

# International risk team



## Practical suggestions for prompt payment on complex claims

Revenue is vanity. Profit is sanity. Cash is reality. So the saying goes.

In the current climate, settling claims and getting funds to an assured promptly is as vital now as it ever was. Despite the negative press, the reality is most risk carriers want to pay valid claims as efficiently and quickly as they can. You don't have to wait for the final adjustment or the final survey report and agreed claim figure to start the cash flow to your assureds. So here are three practical suggestions to help risk carriers keep their funding of assureds as efficient as possible.

### 1. Don't be afraid to lead and gather together your decision-makers early

If you are the lead re/insurer with a workable follow leader clause you can take reasonable steps on behalf of the follow market. Make sure you have the right technical and advisory support in place before you act so

you can demonstrate (if questioned later) that you took the necessary steps. Provided a leader can show they acted reasonably, Courts tend not to be sympathetic to follow re/insurers who try to circumvent their follow/lead obligations. If you have any doubt about whether the claim decision is within the follow/lead terms (say, a without prejudice payment) then do consult your follow insurers. You can communicate with them directly and obtain their buy-in to the recommended course of action. Followers are unlikely to stand in the way of a reasonable course of action upon which they have been consulted.

If you are one of several decision-makers needed to get things moving, ascertain your claims agreement framework and contact your co-decision makers early on. Don't be afraid to ask the broker to clarify the full market so that you can get a clear picture of where everything is placed. Sometimes that

involves more than one broker but keep reaching out. Different orders might have different claims agreement provisions. But you might be surprised at the amount of cross-pollination; claims agreement parties on one order might also have signed up as followers on another order (and be useful claim strategy advocates to that order).

### 2. Make payments on account

By the time you have cleared your lines on policy response, you should also have a decent picture of the likely minimum claim level (net of deductible of course). You will also know from the broker and the assured what large claim/damage repair items can be expected. Ask yourself this question – is there a minimum claim level that I know I am going to have to pay no matter what? If there is, then consider funding that minimum amount early.



In most cases a reasonable funding pathway can be set up to service the assured and protect the insurers. You can have someone independent to hold the funds and pay them out directly upon approvals from surveyors or adjusters.

If it isn't yet clear which insurance product should be responding (or which year of account) consider without prejudice contributions with scope for claw back. For some assureds that may involve a credit risk for re/insurers. But the practical reality is that you are unlikely to ask your assured to give the money back unless there has been some fundamental mistake or you have been severely misled (which is very unlikely in the ordinary course). If there is doubt about which policy responds there is the possibility of entering into an express contribution agreement with the carriers on the other policy and that arrangement should carry little, if any solvency risk. A fair and workable without prejudice payment on account arrangement allows funds to move but keeps options open as the claim develops.

### 3. Document the process and clear the payment pathway

Once you decide to get funds moving, you need a clear and workable agreement in place with the assured (and cedants). You don't have to reinvent the wheel. But you have to spell out clearly what you are

paying, to whom and from what parts of the policy. If there is uncertainty about which elements of the policy should be responding, the payments should be made expressly on an unallocated basis for the time being, pending the clarification of the facts. Your assureds/cedants will be able to give you the standard releases and indemnities. Early funding or contribution agreements allow different covers and different exposure years of account to come together and get funds moving.

Don't forget your other assureds, loss payees and assignees. For many products you can't pay out any funds without the agreement of, say, a principal assured, or without the permission and payment authority of the loss payee and assignee (usually a bank). Tell your assureds/cedants to involve those payment stakeholders early. You don't want funds to be ready and waiting but stuck because the bank is still reviewing the funding agreement.

Most claims under specialist lines have a complex element. It is the nature of the product. But now more than ever we can't leave a problem in the "too difficult to deal with now" box. On most claims there will already be a strong consensus to develop a claims solution, implement and fund it. Don't be afraid to take imaginative (but reasonable and documented) steps to get funds moving.



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