

Containing the Quantum

The other half of the property damage liability loss

BY JAMES GIFFEN



An examination of most industry training material on the adjusting of property damage claims under a casualty policy show an interesting pattern:

The focus is almost exclusively on the negligence investigation. There tends to be scant mention on the investigation, assessment, quantification and scrutinization of the third party property damage component.

The industry has developed highly skilled adjusters capable of thoughtful and detailed negligence investigations and assessment of the liability apportionment.

Can the same be said on the property damage assessment side?

In an industry where claims professionals are more and more specialized in a particular area, less become proficient in both property and casualty. Something might be lost in this technical narrowing.

If a thorough liability investigation allows for a reduction of 25 per cent exposure on a \$100,000.00 or \$1 million loss, and an equally detailed analysis and presentation of the damage component increasing the reduction by even 10 per cent, it will have a significant impact on the bottom line.

In conjunction with examining liability and policy coverage in the investigation, also consider focusing on the following:

Request access

It is common for the liability adjuster to be granted access to the involved property, product or equipment for examination by their own cause and origin expert. Consider also engag-



ing and involving your own property experts for early and on-site examinations of damages to building, contents, equipment or stock. The involvement of such experts throughout the claim process can often result in valuable information on the other side's weaknesses when it comes to settlement.

Betterment/ACV assessments

When granted access to the damaged property, the liability adjuster and their property assessment experts should not only focus on the areas of damage, but examine and photograph all areas to be used in the actual cash value (ACV) analysis. This could reveal areas of substandard construction or bylaw upgrades, which may exacerbate the damage claim.

Often the first party property adjuster is not focusing on the age and condition of the damaged property, particularly with contents and equipment, as they are most often dealing with replacement cost policies. A more detailed examination by the liability adjuster can be a persuasive tool down the road.

Question costs and reasonableness

The first party property adjuster will often settle the damages, taking a liberal view to the policyholder's benefit as a paying customer. This can include such things as allowing an insured to have their own contrac-

tor undertake emergency cleanup and drying work with little control on costs or documentation. It can also result in replacement being allowed where repair may have been suitable. A well documented casualty adjuster file will assist in negotiating reductions.

Request source documents

Particularly on larger property losses involving both building, contents and stock losses there is an opportunity to request significantly more source documents than initially provided by the plaintiff or first party adjuster. Don't be afraid to ask for more.

What may be considered acceptable documentation to support a first party claim may not be adequate for the tort claim. Often the first party claim will rely on a "sampling" of supporting documents. This may not satisfy the third party adjuster who wants to dig deeper.

Business interruption/extra expense and time lines

When dealing with a commercial third party, attempt to work with the first party adjuster in determining business interruption and extra expense exposures. This will include confirming first party coverage and adequate limits, as well as monitoring the length of a downtime and the financial impact to the business. Examine whether everything has been done from a first party perspective to mitigate a loss of revenue while ensur-

ing that any extra expense paid is realizing an equal to, or better reduction in revenue loss.

Early scene examinations will also determine whether there is potentially obsolete stock or equipment, which was affected and may be considered under the first party policy. However, its exclusion may be raised under the casualty policy.

Consider the early involvement of a forensic accounting firm to assist in the monitoring and examination of the anticipated time element and extra expense claim.

Spread it all out

One of the most effective ways to be successful in negotiating reductions on the property damage is to be more thorough and organized than the other side. A properly compiled package outlining the damage assessment can go a long way in achieving your position. One of the best tools is an Excel spreadsheet based on a thorough review of the damage documentation provided.

Such a review and organization of documents can often reveal flaws in the plaintiff's claim, such as invoices, which predate the loss, included inadvertently, as well as giving rise to additional questions and inquiries of the plaintiff's claim.

Examine market value/income approach on total losses

In the event of total losses of commercial properties, construction ACV is often the most common approach to settlement between the first party and third party policies.

Particularly in the case of larger losses or more unique building circumstances, such as older properties or properties where the benefit of their location has significantly altered, the market value or income approach may reveal a value less than that calculated by a construction ACV evaluation. There are numerous, well qualified real estate appraisers throughout the country capable of undertaking such an assessment at a reasonable cost.

Negotiate liability apportionment first

Where possible, try and resolve the negligence aspect with the involved

parties prior to the quantum.

It is not unusual to find the focus of settlement discussions revolve around the liability apportionment. If the casualty adjuster has done a thorough and detailed quantum analysis, they can find they are able to negotiate significant concessions with persuasive arguments from the other side. If the liability has already been agreed upon, then the other side does not have the ability to take, what could become, an otherwise rigid stand if the quantum is

negotiated first in a manner in which the other side finds reductions more significant than they had anticipated.

An increased focus on training, exposure and experience on the property damage side of a liability loss can lead to real reductions under casualty policies. The industry will benefit from a more versatile adjuster. 🍁

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