

Harper Grey LLP
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Current Damages Issues - A Review

PROPERTY DAMAGE

Prepared By:

Jerry J. Cox, FCIP, CRM

COX INSURANCE ASSOCIATES

ADJUSTING CORPORATION

1155 West 8th Avenue

Vancouver, BC V6H 1C5

Phone: 604-261-3121 Fax: 604-261-3184

E-mail: jerry@ciaac.ca

PROPERTY CLAIM CHALLENGES

Initial Appointment

- timely - avoid delays
- Insured frustration
- broker discontent
- loss of opportunity
- cause investigation
- damage review prior to evidence contamination

Adequate Instructions

- Declarations Page
- Incident Report
- access to policy wording
- application form, photos, appraisals
- written instructions: task vs. full handle

Investigation

- authorization to recommend, refer, appoint experts
- authorization to recommend, refer contractors
- inspection by Insurer where practicable
- lack of contractors, experts
- inexperience of contractors
- expectations for completion ~ replacement/repair of major losses

Insured Involvement

- preconceived expectations of process
- expectation of Insurer involvement ~ to assume full conduct; hand holding; responsibility for involvement of others including contractors
- initial cooperation, eventually turning to demands
- goal ~ policy "Limits"
- demand for combined limits including *Extensions of Coverage*
- threats to report to company president when demands are not met

▪ **Claims**

- Insured expectations re:
 - Platinum
 - Gold
 - Comprehensive
 - All Risks
 - Guaranteed RC
 - Single Limit
- disillusionment with broadly described exclusions
 - Leaving little to be covered.
 - What is covered?
- preconceived notion that the Adjuster's job is to save the company money and to pay as little as possible
- the introduction of Co-insurance Requirements and Penalties
 - What about all the coverage I bought?

▪ **Broker Involvement**

- may be an ally in disputes
- may support the Insured
- lack of technical expertise
- motivated by Insured status and combined business
- most support reasonable settlements

▪ **Public Adjusters**

- appointment of public adjuster
- usually Insured or Public Adjuster has enquired early
- appointment usually at the time Insured realizes they may not get everything they want
- public awareness of Public Adjuster

▪ **Expertise of Public Adjusters**

- motivated by level of fee
- highly skilled
- experienced and formidable
- determined to exceed previous offers
- greater level of expertise in commercial claims
- familiarity and access to alternative experts ~ usually responding to Insurer position
- criticizing and pointing out alternative methods of calculation
- increased costs associated with obtaining and reviewing alternative expert reports
- request for appraisal under Insurance Act - far reaching power of appraisers and umpire; lack of definition or limitation within the Act
- non professional umpire - lack of experience in complex matters
- resistance by Public Adjuster to appoint skilled professionals
- sympathy by unskilled umpire
- demands vs. calculated loss
- umpire propensity to mediate - some level of splitting the difference
- no limitation for conclusion of process
- cost of appraisal

▪ **Bylaw Endorsement Coverage**

- Blanket Coverage - broad reaching
- costs associated particularly with multiple occupancy building and especially old timers (30 years plus)
- lack of skilled contractors familiar with building code and in good standing with municipal building departments

▪ **Co-insurance Application to Bylaw Coverage**

- Does co-insurance apply to increased value of buildings due to increased cost for compliance with bylaws?
 - Public Adjusters say "No", and in some cases are supported by legal opinion.
- What about in the case of repair?

- Once again, Insureds and their representatives may argue against co-insurance.
- While most Bylaw Endorsement stipulate that "All other conditions of the policy apply.", property owners and their representatives argue that, because the endorsement is silent as to application of co-insurance, it should not be applicable to settlement of that part of their claim.

▪ **Limitation**

- need for Insurer position (1)
- definitive response to Insured enquiry re: time to submit claim
- instructions to quote Insurer position rather than inaccuracy of *Statutory Condition No. 14*

▪ **Conclusion**

- Perhaps clarification in the *Replacement Cost* and *Bylaw Extension Endorsements* should be considered.
- These are only a few of the recent problems we have been encountering in settlement of particularly large property losses.
- As most of you know, the nature of challenges by Insureds is not limited to large losses, and commonly the most aggressive clients and nastier claims and allegations can result from rank and file claims. 'If there are such claims anymore.'
- Insureds now aggressively demand their rights and in many cases their arguments are valid even though not what we are accustomed to.
- We need to keep our eye on the ball.
- Reasonable settlements acquiring knowledge from each lesson learned.
- Information sharing.
- Participation, encouragement, and support.
- Communication within our industry.
- Underwriters create and sell the product.
- Adjusters and lawyers interpret and settle claims based on the product.
- The creators and those responsible for interpretation and application must have a clear and mutual understanding of the product and intended application.

Compliments of:

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