

MARKET PRACTICES

AN INTERNATIONAL ROUND UP

Good afternoon ladies and gentleman.

As some of you may remember, the subject matter of the first IMCC, back in 2004, was “Communication is the key”; to honour this topic, we had a really thought provoking panel where representatives from various countries gave some highlights on their respective markets conditions, practices and habits regarding claims handling, leader’s roles etc.

For most of those attending, that was the first chance to gain some reciprocal knowledge, to know something about each other’s markets (by the way, for those who missed that milestone, papers are online in our terrific website, www.marineclaimsconference.com).

Now four years have passed, and the organizers thought it was time to refresh our memory and see what happened during this time. Instead of having ten times almost the same introduction, the organizers opted for one presentation where only the peculiarities of the various markets are highlighted, and recklessly picked the worst of the 2004 edition speakers for this job, which is me.

How did we proceed? We took the old template, turned it into a questionnaire, sent it out to a number of volunteers from all around the world and then collated the answers for this presentation. Let me therefore begin introducing you all the people who made this possible:

Stuart Hetherington and John Dawes (Australia)
Shelly Chapelski (Canada)
Viggo Kristensen (CEFOR)
Giles Heligon, Christophe Vatinel and Alain-Michel de La Buharaye (France)
Thore Shiller (Germany)
Omero Lagostena and Paolo Olivari (Italy)
Jiro Kubo (Japan)
Neil Hawking and David Pusiak (London)
Leif Erik Abrahamsen and Josten Egeland (Norway)
Lars Malm (Sweden)

Thank you very much indeed.

I mentioned before our “tool of the trade”: the questionnaire comprises a section on claims handling and one on leader’s rights, role and responsibilities. There is also a third section of market indicators and other information that helped to put the above in context but that we are not going to review.

Before we start to skim through the questions, let’s see what happened since the last time: well, to be honest, I’m afraid it seems that – generally speaking – there have been no significant changes over the last four years, although someone has pointed out that there is perhaps less confidence on leaders at the present time. This feeling should be investigated more and here comes the award winning technology!

[*interactive question to the audience*: “Do you think confidence in the leader over the last years has: increased, remained stable or decreased?”]

With improved systems and communications claims can be handled faster, and this is the area where the most significant changes took place: in the Lloyd’s market (we already now about the Electronic Claims File from last year presentation) and in France, where Optiflux is now fully operational and about which we’ll have a presentation in few minutes.

There has been also a pretty important change in the German Law system, where the old marine insurance law has been replaced by a new Insurance Act, but it seems that the legislator has forgotten to incorporate Marine Insurance in this Act... again, we will learn more about it later on.

Ok, let’s start with the claims handling section of the questionnaire. I will try and run, but you’ll find a summary on the website in due course.

1. *How is a claim first advised to the leading insurer?*

In the majority of cases, by the broker. In most of the markets, in case of emergency and in other exceptional circumstances the assured can contact directly the leading insurer.

2. *How does the leading insurer respond?*

Normally via email or fax; phone is an option, in particular in case of urgency; beside these systems in London there is also still room for the old fashioned way of the written comments on the file and its modern interpretation, the ECF.

3. *How are claims handled outside of working hours?*

Placing brokers have contact details of the claims managers of the insurers, therefore the normal way nowadays is to use personal mobile phone contact numbers; 24/7 emergency systems are implemented here and there.

4. *Who instructs / appoints the surveyors?*

Usually is the leader, and in some market (Sweden, for example) it is even considered a deal breaker.

Brokers sometimes have some kind of authority, explicit or implied, from underwriters to appoint surveyors in case of emergency; I have to say that I did not noticed a lot of trust in the concept of “prudent uninsured”...

There are also different ways like in France, where it is mainly the duty of the assured, or in Canada where the surveyor is appointed by the broker after consultation with the lead.

5. *Reasons for choosing a surveyor*

By far speciality / expertise and personal experience; locality is important when response time is crucial; costs (for the happiness of the surveyors in the audience) is definitely not an issue so please, go on charging the usual hell per hour!

6. *What instructions are issued to the surveyor by the leading insurer?*

No surprises here: go and see and report on cause, nature and extent of damages, repairs costs and the kind, vessel’s particulars, class status, ISM... Standard instructions are available in most of the markets. Surveyors are often asked to keep away from clauses, adjustments etc.

7. *Are Terms of Engagement and/or Service Level Agreements used for such appointments?*

Generally speaking, no. In Australia it is customary practice for agreements to be issued by insurers on reporting standards, fee structures etc, and again in some Scandinavian markets there is something similar.

8. *Who appoints lawyers, attorneys and other experts in non-contentious claims?*

Normally the insurer. If made by the insured, which can happen for a number of reasons, than the lead will ratify the appointment.

9. *How are lawyers, attorneys and other experts selected / appointed by insurers?*

Mainly by speciality / expertise, although cost is sometimes considered. Being part of an approved panel is crucial in the UK, as personal experience of the lead is important in Italy.

10. *What instructions (if any) are issued to the lawyer, attorney or other expert?*

Varies from case to case.

11. *Are Terms of Engagement and/or Service Level Agreements used for such appointments?*

Yes in many markets (Australia, Japan, Germany, London...).

12. *Are expense budgets considered / agreed (and if so, monitored) for appointed experts?*

Considered and monitored, maybe, in particular on large cases, but rarely fixed or capped. The London market seems to be one of the most attentive.

13. *How are reserves established for both indemnity and fees?*

Almost everywhere the lead is supposed to provide estimates to co-insurers.

14. *What liaison (if any) is there between the leading insurer and the P&I Club?*

Generally speaking there are very limited occasions for contacts, and usually these are made through the broker. Scandinavian markets are keener than others.

15. *What is the broker's role in the claims process?*

This is a complex question.

Although the broker can generally be seen as the insured's representative, in practice duties vary from advising the claim to collecting documents, obtaining owner's agreement to any proposed settlement, collecting share of settlements and leader expenses from co-insurers, forwarding information regarding reserves...

There are exceptions, like the Japanese market, where brokers are not involved in the settlement of claims (which is reached with direct discussion between lead and assured) or the London market, where brokers even assist underwriters in instructing the experts and present the claim.

16. *What is the standard approach to issuing guarantees in salvage and collision cases?*

Generally speaking, the leader issues for 100% and co-insurers issue counter guarantee for their respective share. Not everywhere the leader issues also for following (overseas) markets (in Italy, for example, we don't). Some leaders accept counter-guarantees only from A-rated companies.

17. *How are claims paid?*

Via the broker. There are exceptions, like Japan, with direct payment to the assured.

18. *Is there a central accounting system for insurers in your market?*

Generally no; in Japan claims are paid 100% by the lead and the co-insurers' proportions are then recovered on a monthly basis via a central accounting system.

19. *Is there any protocol in operation in your market which governs the handling of claims?*

I would love to say it's the Claim Handling Protocol developed here in Dublin but unfortunately I can't. The Norwegian Plan contains some claims handling clauses and that's almost all we see around the world.

20. *Is some kind of "electronic claims files" system active in your market?*

Apart from London, there is a system limited to cargo claims in Italy (but actually not even covering all the companies) and - as we said - the French Optiflux. Actually Optiflux is the French answer also for the last three slides, regarding payment, central accounting system and protocol. We'll see in few minutes.

It's now time to very quickly proceed with the second part of the questionnaire, leader's role and responsibilities.

1. *What is the strength of the leader's rights to handle a claim without reference to the following market under your usual market conditions and practices?*

Generally speaking, the leader has the right to decide any matter for any loss falling squarely in the policy; this "strong leader approach" is typical of Scandinavian countries, France, Italy and others: other markets have milder ways. London is characterized by the Lloyds Claims Scheme and the involvement of Xchanging for the following syndicates.

2. *Is there an obligation on the leader to ensure that co-insurers are informed (and to what extent) about developments, instruction of experts, legal actions, reserves etc.*

In the majority of the cases the obligation is limited to reserves.

3. *How does the leader communicate with following insurers / co-insurers?*

Via the broker, sometimes directly.

4. *Where there is no broker involvement or you do not wish to communicate through brokers, how do you communicate with co-insurers?*

Direct (phone and email) but this seems a rather unusual eventuality... unfortunately there is almost always broker involvement...

5. *What is the extent of leader's duty to the following?*

There is a common feeling that the leader's duty is to handle the claim in a proper manner and to keep followers informed.

6. *Does leader fund claims on behalf of followers?*

Usually no. Japan and Scandinavian markets, where is more or less a market practice, are the exceptions.

7. *Does leader provide bail on behalf of co-insurers?*

Mostly yes, with the some exceptions.

8. *Does the leader charge a fee for handling claims on behalf of followers?*

It is market practice in France, Italy and Scandinavia.

We actually had a very interesting session with the Claims Handling Protocol Working Group and this seems a very hot topic. The problem here is that “handling claims” has no common meaning throughout the markets, and “adjusting claims” is only a part of “handling”. We will talk more about it sometime in the future.

9. *Do your market conditions allow interest? Can interest be charged on claims handling fees?*

Generally no, and never on handling fees.

10. *Do you have direct contact in the handling of a claim with your insured?*

Usually it happens in Scandinavian markets, in Japan, where we have seen that the broker involvement is quite limited, in France.

Well, it took probably too long for me to go through all the questions and answers so I don't want to bother you any longer.

As promised, it's now time to review Optiflux and then the New German Insurance Act.

Thank you.

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