Details of the Project calendar(s), including weekly working hours / day, and any exceptions for the entire project.	This information may be contained within Item 15 above.
17	Details of any holiday dates that affected the reinstatement works and detail the impact on site works and access.	
18	A narrative explaining key changes to the reinstatement programmes with details of delays experienced together with details of mitigation measures, resequencing, shutdown periods etc.	

	Information Required	Further Details
20	Procurement details for the replacement of all damaged items during the reinstatement works, including the purchase order, details of fabrication and delivery, and supplier correspondence.	
21	All relevant minutes of meetings at the time of the event and during the reinstatement.	
22	Detailed weekly construction progress reports from 3 months prior to the event through to completion.	
23	Details of any expediting measures employed, and discounted.	
24	Details of any design modifications or enhancements included in the reinstatement.	
25	Weekly labour timesheets / expenditure records, including the split of skilled, semi-skilled and unskilled labour from August 2021 through to completion.	
26	Details of any working restrictions implemented during the reinstatement works.	
27	Delay notification letters and supporting details of all Extension of Time claims either approved or rejected, along with all related correspondence and supporting evidence.	
28	A copy of the register of Technical Queries.	
29	A copy of the register of Variation Orders / Change Orders.	
30	A copy of the register of Project Instructions.	

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