

Tricky Matters 2

vrs»vericlam

Mission Statement

To deliver independent global expertise in corporate, commercial and complex claims through outstanding service, empowered staff and an aspirational environment.

Vision Statement

Our vision for vrs Vericclaim is to:

- Provide the best loss adjusting service across a global platform
- Build unparalleled partnerships with our clients
- Deliver value through knowledge, innovation and commitment
- Serve as a stimulating work environment offering equal opportunities for learning and personal growth.

VISION. INNOVATION. FOCUS.

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» Introduction

First the bad news: there are still plenty of tricky things to be dealt with when claims are made, and the trend towards unanticipated complications may even be increasing.

The good news is that we continue to try and share the claims experiences up front to avoid expectation problems and prevent bad things happening. We have therefore compiled a further 18 Tricky Matters for your consideration and hope they will be of practical use.

As before please get in touch with us if we can help.

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» Plant and Machinery Valuations

Detailed Plant and Machinery valuations can be expensive, especially if an asset inventory has to be produced from scratch.

As an empirical observation, if the Plant and Machinery sum insured is less than 125% of the historic cost (*not* the written down value) of the plant/contents in the Fixed Asset Note in the Statutory Accounts, then a valuation may nevertheless be advisable and is likely to be less expensive than any shortfall when a claim is made.

» Subsidence – When is the Damage?

If you notice cracking in commercial Premises, the business may continue unaffected whilst the movement of the building is monitored, typically for 12 months, to judge the impact of each season.

When it is time to move out for the repairs to begin, it might come as a shock to find out that the business interruption cover has expired.

Two points: Firstly, this is one example of why a 12 month Maximum Indemnity Period is insufficient. Secondly, all parties should try and map out the consequences of the proposed plan of action (and the impact on the scope of insurance cover) at the outset.

» Contractual Penalties

Payments due in contract to customers may not fall within the definition of Increased Costs in a policy.

If a Fines and Penalties Extension (with a Limit of Indemnity) is arranged to address this, it is important to align the cover with the underlying contractual exposure.

Tricky Matter #12, which concerns Gross Profit, also mentions the need for the policy and underlying legal/commercial contracts to be consistent.

» One-off Opportunities

The Olympics are taking place in 2012 in London, albeit that other significant one-off opportunities are presenting themselves to businesses all the time.

For the leisure sector, any anticipated trend for the Olympics may form a substantial part of a Business Interruption claim if a fire occurs before they start. This may be critical for an Advanced Loss of Profits claim.

To avoid misunderstandings, consider a meeting between all parties to agree the basis of measurement in advance of an incident occurring.

» Premises

Many policies do not define the term 'Premises' and are imprecise as to whether this constitutes the occupied site or just the buildings on it – or the floor occupied in a multi-tenanted building or the whole of it.

Misunderstandings can arise when business interruption extensions are applied or Warranties considered. More certainty over the term before an incident happens may be of benefit.



» Planning

Environmental considerations and the need for sustainability in the future mean that planning departments have more issues to consider before re-instatement can take place following a loss. This is increasingly going to be the case, with local officials needing to satisfy the requirements of the UK government and also of Europe.

This will probably mean some delay, requiring longer Maximum Indemnity Periods. It may also impact on the scope and cost of Material Damage re-instatement. Not all of this will necessarily be picked up by a Public Authority clause.

Ongoing review of all the Values at Risk is essential.

» Purchases

Business Interruption policy wordings do not usually specifically define the term 'Purchases'. The Insurance community understands this to relate to raw material purchases only. On the other hand, the businessman may assume that everything he purchases meets the definition. This might include electricity, the labour of the workforce or local authority rates.

To avoid inadvertent under-insurance, or difficulties associated with fundamentally low declarations of Estimated Gross Profit, arrange claim meetings pre loss so that misunderstandings can be avoided.

» Computer Equipment

Developments in technology generally are making the distinction between, for example, a computer and telephone switchboard harder to define, a trend that is likely to intensify.

Many policies provide separate sums insured for different categories of asset without always precisely defining them. Unnecessary or inadvertent exposure to under-insurance can arise, or there can be avoidable disagreement as to the breadth of assets falling within a particular definition.

Careful consideration of wordings can reduce the probability of this arising. Is the sub categorisation of the assets involved necessary or providing a significant reduction in premium? Is there a danger of over- or under-lap with more specialist policies?

» Exchange Rates

In recent years there have been significant movements in the relative values of currencies. These movements are not always reflected in Sums Insured. Replacement costs for Plant and Machinery purchased in Euros or Yen may need to be reviewed.

Further fluctuations are likely in the foreseeable future, as different countries/regions lift out of recession before others. This is an exposure that can easily be overlooked.



» Fidelity Guarantee – Confidentiality

News leaks of employees having defrauded businesses/ other legal entities make for bad publicity. Any claim of this nature must be handled with the utmost confidentiality.

In many cases, there is insufficient evidence for a police prosecution, so the incident may not reach court and so may go unreported. The insured person might want to keep it that way. Potentially, they might not want Insurers to pursue ex (or current) employees for recovery.

Any desire to limit Insurer's subrogation rights, particularly in respect of fidelity guarantee claims, should be flagged before any claim is made. The appropriate premium can be charged and post claim misunderstandings will be avoided.

» Uncapitalised Assets

Many businesses develop fixed assets in-house, the costs of which may be wholly or partially charged to the profit and loss account, rather than capitalised as an asset on the balance sheet.

After a significant incident, employee time may be at a premium and assets previously developed/constructed in-house may have to be purchased from third parties, at much higher cost.

If the Plant and Machinery Value at Risk is calculated in the first instance with reference to balance sheet values, considerable (inadvertent) under insurance may arise. Pre-incident scoping is essential.

» Complex Businesses

Many businesses take great care to ensure that the business interruption cover is appropriately wide. However, not all businesses take time to consider how a claim would be proven and what supporting documentation might be available at the relevant time.

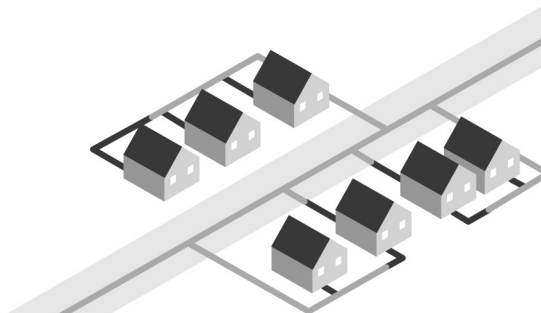
In some cases, it becomes apparent after an incident that it is virtually impossible for the impact of an incident to be adequately proven.

Consider agreeing protocols at an early stage as to what methodology would be used to prove a loss. An over or under indemnity might arise, but all parties would have certainty. The policyholder will be clear as to what would be required after an incident and Insurers would have received the appropriate premium in respect of that.

» Shared Drains

Historically, claims involving shared drains have been complicated, with shared responsibilities between parties. Some may have been insured, some not, with varying degrees of interest in the repair process/costs.

Rejoice! This is no longer a tricky issue. All shared drains are now adopted as public sewers and the property owners are no longer responsible for them.



» Increased costs

Insurance works at its best when the policy empowers the policyholder to spend money to mitigate loss. Whilst technically some policies reserve the right for Insurers to retrospectively apply an economic limit test, such an approach fails the empowerment test.

In advance of a loss, consider clarifying a sensible mitigation plan which will be supported on the basis of discussion or documentation before implementation (ie without a retrospective economic test). This reflects market practice for most adjusters and Insurers - bold mitigation benefits all.

» Unique/Scarce Assets

Some assets are unique and cannot be replaced if destroyed. Valued policies can address this. As an alternative, consider insuring for repair costs only (ie no claim will be made if the asset is destroyed).

For scarce assets (for example militaria or rare wines and spirits), the cost of replacement, particularly for large quantities, can be significantly higher than the historic cost. Not only is the asset type rarer, but there may be an awareness that a buyer is actively interested, both of which may inflate the price. Consider a limit of indemnity which is not average for such assets to avoid the value becoming inadvertently inadequate.



» Loss of Attraction

Loss of Attraction covers claims for business interruption loss resulting from damage to an Attraction in the vicinity (sometimes defined). It follows that the Attraction must generally constitute property that can be damaged.

Confusion sometimes arises over the term – natural attractions such as mountains might be assumed to be an Attraction by the man on the Clapham Omnibus, but they might not constitute the same in policy terms.

To avoid confusion, if a specific attraction is in mind when the cover is arranged, name it in the schedule/policy.

» Tenants and Building Damage

As a tenant, it is easy to assume that landlords will co-operate with repairing building damage promptly and in such a way to minimise business interruption losses. This may not be the case.

The landlord might have forgotten to insure the building or may not have insured it adequately. Whilst there may still be a lease responsibility to reinstate in a reasonable period, that might be construed as a number of years for capital assets.

It may be worthwhile checking the adequacy of the landlord's building cover. It might also be possible to discuss loss protocols, such as leaving the tenant to carry out repairs below a certain amount, to protect the business, recharging that to the landlord.

» Sales Bonuses/Agents' Commissions

Contractually, if a salesman does not achieve targets, commission or bonuses will not be payable. Some businesses therefore do not insure such costs.

However, a salesman who is unable to achieve targets because the business has been affected by an insured incident (outside of his control) may be aggrieved to lose his bonus and take his services elsewhere.

Commercially, it may be desirable to continue to pay the bonus even if it is not legally required to do so. If that is the case, such costs should be insured.

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