



Lillehammer Terms of Engagement 2010

Lillehammer Conference 2011
Richard Foulger
Head of Claims
AEGIS London



Once upon a time.....

- Lillehammer 2003
- The Big Debate - ‘How can we improve the servicing of energy claims?’
- Claims Protocol
- Terms of Engagement for Loss Adjusters
- Introduced April 2004
- Trail blazers
- Born from this conference

The 8th International Energy Claims

Adjusting Conference

Topical Issues

The Client



The Insurers

The Loss Adjuster

Lillehammer, Norway, 12 – 14 February 2004

New Energy Claims Adjusting Protocol



Ask most people in the insurance industry what they know about Lillehammer, Norway and they may have a vague recollection of the town hosting the Winter Olympics back in the mid-1990s. Ask an energy person in the industry and you would probably get a rather different response. Over the past few years this small town (population 25,000) outside the skiing season is sitting on the northern shores of Norway's biggest lake, Mjøsa, has achieved something which could have a significant impact upon the way energy-related insurance claims are managed and handled.

For the last eight years Lillehammer has hosted an international insurance conference aimed at the energy fraternity. Originally a 'closed shop' accessible only by insurers and a select band of 'experts' (i.e. lawyers and adjusters) it threw open its doors to brokers and risk managers in 2001. This move reignited debate as insurance buyers and their representatives, and insurers and their advisors took the opportunity to air concerns that would not have been the light of day in an office environment. The fact that the conference had become respected for its focus on workshops and academic discussion also seemed to lead to a more meaningful dialogue being held.

So it was just the seed of a 'claims dialogue' was sown.

The 'Lillehammer Energy Claims Handling Protocol' was developed through the efforts of a bi-national Working Party and an extended international panel made up of representatives from all areas of the industry.

The Protocol

- is an understanding between the contracting parties (the underwriters and the insured) based on best practice but is not intended to override or modify the terms and conditions of the policy.
- dovetails well with current market moves towards a standardised slip (LMP); indeed, several insurers have requested that slips stipulate that claims handling practices will conform to the Protocol.
- can be used irrespective of the nature of first-party risks insured.
- does not conflict with any governing laws or the legal relationships of the parties to the contract.

Its aim is simple: speed up the claims process from the advice stage to settlement, ensuring that each involved party knows what to expect from the other while minimising frictional costs.

Although it does things the Protocol contains 'target' times which cover the entire claims process. Although these targets are

non-binding, they do provide each side of the insurance divide with a clock to gently beat the other. If, for example, developments are not advised to insurers promptly enough, or decisions languish in an insurer's office, it is mainly to be sure how effective this threat will be.

The Protocol is a *base position* and there is no reason why aspects of it cannot be negotiated during the placement stage. JLT have been reviewing the terms in an effort to reach a JLT standard we feel our clients would be satisfied with.

Alongside the Protocol, and just as an analogy named, sits the 'Lillehammer Terms of Engagement for Energy Loss Adjusters'. This parallel document deals with the relationship between the insurer and their chosen adjuster. It aims to clarify exactly what is expected from each party and establishes a framework for the adjuster's interaction with his client (the underwriter) and the insured.

Full drafts of both the Protocol and the Terms of Engagement can be found at www.energyclaims.net

Please take time to review them and feel free to call or e-mail your JLT claims contact should you have any questions.

...t for more process

...the new Lillehammer Claims Protocol

IN MID-MAY 2004 THE LILLEHAMMER ENERGY CLAIMS CONFERENCE

was specifically designed to improve the handling of insurance claims. The discussions are known as the *Lillehammer Handling Protocol* and the *Lillehammer Terms of Engagement*.

Paul Riches, Chairman of Independent Insurance and Risk Adjusters (IIRA), who is a member of the conference and was a member of the working party which



LMA Energy Claims Group

- Born from 2005 hurricane claims
- Formal LMA Committee
- Participants: Watkins, Catlin, Chaucer, Ascot, Argenta, Amlin, Markel, QBE, Kiln, CV Starr, Travelers, Hiscox, HCC, AEGIS London
- Considering Lloyd's issues at present
- Looking to improve energy claims handling
- Focus on improving LTOE



Why change?





Main changes - the key points

- Definition of service
- More detailed service standards
- Governing Law and Arbitration
- Scope of work form and milestones
- Limitation of Liability
- Indemnity Provisions

LILLEHAMMER TERMS OF ENGAGEMENT 2010
FOR ENERGY LOSS ADJUSTERS

1 GENERAL

terms applicable to the contract between Instructing Insurers and the Adjuster in respect of the Services to be provided by the Adjuster,

The purpose of LTOE 2010 is to define the Services which shall be provided by the Adjuster and the Service Standards which shall apply to those Services, together with the additional liability and indemnity provisions

2 DEFINITIONS

- 2.1 "Adjuster" shall mean the loss adjusting firm who accepts the appointment by Instructing Insurers to carry out the Services.
- 2.2 "Broker" shall mean the broker who has placed the Policy on behalf of The Insured or who has the conduct of the claim on behalf of the Insured.
- 2.3 "Claims Agreement Parties" shall mean those of the Instructing Insurers vested with authority by the relevant Policy to agree claims.
- 2.4 "Instructing Insurers" shall mean the underwriters or insurers on whose behalf the appointment is made as more particularly defined in paragraph 4 below.
- 2.5 "Insured" shall mean the person firm or company with a potential claim under the Policy.
- 2.6 "Policy" shall mean the insurance under which the Insured may have a claim.
- 2.7 "Services" are defined in paragraph 5 below.
- 2.8 "Service Standards" are defined in paragraph 6 below.
- 2.9 "Terms of Engagement" shall mean these Terms of Engagement which shall be referred to as "LTOE 2010".

3 APPLICATION

LTOE 2010 shall apply when the appointment of the Adjuster to carry out the Services is stated to be made by Instructing Insurers upon the basis of LTOE 2010 or is accepted by the Adjuster on those terms

appointment, Instructing Insurers shall be deemed to have accepted the application thereof unless they shall repudiate the same in writing to the Adjuster within two weeks of the receipt of the acceptance, but where the Adjuster's acceptance is communicated to the Broker then this shall mean two weeks from notification by the Broker to the Instructing Insurers that acceptance of the appointment is made on that basis.

- 3.3 Where an appointment is made or accepted on LTOE 2010, it shall be on terms that Appendix 2 thereto applies unless the application of Appendix 2 is expressly excluded in writing by the terms of the appointment by Instructing Insurers or the acceptance thereof by the Adjuster.

4 APPOINTMENT

- 4.1 The appointment by Instructing Insurers of the Adjuster requires the Adjuster to carry out the Services subject to LTOE 2010, which shall take effect from the date on which the Adjuster accepts the appointment on such terms.
- 4.2 Where the appointment is made by the Broker on behalf of Instructing Insurers, Instructing Insurers will authorise the Broker to provide to the Adjuster the complete policy wording, the placing slip and all endorsements, the policy itself and (where relevant) similar details of any underlying cover.
- 4.3 Instructing Insurers will request the Broker to identify all solvent insurers subscribing to the policy and the Claims Agreement Parties empowered by the Policy to handle and agree claims on behalf of subscribing insurers.
- 4.4 The acceptance of any appointment by the Adjuster shall take effect as acceptance to provide the Services only on behalf of such subscribing insurers as the Adjuster agrees at the time of appointment or subsequently.
- 4.5 When the appointment is made by Instructing Insurers directly to the Adjuster, the Instructing Insurers shall immediately request the Broker to provide all the information and documentation as specified in paragraph 4.2 to 4.4.
- 4.6 Should the Broker fail to provide the relevant documentation within 14 days of the acceptance by the Adjuster of the appointment, the Adjuster shall notify the Claims Agreement Parties of that fact, and the Claims Agreement Parties shall provide such documentation and information as they have within their own possession and instruct the Broker to provide the missing documentation and information forthwith.

The Adjuster undertakes that it shall carry out the Services as agent on behalf of Instructing Insurers in accordance with the Service Standards.

- 4.8 The Services carried out by the Adjuster are solely for the benefit of Instructing Insurers. They are not intended to be for the benefit or relied upon by others or for a different purpose other than the Services.

THE SERVICES

- 5.1 The Services to be carried out by the Adjuster on behalf of Instructing Insurers shall include:
- (a) Communicating with the Insured in order to assemble all documentation and information relevant to the loss in respect of which the appointment is made.
 - (b) Effecting site visits as may be required.
 - (c) Assessing the extent of the insured loss or damage and reporting to insurers thereon.
 - (d) Investigating, if necessary with the assistance of third party experts, the cause of the loss and reporting to Insurers thereon.
 - (e) Providing as soon as conveniently possible an estimate of the insured claim to enable Instructing Insurers to establish a reserve.
 - (f) Providing periodic written reports to Instructing Insurers detailing and substantiating each aspect of the claim including the extent of loss or damage, the cause of loss, an estimate of the likely amount for the insured's loss, the conduct and timing of any repair or remedial works and all other information relevant to the adjustment of the claim including a budget for the Adjuster's costs, a proposed work plan and strategy for adjusting the loss.
 - (g) Monitoring the Insured's negotiations with products/service providers to ensure as far as possible that repairs are carried out in a timely manner and at an appropriate cost.
 - (h) Protecting the interests of Instructing Insurers at all times when dealing with the Insured.
 - (i) Investigating and ascertaining whether any requirements for claims handling pursuant to applicable Insurance Code or other Regulation are applicable to Instructing Insurers' response to any claim by the Insured under the Policy in respect of the loss which is the subject of appointment, and advising Instructing Insurers of the same; also ensuring compliance therewith or notifying Instructing Insurers in the event that the Adjuster is unable to ensure compliance therewith.
 - (j) Investigating potential subrogation opportunities, advising Instructing Insurers thereof and reporting to Instructing Insurers in respect of any such action already undertaken by the Insured.
 - (k) Organising and conducting market meetings involving all Instructing Insurers provided that prior approval from the Claims Agreement Parties representing Instructing Insurers is obtained.

- (l) If so instructed, conducting settlement discussions with the Insured regarding the claim in order to report to Instructing Insurers the terms upon which the Insured will accept settlement of the claim under the Policy, but on no account shall the Adjuster agree with the Insured any element of quantum of the loss without prior approval of Instructing Insurers.
- 5.2 The Services conducted by the Adjuster on behalf of Instructing Insurers shall not include:
- (a) Instructing any third party expert on behalf of Instructing Insurers without prior consultation with and approval from Instructing Insurers. For the avoidance of doubt, any subcontractor of the Adjuster engaged by the Adjuster to assist him in the carrying out of the Services shall not constitute a third party expert.
 - (b) Responding to complaints by the Insured or any other party without prior consultation with and approval from Instructing Insurers.
 - (c) Providing to the insured a representative name for the Instructing Insurers for the purpose of legal proceedings, unless specifically requested and authorised by Instructing Insurers to provide such information to the Insured.
 - (d) Agreeing any element of the quantum of the Insured's claim without prior approval of Instructing Insurers.
 - (e) Confirming or denying Policy coverage or liability to the Insured and/or third parties in any circumstances, save where expressly authorised in writing by Instructing Insurers so to do.
 - (f) Performing any warranty survey activity. In the event that the Adjuster is requested by any insurers to perform such activity, such request shall take effect as a separate appointment and LTOE 2010 shall not be applicable to it.
- 5.3 The Services shall be further defined and may be varied by the terms of the Loss Adjuster's Scope of Work Form as set out in Appendix 1 hereto, save that it shall be understood and agreed that the Adjuster shall have no apparent authority to conduct on behalf of Instructing Insurers any of the activities excluded by paragraph 5.2 above. In the event that the Adjuster is requested and authorised by Instructing Insurers to carry out any such excluded activity, the Adjuster will be so authorised in writing and is also hereby required to produce to the Insured and any other relevant party written evidence of Instructing Insurers' authority, failing which he shall have no authority to act on behalf of Instructing Insurers or to bind Instructing Insurers in respect of such activity.

SERVICE STANDARDS

- 6.1 Unless otherwise agreed, the Adjuster will comply with the following timetable and advise Instructing Insurers if the Adjuster cannot comply to a material extent:

shall be finally resolved by arbitration.

15.2 Where a dispute is referred to arbitration under LTOE2010, it is agreed that:

- (a) The Arbitration Tribunal shall consist of one Arbitrator who shall be a practicing Queen's Counsel at the English Bar;
- (b) In default of the parties' agreement as to the Arbitrator, the appointing authority shall be the President of the Law Society;
- (c) The seat of the arbitration shall be London but the venue may be a different location by agreement between the parties.
- (d) The language of the arbitration shall be English.

the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.

15.4 In the case of a dispute in respect of which arbitration has been commenced, the following shall apply:

- (a) Either party may at any time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.
- (b) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitrator or such person as the Arbitrator may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and in such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.
- (c) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

Adjuster's Scope of Work Form – Guidance Notes

1. INTRODUCTION

The purpose of the LASW is to assist Instructing Insurers to plan and monitor the handling of a claim.

Guidance for the completion of the LASW form is provided under the following form headings:

1.1 Summary

a summary of their proposed scope of work in narrative form.

This section is to detail any applicable fee agreements, such as Third Party Expert terms and to outline any fee sharing arrangements for the Adjuster and/or Third Party Expert. This section should also clearly state the percentage of charges from each Third Party Expert that is to be carried by Instructing Insurers.

1.3 Cost Estimates

This section is to record the Adjuster's estimate of the total fees and expenses (excluding Third Party Experts), together with amounts billed to date and the expected balance to bill. In addition, this section is to record the estimated cost of Third Party Experts to be billed through the Adjuster's invoices.

All the estimates stated should reflect apportionments and budgets separately agreed with Underwriters, as identified in the section for Fee Agreements above.

1.4 Milestones

Milestones should be predicted to the extent possible at the time each version of the LASW form is completed.

Milestones will include dates of:

- Instruction
- Initial Contact with Assured
- All site visits
- All Meetings

LTOE 2010

APPENDIX 2

LIABILITY AND INDEMNITY PROVISIONS

1 LIMITATION OF LIABILITY

1.1 The Adjuster's liability to Instructing Insurers for any loss or damage the Instructing Insurers may suffer arising out of breach of LTOE 2010 or inadequate performance of the Services shall be determined in accordance with English law and subject to the arbitration provision in paragraph 15 of LTOE 2010.

1.2 The Instructing Insurers agree that the limitation and exclusions of the Adjusters' potential liability are reasonable based on:-

- (a) The amount of any likely liability to Instructing Insurers if a breach by the Adjuster occurs,
- (b) The current and future availability and cost to the Adjuster of professional indemnity insurance,
- (c) The fees payable to the Adjuster, and
- (d) The level of risk assumed by the Adjuster in connection with its obligations in connection with the Services.

1.3 Without affecting any other provision in LTOE 2010, the Adjuster's liability

**shall be limited to
£5,000,000 (five million pounds sterling)**

- (a) Death or personal injury;
- (b) Loss or damage arising from fraud or wilful conduct;
- (c) Any other situation in which the limitation of liability is prohibited by a law.

1.4 **aggregate limit**

2 INDEMNITY

- 2.1 In this clause, a reference to the Adjuster shall include the Adjuster's subsidiaries, officers, directors, employees and any subcontractor of the Adjuster engaged by the Adjuster to assist him in the carrying out of the Services, but the reference to Adjuster shall not include any third party expert acting on behalf of Instructing Insurers even if appointed by the Adjuster pursuant to the terms of paragraph 5.2(a) LTOE 2010.
- 2.2 The provisions of this clause 2 shall be for the benefit of the Adjuster and each subsidiary, officer, director, employee and subcontractor and shall be enforceable by each such subsidiary, officer, director, employee and subcontractor in addition to the Adjuster.

The ... suffered or incurred by the Adjuster arising out of or in ns
inde connection with any claim made against the Adjuster by any nd
loss third party in connection with Services which the Adjuster was
... save to the extent that the claim by any
third party arises from the Adjuster's gross negligence, fraud or wilful default.

- 2.5 In the event that any third party makes a claim or notifies an intention to make a claim against the Adjuster which may reasonably be considered likely to give rise to a liability under the indemnity in clause 2.3 above (a "Claim"), the Adjuster shall:
- (a) As soon as reasonably practicable, give written notice of the Claim to Instructing Insurers, specifying the nature of the Claim in reasonable detail.
 - (b) Not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Instructing Insurers (such consent not to be unreasonably conditioned, withheld or delayed);
 - (c) Give Instructing Insurers and their professional advisers access at all reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, subcontractors, agents, representatives or advisers and to any relevant assets, accounts, documents and records within the power or control of the Adjuster so as to enable Instructing Insurers and their professional advisers to examine them and to take copies (as Instructing Insurers' expense) for the purpose of assessing the Claim;
 - (d) Subject to Instructing Insurers providing security to the Adjuster to the Adjuster's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as Instructing Insurers may reasonably request to avoid, dispute, compromise or defend the Claim.



Challenges

- Claims process needs managing
- Require contract clarity
- Performance matters
- Cost effective claims handling
- Lifecycle of claims
- Knowing what an adjuster is doing
- Platform to promote efficient claims handling



- Ensure the continued development of energy claims handling
- Improve communication
- Promote clarity in the claims process
- Promote best practice and standards
- Improve the claims process for all concerned
- **Recommend LTOE 2010 be used going forwards**