



Construction Claims

Introduction

Whilst we will largely be discussing material damage claims, it is important to emphasise that the indemnity granted to any contractor reflects the works etc., for which the contractor may be responsible. We are only concerned with the extent of the Insured's liability for loss or damage, and consequently, please consider the investigation and settlement of such claims as if you were dealing with a liability case. It is only if such a mind set is adopted that we can properly ensure that all relevant evidence is obtained and/or information sought.

As with any loss, the first stage of our investigation will be the site visit. This may possibly be our first introduction to the work that is being undertaken, and it is essential that we take the opportunity to properly acquaint ourselves with the nature of the contract and the parties involved before becoming involved in the circumstances of the loss itself. It is only when we have an understanding of the background information that we can properly assess and/or discuss the way forward.

Whilst there will be client specific variations, what follows is the Teceris standard body report which should be adopted on all other occasions. The layout of the report provides an easy investigation aide memoir, and indeed, reasonably sets out the agenda for our first meeting. The facing page will always duplicate the content of the full report and consequently, for this purpose we will concentrate on the full body format only which should read as follows:-

Date and Situation of Incident

This is an introductory section, which should be brief and to the point. If, for example, we are concerned with storm damage to the works, we should merely say that “*storm damage occurred to the works on a particular date at a particular site*”.



Claimants and Professional Advisers (Liability Cases Only)

Again, albeit only for use in Third Party liability cases, the content of this section should be brief. Its purpose is to merely identify the third party (Claimant) (including age, address and NI details if injury related) and detail any professional advisers that may have been retained (e.g. Solicitors, Members of the Professional team if the Claimant is the Employer, Insurers or Adjusters). Details of any funding arrangement declared by, for example, solicitors, should be confirmed.

This information should not be repeated or incorporated within the subsequent section.

Contracts and Interests

The importance of this portion of the investigation, and the Preliminary Report that is issued, cannot be over emphasised. It is here that we set down the background to the works being undertaken at the material time, identify the parties and the varying contractual relationships, and further, provide essential underwriting information.

If we are dealing with a relatively small contractor, then we should take the opportunity to initially describe the nature of the Insured's business, including, if possible, an indication of the activities they undertake, the number of direct employees on their books, annual revenues etc. This information could be useful to Underwriters, who may be passed a copy of our report.

Regardless, we then need to properly identify the Employer, any Funder and the Employer's professional team (Architects, Engineers, Quantity Surveyors etc). We need to confirm that a main contract has been let to a particular party, and in broad terms outline the nature of the project works. There is no need to emphasise specific constructional elements which are relevant to the cause or extent of the loss, as these will be detailed in later sections.



We must correctly identify when the works commenced, and the scheduled date for practical completion. Comments should be made regarding anticipated delays prior to the loss, and we need to confirm the original contract value.

At this stage we need to correctly identify the nature of the main contract. “JCT Contract” is clearly insufficient. We need to confirm that, for example, the main contractor was engaged subject to the Standard JCT Form of Building Contract with Contractors Design (1998 Edition), subject to Amendments 1-12. The relevant insurance clause and any amendment should be determined. It is rare indeed that such information is not held on site, or that the site management team cannot give you an indication of the contract in force which can be confirmed at a later date.

We then need to consider the involvement of sub-contractors and provide similar information. On larger project sites the number of sub-contractors could extend to the 100’s, and we must therefore restrict ourselves to those which will have some relevance to the claim under consideration. Whilst clearly we need to mention sub-contractors whose sub-contract works have been damaged, or the sub-contractors may have caused any particular problem, we must not overlook the involvement of sub-contract designers (Architects or Engineers). The terms of their engagement must be properly determined. As with the main contract detail, comment regarding insurance clauses that may be operative should be made.

Finally, we need to provide a brief summary of the parties involved in the contract, listing the Employer, Main Contractor, Sub-contractors etc. This provides an easy reference guide to the foregoing narrative.

Circumstances and Cause of Loss

This is the “catch all” section of the report which enables us to simply tell the story of the loss. It is here that individual styles will of course vary, but it is relevant to indicate the state of the works at the material time, or, if we are concerned with the failure of a particular element of the structure, to provide a detailed description of that element, and the method by which the work has been undertaken.



Basic information should be incorporated. If for example we are concerned with a theft, we need to know when the site was last occupied, security arrangements etc. Quite often, we will be asked to consider a complex sequence of events which leads to the discovery of damage, and it may not at first be possible to accurately identify causation issues. We should however seek to incorporate any specialist reports which may have already been obtained, or at very least to provide the list of probable causes which can be discussed in greater detail as our investigation progresses.

Nature and Extent of Damage

The usual rules apply here. Photographs should be included where helpful and we should comment upon the measures being taken to mitigate the loss and agreed methods of recording the final extent of damage and/or quantum.

It is good practice to comment upon the effect of any damage on the continuance of the works and/or the critical path. Consideration should always be given to possible means of accelerating rectification work.

Insured's Liability

It is here, and within the next section of the report, that the fruits of our investigation pay off. It is only when we have the background information that we can accurately determine the nature of the Insured's responsibility for the damage and/or losses that have occurred.

This section of the report can be relatively simple, or, as is often the case, quite complex. We need to logically examine who is responsible for the costs to be incurred. Initially, we need to consider the relationship between the Employer and Main Contractor, and in particular, joint insurance arrangements. The particular clause that is operative should be quoted, or our Insured's responsibility otherwise established, and in this way we can establish primary liability.



There is no third party section to this report format and consequently, we then need then consider the position insofar as sub-contractors (all forms) are concerned. Do the sub-contracts allow the responsible party to defer their liability or alternatively, does the possibility of subrogation arise.

Policy Liability

There are certain basics which will be considered initially in all cases, save for where we are concerned with a specific project policy. We need to confirm or else seek confirmation from Insurers that the nature of the work undertaken is in accord with the Insured's business activities as stated in the policy schedule, and that the works were undertaken within both territorial and contract value limits. If the loss and/or damage occurred off site or in transit, does the cover apply?

This sets the scene, and we then have to consider whether or not loss and/or damage to any insured property or the like has occurred. This is not always self evident!

Assuming however we successfully jump the "operative clause" hurdle, we then need to consider what, if any, extensions will apply, for example professional fees, debris removal, expediting expenses, increased costs of working, additional costs of outstanding construction work etc.

Finally, we need to consider the possible application of exclusions, for example the defects exclusions (and the exceptions thereto) and to clarify the nature of any applicable excess(es). It is at this stage that arguments relative to other extensions, for example the 72hr clause, come into play.

In a simple case, we indicate our view, although, in more complicated matters, it may be appropriate to seek your comments and/or instructions.



Reserve for Insurers

The normal rules apply here, although, we need to avoid simply placing a full liability reserve against the loss when we may have drawn alternative conclusions in earlier sections of the report.

Proposed Action/Conclusion

Either of these headings may be used, which will emphasise what steps we are taking, particularly if we are recommending the appointment of Experts or to seek instructions on any points previously raised.

Appendix

If relevant we can append a schedule of photographs, site plans or drawings which illustrate the earlier narrative and if outside of the expert market or bespoke terms apply, copies of the relevant contract schedules to confirm the detail previously reported.

Mike Roberts,
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