

Eagle Insurance Seminar
On
Loss Adjusting
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“International Best Practice”

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A presentation and discussion session dealing with the following topics:-

- Being a “Professional”
- Consumer Protection
- Dispute Resolution
- Claims Presentation
- Focus on Strategy
- Project Management
- Information Sharing
- Performance Standards
- Continuing professional development

Paul May is Chairman of Concordia Consultancy Ltd. He has been working on insurance claims and surveys in Sri Lanka since 1983. He is a Past President of the Chartered Institute of Loss Adjusters (CILA), UK and the European Loss Adjusting Association (FUEDI).

He assisted the formation of the Sri Lanka Association of Loss Adjusters and has supported the library of the Sri Lanka Insurance Institute.

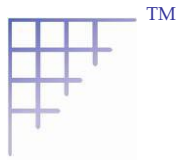
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Chartered Loss Adjusters – Dispute Resolution – Compliance – Risk Consultancy

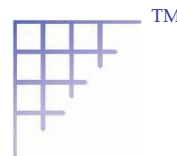


Being a professional

- The professional Loss Adjuster is responsible not just to the parties on each claim but also to the wider insurance community.
- Ethical conduct essential. Is there a code of conduct by which the members of Sri Lanka Association of Loss Adjusters conduct their activities?
- A true professional puts back into the industry his or her time and effort to support new entrants and progress.
- A professional Loss Adjuster pays the right amount not the lowest amount.
- Essential to form opinions through careful, open minded investigation.
- Professionals should not “cut corners”, assume or presume.
- From my own experience of giving evidence in the High Court in London I know how important it is to run each case file as if it will be scrutinised by Lawyers and the Court.
- A professional should be trusted for their independence of thought and action.

Consumer Protection

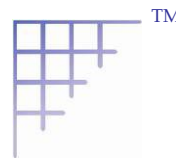
- There is a global trend to protect the consumer, not just individual but commercial consumers.
- UK insurance Ombudsman creates new law which produces uncertainty. The new Sri Lanka Consumer Protection Act needs to be very clear as to the Ombudsman’s authority and point of intervention.
- Regulators are now imposing supervision of Loss Adjusters in the UK on the Insurers. Considering that the special skills of Loss Adjusters are the main reasons for the claims to be out sourced rather than dealt with internally, Insurers will have to develop regulatory compliance and performance monitoring skills.
- The licensing system in India for example requires an individual to pass an examination before it is possible to obtain a license to practice as a Loss Adjuster. A similar situation exists in several states in the USA. Self-regulation by a strong professional body has advantages over such Civil Service type supervision.



- A complaints procedure needs to be understood not just inserted in a policy document. Loss Adjusters should be familiar with the complaints procedure for each client. Interesting to note that complaint is an anagram of compliant.
- Identity cards with photographs may well become the norm, especially for Loss Adjusters making visits to policy holders at home.
- Self-regulation requires a confident professional body with sufficient resources and personnel to review complaints and to develop best practice guidelines.

Dispute Resolution

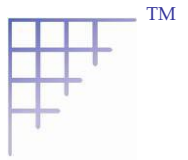
- There are alternatives to litigation and increasingly parties are obliged to seek to resolve their dispute by these alternative means before litigation can proceed.
- A detailed and well explained loss adjustment calculation supported by a clear presentation to Insurers and their client remains an excellent way to settle a dispute.
- Mediation is growing in attraction especially due to the confidential nature of the process. Lawyers are not necessarily the best mediators but they are seeking to dominate this field and to “structure” the mediation process.
- Insurance policies generally provide for arbitration but on quantum only. Considering that arbitration can often be as complicated and expensive as litigation I wonder why the policy wording could not be amended on occasions to allow for arbitration on policy liability issues as well.
- The UK is seeing the emergence of a Single Joint Expert engaged to assist the court in determining an issue. My own experience as a Single Joint Expert suggests that this is an efficient way to conclude disputes, especially if the Single Joint Expert is given full and final binding authority.
- Litigation remains as the final form of resolution. It is often misused by policy holders, Insurers and re-insurers and frequently represents an “entrenchment” of untenable positions which would never have been held if the parties had maintained improved communications from the outset.
- There remains a tendency to leave consideration of subrogation and contribution until a significant way through the loss adjustment. However, early engagement of other interested parties (and their Insurers) can often help to reduce the level of dispute. Insurers of professional indemnity, public and



product liability in particular need to be encouraged to participate early rather than sit waiting for an outcome. The elapsing of time often makes a settlement for these Insurers much more difficult and costly.

Claims Presentation

- There is no doubt that an Insured, whether that be an individual or an organisation, needs help after they have suffered an event such as a fire, explosion or flood. The Adjuster has to realise that the people he will be meeting from the Insured may well be in shock, seriously concerned about their future (whether that be accommodation or continuing business) and will probably not have much experience of experiencing and recovering from such an event.
- There are several parties that often provide assistance to the Insured:
 - Insurance Broker (often for a separate fee).
 - Public adjuster in USA (often for a percentage of the settlement).
 - A Loss Assessor in the UK (historically looked for a percentage of the settlement). However, since the Chartered Institute of Loss Adjusters developed a clearer set of guidelines for claims presentation there are an increasing number of Chartered Loss Adjusters representing policy holder's interests.
 - The European "Expert" system often involves a specialist representing the Insured (e.g. Architect or Engineer) who will meet and negotiate quantum with the expert acting for the Insurer. However, policy liability issues tend to be made by the insurance company rather than the experts.
- For many years the Business Interruption policy has enabled the Insured to recover costs relating to Accountants' fees for verifying information (but not actually presenting and negotiating the claim).
- Most Professional Fees clauses exclude any claims presentation element even though it is often the same professional that is involved and therefore separating out presentation from for example preparing a specification can be a cause of dispute.
- Meeting with the Insured, particularly a commercial or industrial organisation, at the outset of the insurance can be of tremendous assistance should a claim occur. The adjusting team will have met, albeit briefly, with the Insured's

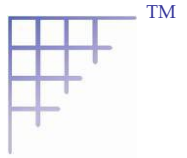


management in a non-contentious environment. My own company develops a Protocol in such circumstances that maps out with the Insured the general way in which claims would be dealt with. Business continuity issues are identified at the initial meeting, especially business interruption factors such as alternative premises, lead time for replacing key items, PR response particularly to customers, suppliers and other stake holders.

- Insurers, and especially brokers, should try at underwriting and policy inception stages to understand more clearly the way in which the Insured intends to recover from a serious event such as a fire. Business continuity plans need to be more fully understood and perhaps a copy should be kept on the underwriting file.

Focus on Strategy

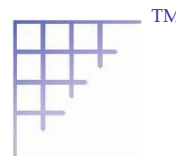
- From my research work on fraudulent arson it is clear that greater emphasis should be placed on establishing where the Insured business was going before the loss occurred.
- Business plans, budgets and board meeting minutes should not be regarded as out of bounds information although the adjuster needs to convince the Insured that such information will be dealt with in the strictest confidence.
- A SWOT analysis can be started from the first visit and slowly built up as more information becomes available.
 - Strengths: e.g. good management, patented product.
 - Opportunities: e.g. new customers, market liberalisation.
 - Weaknesses: e.g. out dated equipment, little staff training.
 - Threats: e.g. new competitor in the market, customer insolvency.
- Similarly a STEP analysis can be started from the first visit. This helps to position the Insured's business in its wider environment and is helpful to establish the extent to which the business was truly likely to achieve the key points upon which the claim is based, e.g. production levels, sales of a particular product, completion of a new product development by a certain date.
 - Social: e.g. animal rights protestors, anti-smoking lobby.
 - Technological: e.g. new processes, new software.



- Environmental: e.g. new zoning/planning rules, waste emission controls.
- Political: e.g. change of local MP, positive discrimination laws.
- The traditional proposal form fails to capture any of this strategy orientated information even though it is of equal if not greater importance than some of the information obtained during completion of a proposal form or conduct of a site survey. The insurance company account executive/surveyor could prepare SWOT and STEP reviews but should not just rely on the Insured for information. Greater use of external resources such as industry specialists, University faculty, and of course Loss Adjusters would help this information gathering process. The results may show drivers for change which support or contradict the Insured's proclaimed strategy. This would not only assist at the time of the claim but could perhaps enable rating to be improved.

Project Management

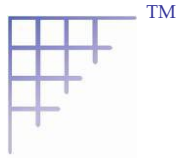
- The Adjuster needs to be able to co-ordinate all the necessary support personnel and manage the case so as not to upset or confuse the Insured.
- A commercial or industrial Insured will often have several of their own employees involved in dealing with recovering from the loss event and presenting the claim. It is not unusual to attend the first meeting and find that around the table are representatives from Production, Marketing, Finance and sometimes legal departments as well as several main Board Directors and often a key supplier. The Loss Adjuster can not be expected to be a "one-man band" dealing on his own with:
 - Technical enquiries e.g. cause, process, restoration, recovery considerations.
 - Accounting e.g. analysis of budget, the actual performance and identifying accuracy of Insured's expectations.
 - Legal e.g. such as rent issues, terms of trade especially limitations of liability and notice periods.
 - Re-design issues which often arise due to manufacturers updating equipment with new improved facilities etc.
 - Specialist issues which often require leading edge advice from research specialists.



- The Loss Adjuster remains the lead representative of the Insurer but must openly explain to the Insurer where specialist resources may be needed. These resources could exist within the insurance company organisation and as long as no conflict of interest is likely, extra help of this nature would be fairly useful.
- As with any project, a significant claim needs to be managed in terms of a time table and budget. The Loss Adjuster should explain in the report what resources are being deployed, why and how they will be measured. A Future Action heading in the report enables the Loss Adjuster to indicate what work is foreseen and how it will be scheduled.
- If the claim is in any way considered to be suspect as to involvement of the Insured in the cause origination or overstatement or fraud by the Insured, then clearly the adjuster should not share with the Insured the nature and the extent of the enquiries. However, for non-suspect claims the greater the agreement between the Insured and the Loss Adjusters over the deployment of resources the better. The Insured should appreciate that these resources are being deployed to ensure a fair settlement but also to identify any recovery opportunities and risk improvement measures.

Information Sharing

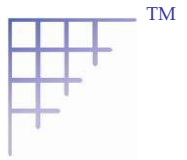
- No news is bad news in my view. Regular reporting with clear updates to all parties helps to avoid small problems becoming larger obstacles which may de-rail the settlement process.
- The Loss Adjuster and the Insurer should agree the reporting frequency and each report should not only explain what has happened but also what will be happening in terms of finalising the claim.
- It is important to confirm in writing to the Insured, the information that the Loss Adjuster requires. It is important that the Insured is advised that the list is not exhaustive and represents the information that is needed at that stage in the claim. It is even more helpful, however, to explain in the letter how such information will be helpful. Just leaving the Insured with a two page list asking for numerous copies of accounts, budgets, plans, drawings, statements, photographs etc. adds a further burden onto an already disrupted organisation. The explanations need not be in great detail (especially if in the early stages it is not clear if the claim is suspect) but should at least enable the Insured to understand that it is in their interest to provide the requested information as soon as possible.



- Frequent confirmation of telephone conversations and information provided verbally is helpful. Such confirmation can be by letter or email and need not be very lengthy. This will not only act as evidence of the information provided verbally in the file, but will also give the Insured the opportunity to rectify any misunderstanding that may have occurred during the telephone conversation.
- At the outset the Adjuster should determine the extent to which the Broker wishes to be kept advised of developments. It is the Insurer who decides whether the Broker should receive copies of the reports. Great care is needed to avoid placing the Broker (who is the agent of the Insured) in a position of conflict and any such aspects should be omitted from the report to protect the Broker from such conflict.
- Minutes of meetings need not be lengthy but should record key information provided and dates by which actions are to be completed (by the adjuster just as much as by the Insured). Circulation of the minutes helps all parties to be sure that they agree with the understanding contained in the minutes.
- There are usually several occasions during the course of a claim when the Adjuster has to break bad news to the Insured. By maintaining regular communication the Adjuster should have established a relationship with the Insured that will enable bad news to be conveyed with suitable explanation to enable the Insured to understand the reasoning involved. Bad news should always be conveyed verbally, preferably in a meeting but if necessary by telephone. Letters and emails should not be used to send a cold message of bad news but to confirm the earlier conversation.
- The Adjuster should remember that the Insured is the client of the Adjuster's client and has paid for protection. Unless there are concerns relating to the suspect nature of the case, the Insured should be included in the information sharing process.

Performance Standards

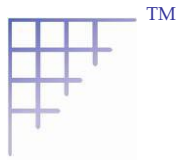
- What does the Insurer expect from the Loss Adjuster? Both the Adjuster and the Insurer should agree the "brief" for the claim. Some claims are able to be "fast-tracked" whereas others require closer and more considered attention. The Adjuster needs to establish from the client:
 - How frequently reports are to be issued.
 - Whether opinions on policy liability, cause, and recovery prospects are to be included in the report.



- Wherever possible the Adjuster needs to avoid “woolly” paragraphs full of ifs and buts. However, if the enquiry is still on going and therefore a conclusive answer is not yet available, this should be explained.
- The Adjuster should expect the Insurer to provide the full details of policy cover and a copy of the proposal form immediately. These documents should be readily to hand in the Insurer’s files and need only be scanned or photocopied. However, if the policy has not yet been issued it is important to establish the key agreements without delay.
- Insurers may have their own performance standards which are often provided to their policy holders at the time the policy is issued. The Adjuster needs to be aware of these standards to ensure that he complies with the undertakings given by his client to their client.
- Industry claim codes are beginning to appear. In the UK after some four years of consideration and debate, a claim code is about to be launched by the Association of British Insurers who have liaised closely with the Chartered Institute of Loss Adjusters.
- The Adjuster should agree with the Insured and the Insurer a likely timetable for the individual claim involved. That “case time-line” can then be used by all the parties to measure progress on the Adjustment.
- There is little point in having standards if they are not checked. Concordia specialises in the assessment of performance on individual claims as well as by adjusting companies and insurance company claims departments. As out sourcing continues to develop we are seeing insurance company claims departments no longer being run by employees of the Insurer. Such departments and call centres are themselves subject to performance standards which also need to be reviewed and audited.

Continuing Professional Development

- Showing evidence of continuing professional development (CPD) has now become the norm in most professional institutes. Failure to maintain the required level of CPD can often lead to membership of the professional institute being suspended or withdrawn.
- CPD activities often include:
 - Attending seminars.
 - Presenting at seminars.



- Writing articles.
 - Reading articles of a specialist nature.
 - Taking other examinations.
 - Partaking in industry organisations and committees.
- The Sri Lanka Association of Loss Adjusters could perhaps give some serious thought to developing a CPD initiative. Certainly the high turn out of members at this seminar shows that there is a real interest.
 - One suggestion might be quarterly work shops run by the Adjusters Association with guest speakers (such as Insurance company executives, Brokers, Risk Managers and presentations by members of the Association.
 - As far as the Sri Lanka insurance industry in general is concerned, there does not yet seem to be an insurance industry grouping focused on claims issues. Perhaps the Adjusters Association might like to act as the catalyst for a Claims Group open to all members of the insurance community including brokers, underwriters, risk surveyors as well as claims department professionals and of course adjusters.

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