

Cross Border Claims Management from the perspective of the insurance sector

Good afternoon, I'm going to be talking about the management of cross border liability claims from the perspective of the insurance industry. I am the Chair of the General Liability Steering Group of Insurance Europe and I'll start by saying a few words about Insurance Europe.

I'll just run through a few points that I think it is relevant to understand to put into context.

Liability Policies

I thought I'd start by briefly explaining the cover provided by a general liability policy.

- Policies cover injury to third parties and damage to their property

The basic cover is to pay damages to third parties as a result of injury to them or damage to their property for which the insured party is legally liable to pay.

- Legal costs are also covered

The policy will also cover the legal costs associated with the claim/.

- Policies are designed to represent/defend the insured party

I think it is important to understand that policies are designed to represent the interests of the insured party, to protect the party accused of causing the harm. The insurer will defend the insured party.

- Policies contain a financial ceiling

All policies will contain a Limit of Indemnity that is a financial ceiling representing the maximum amount the insurer will pay in the event of a claim.

- The financial ceiling applies to the event

The limit applies per event, in other words, all claims arising from a single event will be subject to this financial ceiling. It does not apply per claim.

- Wordings and triggers are different

There is no standard wording, each insurer will have developed their own and will be based upon the legal system to which it is most likely to apply but also to meet the needs of customers. They will also reflect the type of cover typically provided in a particular country, in many markets, insurers have widened wordings to gain competitive advantage. Different markets also apply different triggers, this sets out when and how a policy responds to a claim. Most policies are triggered by the happening of the injury of damage but a common alternative is for the policy in force at the time the first claim is made to apply.

Some policies will only cover claims brought in a court in the home country; this tends to be the case in less developed markets.

- the amount of cover is largely based on the economics of the jurisdiction where the risk is located

Unless there is a compulsory insurance requirement in a particular country that lays down how much insurance should be bought, it is down to the insured party to decide how much cover they should buy. The amounts can vary considerably as the amounts awarded as damages can be significantly different. In some markets, €100,000 per event may be considered sufficient whereas other markets will typically provide €10m per event. Larger companies tend to buy more and multinationals are likely to buy at least €100m per event.

The liability claims environment

Liability insurers in Europe receive thousands of liability claims every year. We employ thousands of liability claims specialists, many of whom are qualified lawyers. This means there is a large amount of expertise within the insurance industry today and given the importance to us all of the single market, a number of these claims will arise in other EU countries.

- Insurers have plenty of experience of cross border liability claims

As a result, insurers have a lot of experience in dealing with cross border claims.

➤ Products Liability

For example, we receive products liability claims where the insured party has supplied defective products used in other countries. Claims vary considerably from relatively straightforward ones where the harm is fairly modest to more substantial claims from products such as pharmaceuticals.

➤ General Liability

We also receive general liability claims, they can arise from things like construction work, exhibitions, installation of products or more significant losses from things like railway accidents.

➤ Across several jurisdictions

Claimants may be residents of several countries

➤ Affecting large numbers of people

Large numbers of people may also be involved.

- Civil liability rules and procedures differ

Liability rules and procedures differ, for example, on disclosure of information affecting both sides to the claim.

- Limitation periods are not the same

Claimants may be limited in time for when claims need to be made. Some countries have an absolute period, others have rules about when the time starts to run in the case of latency. There are no standard rules.

- Heads of damages and values differ

There will be differences in what claimants can claim compensation for; for example, some jurisdictions permit claims for pain and suffering, others don't. Future loss can also be an issue, for example, loss of wages, future medical care. The methods of calculating compensable losses will also vary as, indeed, do actual wages and taxes that affect the amount actually received as wages.

- Lump sum awards v annuities

In many countries, compensation is paid by means of a lump sum award in full and final settlement of the claim. The amount is based upon the facts as known at the time of the settlement even though the real long term prognosis may be uncertain. A few countries may permit the settlement to be reviewed in exceptional circumstances. However, some countries can allow certain types of claim to be settled by way of an annuity, whereby the claimant receives an amount per annum, the amount maybe variable by anticipated needs. Some annuities will be payable for life, others will be payable until normal retirement age.

- Claims cultures and awareness differs

Attitudes to claiming and awareness of the right to compensation can vary widely across Europe as can entitlement to state benefits

- The experience of lawyers varies

The experience and capability of claimant lawyers varies enormously; some can be real specialists, others deal with all branches of the law but most will only have experience of their home country and all the different aspects I've just mentioned will be specifically for one territory.

Current practice for non nuclear claims

- Applicable law – Rome II Regulation

The appropriate jurisdiction for non contractual liability claims is determined by the Rome II Regulation of the EU, basically this is the country in which the claimant habitually resides or where the act leading to the harm took place.

- Strict liability or fault based

Liability can be strict or fault based. It should be remembered that even where liability is strict, there may be defences available.

- Claimant needs to show the harm and the causal link

With most types of harm, the duty is on the claimant to show the harm and the causal link to the activity for a claim to succeed.

- Rules on disclosure

The rules on disclosure can vary quite a bit from very little to a requirement on all parties to disclose anything requested, no matter how damaging to their case

- Class Actions

Class Actions may be permissible where there is a group of claimants with a common case against a single party or group of parties. A number of EU countries permit these but the rules on qualification, process and procedures are not the same. From an insurers' standpoint, they can be helpful as there should be only 1 case and set of legal costs but what is the appropriate jurisdiction of the claimants are from several Member States?

- Use of ADR e.g. mediation

The use of Alternative Dispute Resolution is increasing as a means of resolving disputes quickly and efficiently. Mediation is particularly useful as it entails all of the parties getting together to reach a negotiated agreement. A mediator, a third party, who uses skills to facilitate the process in a structured way to enable the parties to reach an agreement.

While confidential, it is legally binding and is much quicker and cheaper than traditional litigation. It also gives parties some of the control that they don't always have with litigation and because it is agreed by all of the parties, compliance with the outcome is high.

- Case conferencing

Case conferencing is a variation on mediation, whereby all of the parties come together to reach a compromise solution acceptable to all but is done without the services of a skilled mediator. This is most likely to be possible where there is not a lot in dispute.

- Management practices will vary according to the circumstances

Claims management practices will vary depending upon the circumstances; it is actually helpful to everyone involved not to be bound by strict protocols and procedures to reach a solution as quickly and cheaply as possible.

Nuclear damage claims are unique

Turning now to nuclear claims, there are some significant differences.

- International conventions are designed to cater for cross border claims

The Paris and Vienna conventions recognise that nuclear events could well result in cross border claims and so there are some differences that only apply to nuclear claims.

- Rome II Regulation does not apply

In addition, Rome II does not apply because the issue is addressed through the conventions.

- Country of operator has exclusive jurisdiction

The country of the operator has exclusive jurisdiction for the claims

- Simplifies the system for claimants

This approach simplifies the system for claimants

- But access to suitable lawyers may be more difficult

But may mean finding a lawyer familiar with the jurisdiction becomes more difficult – although if it was the UK, the lawyers would find the claimants!

- Local civil liability procedures apply

The local civil liability procedures will apply

- Local levels of awards and methods of payment

As will the local levels of award and the method of payment

- Could lead to under or over compensation

Which could lead either to under compensation or over compensation

- Is intended to balance the interests of operators and the public

This approach was designed to achieve a balance of interests between the operator and the claimants

Nuclear damage claims are unique

- Liability is strict

There is no need to prove fault or how the accident occurred, the operator has a strict liability unless caused by war or similar causes

- Liability is channelled

The liability is channelled to the operator who has exclusive liability. It cannot be passed on to others through, for example, contract. This simplifies the process quite a bit, giving easier and speedier access to justice.

- Claims could be difficult to investigate

Claims could be difficult to investigate because of the radiation and devastation caused by the incident

- Short tail and long tail claims

We could get short tail claims which are where the damage and loss are immediately apparent and can be compensated quickly. Others may take a lot longer because

- Injuries may be catastrophic

The injuries could be catastrophic

- Effects may take years to become apparent

The full effect of the injuries may take many years before they become apparent, are known or understood

- Repairs to property damage may not be easy to implement because of the radiation

Or repairs to property damage may not be easy or possible because of the level of radiation present

- Long term effects of injury or damage may be difficult to predict and rehabilitation may be difficult

The Long term effects of injury or damage may be difficult to predict which can make rehabilitation difficult

- Specialist lawyers and other experts will push up costs

Because of the rarity of such events and catastrophic nature of the consequences, specialist lawyers and other experts will almost certainly be utilised which will push up the legal and other costs

- Nuclear pools reinsure each other giving global expertise and capability

Nuclear Pools around the world do provide global capacity through reinsurance which enables them to give global expertise and capability in the handling of nuclear claims

- Need to manage exposure aggregations

But they do need to manage their global aggregated exposures to loss as major incidents may well affect other types of nuclear insurance provided by the pools and as is the case with all businesses, they need to manage it effectively to ensure they are able to deliver their services when needed most.

Summary

- Insurers today have extensive experience of cross border claims

Insurers have extensive experience of handling large scale claims, for example after earthquakes or floods, including cross border claims. Insurers are equipped with the experience and people to deal with them.

- The nuclear market is global and has the expertise to deal with any jurisdiction

Within the nuclear market, the Pools have existing multilateral and bilateral co-operation agreements between them for the handling of claims and through this international network, the gathering of all relevant information from a number of countries and people can be done quickly and efficiently, for the benefit of all of the claimants.

- Claims management techniques will vary according to the circumstances

The management of claims is something that needs to be determined based upon the circumstances and the damage. Insurers have extensive experience of responding to major incidents.

- A number of differences exist between non nuclear and nuclear

The special arrangements that exist for nuclear claims mean there are a number of differences between the handling of non-nuclear and nuclear claims

- These differences are recognised by international conventions and special rules exist already for nuclear damage claims

The rules for nuclear claims specifically recognise and address the cross border possibilities.

- A prescriptive approach is likely to be complicated and unworkable

To ensure we have a system of handling claims in the best interests of the claimants, we do not need a prescriptive approach being imposed, bureaucracy can slow down the process and at worst, becomes unworkable

- Flexibility is important to ensure the process can be as simple and smooth as possible, this will be of most benefit to claimants

Freedom and flexibility is important to ensure the process can be as simple and smooth as possible, this will be of most benefit to claimants

Phil Bell

Group Casualty Director

RSA Insurance

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£30.6bn in claims in 2012 paid by UK insurers