

Proudly presents...

EFFECTIVE CLAIMS MANAGEMENT FOR HIGH EXPOSURE CLAIMS

**INTRODUCTION/AGENDA
& MODERATOR**

Nancy Chambers

Agenda

- WELCOME
- INTRODUCTION
- BACKGROUND
- ROLE OF RISK MANAGER

Agenda

- **Nancy L. Chambers**, *CRM*
Director, Risk Management & Insurance Strategic Resources Group
Bentall Kennedy (Canada) LP
- **Paul C. Hancock**, *B.Sc., CIP*
National Director/Toronto Branch Manager GTS
Crawford & Company (Canada) Inc.
- **Scott Francis**, *Senior Vice President*
National Claims Advocacy Leader
AON Reed Stenhouse Inc.
- **Paul McCague**, *Partner*
McCague Borlack LLP
- **Peter Yaniszewski**, *Partner*
McCague Borlack LLP
- **Lorne Honikman**, *Partner*
McCague Borlack LLP

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Biographies

Bios

Nancy Chambers, CRM

Director, Risk Management & Insurance Strategic Resources Group
Bentall Kennedy (Canada) LP



Nancy is the Director, Risk Management & Insurance at Bentall Kennedy (Canada) Ltd. Prior to joining Bentall Kennedy, Nancy's career included that of Director, Risk Management at OCAD University and also at Sears Canada, as well as Risk Manager for the Waterloo Region Municipalities Insurance Pool, the City of Kitchener and the University of Guelph. A former RIMS president, Nancy served as past president, ex-officio on RIMS board of directors; president; first vice president - audit & investments; vice president - conference; vice president - treasurer (2 terms); and chair of the national education committee. Nancy also served on her local chapter's Board of Directors.

Nancy is the recipient of numerous awards for performance excellence and recognized for achievements in program and policy development, risk identification and assessment, formulating workable solutions, as well as leadership and team building - including the 2005 Don Stuart Award and the 1990-1991 Fred Bossons Award.

Bios

Scott Francis, Senior Vice President
National Claims Advocacy Leader
AON Reed Stenhouse Inc.



Scott is Senior Vice President, National Claims Advocacy Leader at Aon and his primary role is to develop and maintain communication with the major insurers with whom Aon conducts business and negotiate both coverage and quantum with underwriters on behalf of major clients.

He provides catastrophic claims management, handles errors and omissions negotiations with insurers in conjunction with the national broking leader and monitors and addresses losses with relationship managers/originators.

Responsibilities also include strategic recommendations based on trend analysis reports generated from claims staff on a national, regional and local basis.

- *Special Capabilities and Achievements*

Patent infringement | Ethical institution liability | Public entity liability | Environmental and engineering | Hospital liability | Bloodstock liability and mortality claims | Product liability | Sexual abuse and molestation losses | Professional E&O | Employment practices liability | Agricultural liability | Agricultural environmental | Member, Ontario Insurance Adjusters Association | Associate Member, Ontario Risk Managers Association

Bios

Paul Hancock, BSc., CIP
National Director/Toronto Branch Manager GTS
Crawford and Company (Canada) Inc.



Paul Hancock is the National Director/Toronto Branch Manager for Crawford Canada's Global Technical Services Division.

Paul has vast claims and claims management experience on both the brokerage and independent adjusting side of the business. He has held the following industry roles:

- **Vice President/Manager, Aon Reed Stenhouse Inc,** Oakville Office - 2008
- **Vice President, Aon Reed Stenhouse Inc,** Southwest Ontario & Atlantic Region, Claims - 2005 to 2008
- **Vice President, Marketing, Custard Insurance Adjusters Canada Inc.,** Toronto, Ontario - 2002 to 2005
- **Senior Vice President/Director, Cunningham Lindsey Canada,** Toronto, Ontario - 2000 to 2002
- **Executive Vice President/Director, SCM Canada,** Toronto, Ontario - 1995 to 2000
- **Assistant Vice President, Customer Service, Lindsey Morden Claim Services Limited,** Toronto, Ontario - 1994 to 1995

Paul is a Chartered Insurance Professional having graduated from the Insurance Institute of Canada in 1988. He graduated in 1984 with a degree in Business Administration from Sheridan College and holds a Bachelor of Science from University of Western Ontario, graduated in 1981.

Bios

Paul McCague, Partner
McCague Borlack LLP

**McCague
Borlack_{LLP}**
Barristers & Solicitors

Since 1978, Paul has established an extensive property, casualty, and special risks practice acting primarily for the insurance industry. Paul has built his reputation via the results he achieves on complex matters involving national and international issues with substantial quantum at risk. Paul is regularly retained by large corporations on their self-insured retention programs, and in all forms of coverage disputes, including excess, umbrella, and reinsurance issues.

Paul's practice involves litigation and trial advocacy, and has expanded to include all forms of alternative dispute resolution. He frequently acts for clients on coroner's inquests and at hearings involving regulatory and enforcement proceedings. Additionally, Paul has experienced considerable success in the pursuit of major subrogated claims, and he is considered a pioneer in the defence of class action law suits in the Province of Ontario.

Paul is a member in good standing with The Law Society of Upper Canada, The Canadian Bar Association, The International Bar Association and The Advocates Society. He is also the founding member and president of Canadian Litigation Counsel, an affiliation of independent law firms across Canada focused on the provision of litigation and risk management services to the Insurance Industry and to public and private institutions.

Bios

Peter Yaniszewski, Partner
McCague Borlack LLP

**McCague
Borlack** LLP
Barristers & Solicitors

Peter is a senior partner at McCague Borlack LLP and has broad experience in the defence of municipal, professional liability, construction, and commercial claims, including the liability of municipal officials, architects, engineers, geotechnical consultants, building inspectors, land surveyors, construction consultants, real estate agents and brokers, life insurance agents and brokers, financial and investment advisors, and directors and officers of corporations.

Peter has also provided advice and counsel regarding insurance disputes, surety bonds, fidelity bonds, and boiler and machinery policies. Peter has successfully litigated numerous product liability, personal injury, property and subrogation claims, and has appeared at various levels of the Ontario court system, before administrative and regulatory bodies, and in Alternative Dispute Resolution forums.

Peter is a graduate of the University of Waterloo, obtaining his Bachelor of Arts in Economics. He obtained his law degree from Queen's University in 1989.

Peter was called to the Bar of Ontario in 1991. He is a member of the Law Society of Upper Canada and the Construction Law Section of the Ontario Bar Association.

Bios

Lorne Honickman, Partner
McCague Borlack LLP

**McCague
Borlack** LLP
Barristers & Solicitors

Lorne has a broad civil and criminal litigation practice with an emphasis on media, entertainment, and sports law, libel, slander, and publication ban issues. He has particular expertise in legal disputes concerning internet defamation. Through his interactive training sessions, Lorne provides valuable instruction on dealing with the media, which today plays a key role in a company's risk management strategy.

Lorne has guided CEOs, in-house counsel, and risk managers to create the proper crisis communication strategies. Lorne ensures that reputation management is not just a reactive process, but rather, a necessary proactive component of an overall corporate strategy.

Before practicing law, Lorne was the legal specialist for City TV for more than twenty years, where he filed more than five thousand stories and was regarded as one of Canada's most experienced broadcast journalists. Lorne continues to host a weekly talk show called Legal Briefs, which is broadcast locally on Cable Pulse 24 and nationally on Court TV.

Lorne received his Bachelor of Science (Honours) degree from the University of Toronto in 1977, and his Bachelor of Laws degree from Osgoode Hall Law School in 1995. Lorne was called to the Ontario Bar in 1997, and is a member of the Canadian Bar Association, The Advocates' Society, and Ad Idem.

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EFFECTIVE CLAIMS MANAGEMENT FOR HIGH EXPOSURE CLAIMS

The Role of the Adjuster

PAUL HANCOCK, B.Sc., CIP

National Director, Toronto Branch Manager

Crawford Global Technical Services

Agenda

1. What is an insurance adjuster?
2. Claims process
 - I. Before the claim
 - II. When the claim is reported
 - III. Claims handling
 - IV. Reporting
3. Who is in charge?
4. Thought before action
5. Lining up experts
6. Dealing with coverage issues
7. Investigative roadblocks
8. Scoping and action
9. Temporary aid
10. Summary

What is an Adjuster?

- “To be an adjuster, one must be courteous, diplomatic, shrewd, persuasive, an expert jollier, of an equable temper, slow to anger, a Sherlock Homes, up-to-date, good looking (with honest eyes and a glad hand), a good memory, good cigars, acute business judgment, and the embodiment of virtue but with good working knowledge of sin and evil in all its forms.”**
- “An adjuster must understand insurance, electricity, chemistry, mechanics, physics, bookkeeping, banking, merchandising, selling, shipping, contracting law, medicine, real estate, horse trading and human nature.”**
- “He must satisfy the claims manager, the claim examiners, the home office claims department, the underwriting department, the general agent, the local agent, the solicitor, the insured, the claimant, and the Provincial Insurance Department.”**

What Constitutes a Claim?



What Constitutes a Claim?



What Constitutes a Claim?



What Constitutes a Claim?



What Constitutes a Claim?



What Constitutes a Claim?



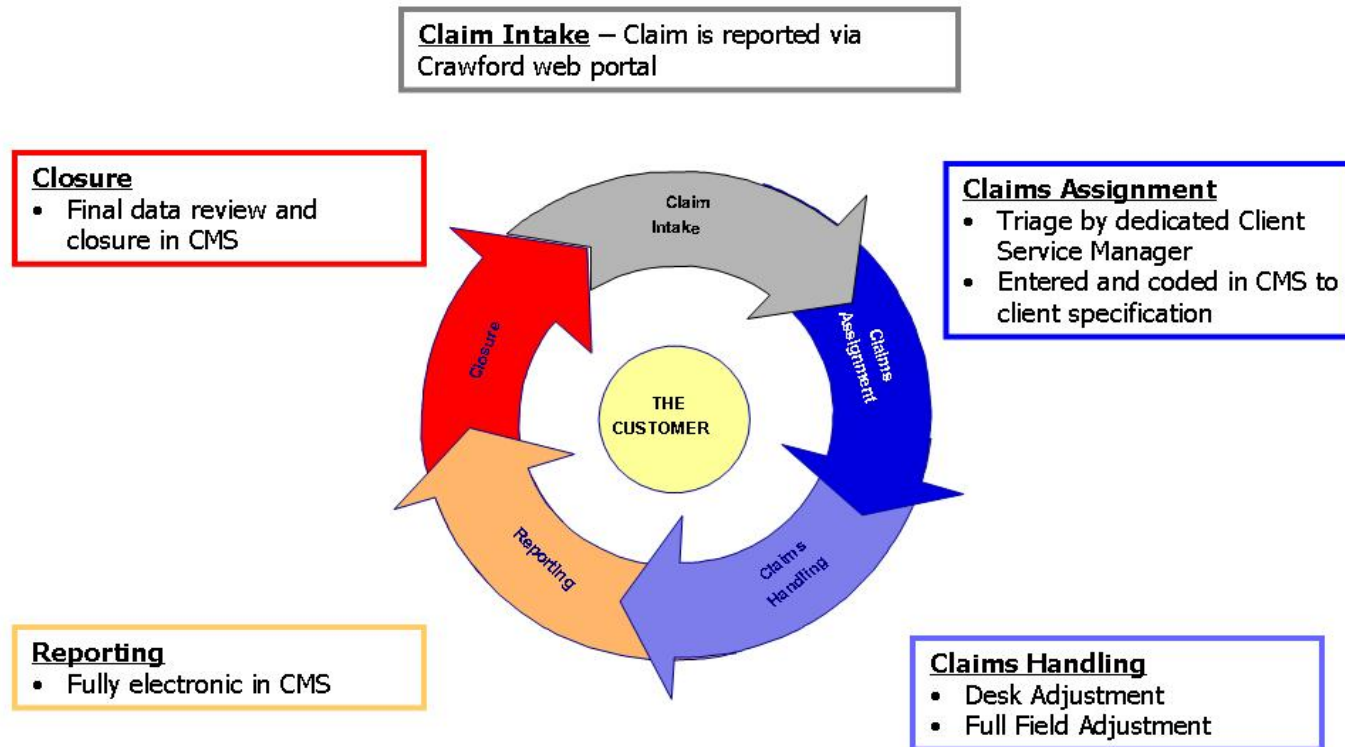
What Constitutes a Claim?



What Constitutes a Claim?



Claims Process



Claims Process

- **Before a claim occurs**
 - **Meetings with insurer, broker and insured to determine claim protocols**
 - **After hours procedures**
 - **Reporting**
- **When a claim occurs – Claims intake and triage**
 - **How does the claim arrive**
 - **Usually from insurance company**
 - **On occasion from insurance broker**
 - **Direct from insured if they have large self insured retentions**
 - **Is it an emergency?**
 - **Assign adjuster – Desk adjuster or full investigation**

Who is in Charge?

- **Governmental Agency**
 - **Emergency Management Authority**
 - **Federal Government**
 - **Provincial Government**
 - **Municipal Government**
 - **Environmental Protection Agency**
 - **Police**
 - **Fire Department**

Although not in charge, an adjuster must be in control – limited to the coverage at risk

Lining up the Experts

- Cause & Origin
- Structural
- Mechanical
- Metallurgical
- Electrical
- Environmental
- Code
- Data Processing
- Economist
- Legal
- Hydrology
- Geology
- Marine
- Inventory
- Salvage
- Security
- Storage
- Realtors
- Forensic Accountant

Dealing with Coverage Issues

- **Non-waiver or Reservation of Rights**
- **Agree on a chain of command**
- **Identify respective responsibilities**
- **Agree on a protocol for developing & accumulating information**
- **Set a timetable for completion of tasks**
- **Confirm the agreements reached via a Critical Path letter**

Investigative Roadblocks

- **Access to a site may be restricted.**
- **Police may be reluctant to share information.**
- **The site may have been declared a crime scene.**
- **The fire department may not be able to access the site to put out fires resulting into evidence.**
- **It may be necessary to involve legal counsel early to assist in the release of information and preservation of evidence.**

Other Potential Factors

- **Period of indemnity**
- **Excluded property**
- **Excluded perils**
- **Insufficient policy limits**
- **Coinsurance and policy sub-limits**
- **Restoration to code**
- **Data recovery**

Scoping & Action

- **Building Structure**
- **Stock**
- **Furniture**
- **Fixtures**
- **Equipment**
- **Computers & Data Processing**
- **Valuable Papers**
- **Property of Customers**
- **Property of Vendors / Lessors**
- **Property of Employees**
- **Leasehold Improvements**
- **Demolition & Debris Removal**

Temporary Aid

- **Advance Payments**
 - **Used for the purpose intended**
 - **Not Excessive or unrealistic**
- **Discontinuing Expenses**
 - **Utilities**
 - **Abatement of Rent**
 - **Labour Workforce – layoffs**

Claims Process con't

- **Claims Handling (First 72 hours)**
 - **Contact insured, introductions explaining the role of a loss adjuster and obtain overview of loss**
 - **Attend site for investigation**
 - **Identify yourself to Public Authorities (Police, Fire) – then stay out of their way until they are prepared to meet with you**
 - **Request insured to protect if necessary**
 - **What are insured's immediate concerns**
 - **Determine site conditions/loss location**
 - **Experts required: Engineers, Accountants, Environmental, Lawyers, Quantum Surveyors**
 - **Identify witnesses**

Claims Handling: First 72 Hours con't

- **Secure reports: Alarm Monitoring, Security Records, Site Plans and Photos**
- **Coordinate and assist in emergency service contractor retention and scope of duties**
- **Ensure that records are kept (“Memos to File”) daily on activities – they will assist in recollection for reporting and referring to as exhibits**
- **Photograph or videotape the scene – use professionals if warranted**
- **Gather media information, reports, and tapes where available (Premiere Media)**
- **Update Insurer, notify all Subscribers where applicable**
- **Update Broker**
- **Begin detailed workup of reserving**
- **Confirm coverage and policy wordings in writing**

Claims Handling: Ongoing Investigation

- **Secure the scene and site safety**
- **Continue to quantify damages**
- **Accurate Reserve recommendation within first 30 days**
- **Determine all policies that may be available or responsible**
- **Obtain Public Authority reports**
- **Coordinate scope and estimates for reconstruction/equipment tenders**
- **Meetings with insurers and brokers – keep communication lines open**
- **Advance payments where required**

Reporting Protocols

- **Verbal report to insurer after scene investigation for large claims**
- **Send acknowledgement usually within 48 hours**
- **Detailed first report – usually within 30 days**
- **Subsequent reports every 30 or 60 days, depending on the activity**

First Detailed Report

- **Assignment**
- **Synopsis**
- **Reserves**
- **Policy Details**
- **Date of Loss**
- **Location of Loss**
- **Schedule of Exhibits**
- **Insured**
- **Media Coverage**
- **Loss Investigation**
- **Fire Department Investigation**
- **Police Investigation**
- **Fire Marshall Investigation**
- **Origin & Cause Investigation**
- **Coverage Issues**
- **Liability**
- **Loss & Claim**
- **Extra Expenses**
- **Salvage**
- **Subrogation**
- **Recommendations for Future Handling**

Summary

- **Communication!**
- **Be prepared**
- **Be fair, truthful and realistic**
- **Be professional and courteous**
- **Be knowledgeable to explain in detail the insurance policy**
- **Be proactive not reactive**
- **Maintain control within the confines of the Policy coverage afforded**
- **Avoid situations that could expose the Insurer to a waiver of a Policy Condition or Estoppel**
- **Be responsive**
- **Communication!**

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EFFECTIVE CLAIMS MANAGEMENT FOR HIGH EXPOSURE CLAIMS

The Role of the Broker

SCOTT FRANCIS, Senior Vice President
National Claims Advocacy Leader

Aon Canada

The Broker Role

- **Pre-loss process**
- **Understand the client business, expectations and risk manager needs**
- **Define the specific needs of the client: property, casualty, business line**
- **Arrange needs analysis meetings to address the following but not limited to:**
 - **General claims process**
 - **Jurisdictional issues**
 - **Local, regional, national, and global exposures**
 - **Define protocols for each noted above**
 - **Structure pre-loss meetings with client**

The Broker Role

- Role of the insurer, each insurer have their own set of processes, based on those protocols will determine how we respond to the pre-loss process
 - Compare client processes to that of insurers to have a constant approach to the claims process
 - Comparison of panel councils
 - Comparison of adjuster approval process
 - Comparison of experts

The Broker Role

- **Adjuster: is there an existing relationship between the client and an adjusting firm? If yes, are they right for the client?**
Should we be considering:
 - RFP
 - RFI
 - Claims management systems – web-based, online reporting
 - Litigation management
 - Litigation management protocols
 - Insurer-approved panel list
 - Service level agreements
- **Do we have global exposures? If so, pre-loss processes should extend to include all of the appropriate vendors**

The Broker Role

- **Upon notification of the loss we as brokers need to proceed as follows:**
 - Acknowledge notice of the loss regardless of the source of the report
 - Verify all policies that may pertain to the loss and proceed to advise in writing the loss to all carriers on the risk
 - In some cases prompt verbal notice may also be required
 - If a process is in place such as described in the pre-loss structure, then notification of the loss may be directly from a control adjuster (electronic notification), we then contact the client to acknowledge the loss and provide claims advocacy support
 - Provide advocacy
 - Policy interpretation
 - Advocacy management assistance (Maple Leaf – Listeriosis)
 - Monitor the entire process
 - Assist the insured in receiving all benefits they are entitled to under the terms of the policy

The Broker Role

- When required do a post-loss assessment
 - Client surveys
 - Insurer surveys



PROPER CLAIMS HANDLING
AND PROCESS
EQUALS CLIENT RETENTION

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EFFECTIVE CLAIMS MANAGEMENT FOR HIGH EXPOSURE CLAIMS

The Role of the Lawyer

PAUL MCCAGUE, Partner

McCague Borlack LLP

The Lawyer Role – Pre Loss

- From the lawyer's perspective, the most important principal to remember to effectively manage high risk claims:
 - The Ultimate Client is the Insured

The Lawyer Role – Pre Loss

- **The entire process must be geared to:**
 - Properly identifying the Insured's needs & expectations
 - Program must meet & exceed those needs & expectations
 - Ensure that the client's interests are fully protected throughout the entire process

The Lawyer Role

How to achieve these goals?

Two key elements

- 1) **Maximization of the connectivity between everyone involved in the process:**
 - Risk Management
 - Broker (account executive & claims)
 - Insurance Claims Professionals (subscribers & layers)
 - Independent Adjusters / Investigators
 - Applicable Experts
 - Legal (defence & subrogation)
- 2) **Utilization of all available resources.**

The Lawyer Role

- In our present environment, connectivity between the parties begins long before the claim occurs.
- It begins with the risk manager and the broker assembling an entire insurance program for particular Insured or class of business. This process involves the Risk Manager and the Broker:
 - Assembling all of the pieces of the puzzle required to ensure that the focus and goals of the program are fully and properly addressed
 - Meeting with each team member individually to discuss the Program and to confirm that they all have the skills and resources necessary to effectively participate

The Lawyer Role

- The services most commonly required from the law firm include:
 - **Jurisdictional Coverage**
 - Regional
 - National
 - International
 - **24/7 Legal Assist Hotline capabilities:**
 - General liability legal advice
 - Collection matters
 - Employment law matters (employer or employees)
 - Family law issues
 - Quasi criminal or regulatory matters
 - Media relations

The Lawyer Role

- **Educational Tools**

- Legal Seminars / Loss Controls Seminars / Lunch & Learns
- Regional Management Presentations
- Newsletters / Bulletins / Webcasts

- **Expert Bank**

- Structural, electrical, mechanical and forensic engineers;
- Forensic collision re-constructionists with trucking experience;
- Origin and cause specialists;
- Forensic accountants;
- Investigators and loss control specialists and analysts in the jurisdiction in which the loss occurred.

The Lawyer Role

– 24/7 Emergency Legal Response Team capabilities:

Types of Losses:

- Transportation
- Environmental
- Fire/Explosion
- Equipment – construction/farm/business
- Building fire failure/farm/collapse

Responsibilities

- Scene control
- Co-ordinate, instruct, supervise
- Direct investigation
- Privilege
- Evidence Presentation / chain of custody
- Insured assistance
- Media response

Response Triggers

- Fatality / serious injury
- Fire / Explosion
- Environmental leakages
- Structural collapse
- Transportation

The Lawyer Role

- **Proven Subrogation Capabilities**
 - Aggressiveness
 - Flexible Fees: hourly/contingencies/graduated
- **Media Response Team**
 - Pre-loss Training / Post Loss Strategy
- **Final Step: Protocol Development**
 - Team identification / co-ordinates
 - Reporting instructions
 - Authority levels
 - Free services, hourly rates, contingency fees
 - Billing instructions:
 - » Self-insured retention/deductible
 - » Transition to insurer

The Lawyer Role

SUMMARY

Key to Effective Claims Management for High Exposure Claims:

“The Insured Is the Ultimate Client”

Goal: **Meet all the Insured’s needs and exceed their expectations.**

Method: **Improve Connectivity Between the Parties while Maximizing Resource Utilization**

**Result Is The Complete Protection of the Insured’s
Interests in all areas.**

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EFFECTIVE CLAIMS MANAGEMENT FOR HIGH EXPOSURE CLAIMS

The Role of the Lawyer

PETER YANISZEWSKI, Partner

McCague Borlack LLP

The Lawyer Role – Date of Loss

- **A lawyer's involvement at the time of loss may be of great assistance to an insurer in managing a claim.**
- **A high exposure claim is different from most types of litigation because it begins as soon as the accident / incident takes place.**
- **The time between the event itself, the first call from the insured to the insurance company / third party administrator / adjuster and then to legal counsel can be, quite literally, mere minutes.**
- **At our firm, we send lawyers to the scene of significant motor vehicle accidents and major loss events like fires, floods, building collapses, etc.**

The Lawyer Role – Date of Loss

- One of the reasons for this proactive approach includes an effort to ensure site investigation management and control. Much information must be gathered at the scene, and if certain steps are missed or delayed they may prove costly should a claim need to be defended or should subrogation be pursued.
- Lawyers are not police officers and so they cannot take complete charge of the scene. However lawyers can control some of what is going on with the proper approach and demeanour.
- As lawyers, foremost in our minds upon arrival upon the scene is protection of the insured's representatives. Are their injury, health and welfare needs attended to?

The Lawyer Role – Date of Loss

- Typically we will want to co-operate with the authorities while on scene. We have found that if we want information from the police or other first responders, either on or off the record, we have to be co-operative. However as legal counsel, we have to protect the insured's representatives. That is job one.
- If the authorities request information, we always act as though the case will end up in court. While refusing to provide information can imply guilt or if the authorities request information, we always act as though the case will end up in court. While refusing to provide information can imply guilt or responsibility on the part of the insured, the initial expression of information needs to be truthful, based on fact and consistent.

The Lawyer Role – Date of Loss

- **This philosophy needs to remain consistent throughout the course of the investigation, during any downtime, and throughout the litigation itself should the authorities re-visit or follow up on the incident at a later date.**
- **One of the worst things that we can have is inconsistency so at the outset we as lawyers for the insured will assist with incident statements from the insured's representatives in appropriate cases.**
- **As lawyers on a high exposure claim, we will have to make an immediate decision as to whether our insured's representatives can talk to the authorities if we arrive at the scene before this has already occurred.**

The Lawyer Role – Date of Loss

- **Before any of the insured's representatives give any statements, we will need to assess the facts of the incident as currently known and the level of sophistication of the insured's representatives.**
- **Also, some insureds (like trucking companies for instance) have company policies prohibiting their drivers from giving statements to the police without counsel present so it is important to know if this is the policy of the insured in advance.**
- **Hopefully the insured has already properly trained its representatives that care needs to be taken after an incident to mitigate liability.**

The Lawyer Role – Date of Loss

- **At the scene we will meet with the insured's representatives to prepare them for some limited questioning including instructions not to guess or speculate.**
- **As lawyers, it is important for us to address the criminal and regulatory issues early.**
- **The initial coordination of the scene investigation must take into account any criminal or regulatory issues related to the incident (was there a fatality? were drugs or alcohol involved? are charges likely?).**
- **At our law firm, we typically have two or three criminal lawyers on our telephone list with whom we have relationships. They know us, what we do and why we might be calling them.**

The Lawyer Role – Date of Loss

- **Either by the time of arrival on the scene or early in the investigative process, we will have communicated with the necessary adjusters, investigators and experts.**

The Lawyer Role – Date of Loss

- **Depending on the type of loss event, this may include the following:**
 - Accident reconstructionists,
 - Forensic engineers,
 - Photographers (still, aerial and videotape),
 - ECM download experts (for trucking and possibly car accidents),
 - Lab testing facilities, etc.

The Lawyer Role – Date of Loss

- **Other counsel and their investigators and experts might also be on site. It is therefore important to get as much information as possible while cloaking our investigators' and experts' work in the solicitor client or litigation privilege.**
- **Knowing the unique evidentiary rules of a particular jurisdiction will allow the lawyer to instruct their experts and investigators as to how to relay information back as part of the ongoing investigation process.**

The Lawyer Role – Date of Loss

- **As lawyers on the scene we will seek to identify all authorities and interview them if possible. This would include:**
 - Police,
 - Emergency medical personnel,
 - Fire Department,
 - Office of the Fire Marshal,
 - Ministry of the Environment,
 - Ministry of Labour,
 - Technical Standards and Safety Authority,
 - Coroner's Office and others.

The Lawyer Role – Date of Loss

- **We will seek to obtain any available notes or reports.**
 - **Who?**
 - **What?**
 - **Where?**
 - **When?**

Information that can be gathered on the scene will be critical as the litigation unfolds.

The Lawyer Role – Date of Loss

- **While on site it is important for the lawyer to:**
 - **Start collecting contact information that will allow the lawyer to obtain police reports, witness information and other investigation and reconstruction reports;**
 - **Oversee the collection of scene photographs, video surveillance and other documentation of the scene;**
 - **Oversee the securing of the insured's property (preservation, recovery and removal issues) to avoid spoliation;**
 - **Assess whether there are additional site safety, security, pollution or clean-up issues;**
 - **Identify whether any relevant documents or electronic records may exist;**
 - **Determine whether the authorities have additional needs / questions for the lawyer.**

The Lawyer Role – Date of Loss

- **Sample Construction Accident Investigation Checklist**

IDENTIFY:

- Person(s) involved, injured or killed, summon help and medical assistance as needed, and notify family/contact person(s);
- The exact location site of the accident;
- The date and exact time of the accident;
- All eyewitnesses to the accident and surrounding conditions;
- Foremen and other safety managers on site;
- All contractors and subcontractors working on site at the time of the accident;
- Employer and foreman of the injured worker(s);
- Personal protection equipment available and in use, e.g., tie-offs, lanyards, helmets, ladders.

The Lawyer Role – Date of Loss

- **Sample Construction Accident Investigation Checklist – Con't**

LOCATE:

- All warnings, signage and other safety devices on location;
- All flagging, tie-offs and barriers;
- Guarding and safety mechanisms;
- Warnings and manuals for all equipment involved;
- Contracts of all involved parties, indemnity agreements, insurance policies and certificates, notify insurers.

The Lawyer Role – Date of Loss

- **Sample Construction Accident Investigation Checklist – Con't**

DETERMINE:

- **Construction activities ongoing at the time of the accident;**
- **What was injured worker doing at the time of the accident;**
- **All environmental or weather conditions for the day of the accident;**
- **Basic cause of the accident, e.g., fall, collapse, equipment failure;**
- **General nature of the primary injury, e.g., fracture, cut, head injury;**
- **What companies owned or furnished any tools or equipment involved in the accident;**
- **Preserve evidence and/or document worksite conditions before altered by ongoing construction.**

The Lawyer Role – Date of Loss

- **Sample Construction Accident Investigation Checklist – Con't**

OBTAIN:

- Accident report;
- Police/Fire Department reports;
- Jobsite progress photographs and any accident site photographs taken;
- Any site, security or newscast videotape;
- Handwritten or recorded statements of witnesses;
- Ministry of Labour investigation documents and reports;
- Daily reports or logs for the day before and of the accident;
- Safety and daily “tailgate” meeting records of all involved parties and for the project.

The Lawyer Role – Date of Loss

- **Sample Transportation Accident Investigation Checklist – Con't**
 - 1) ***Establish and Communicate a Protocol and Chain of Command***
 - 2) ***Have “Boots on the Ground” as Quickly As Possible***
 - 3) ***Use Lawyers to Control The Investigation and Preserve Privilege as You Take the Following Steps:***
 - ***Identify and interview all witnesses***
 - ***Identify and interview all police on the scene and obtain available accident reports***
 - ***Identify and interview all emergency medical personnel at scene and obtain available reports***
 - ***Interview, control and protect driver***
 - ***Interview, control and protect all ECM/black box/computers***
 - ***Photograph and/or control debris field***

The Lawyer Role – Date of Loss

- **Sample Transportation Accident Investigation Checklist – Con't**
 - *Photograph and/or control roadway surface*
 - *Photograph and control vehicles*
 - *I.D. and control all driver records, including logs, fuel receipts, toll receipts, trip envelopes and other travel documents*
 - *Photograph all vehicles and accident scene*
 - *Aerial photograph of scene*
 - *Drug and Alcohol Testing*
 - i) Highway Traffic Act / Criminal Code requirements*
 - ii) Client policy*

The Lawyer Role – Date of Loss

- **Sample Transportation Accident Investigation Checklist – Con't**
 - *Identify all involved in towing, storage and/or repair facilities*
 - *Make plans with the insured to secure cargo if necessary*
 - *Ascertain if there are any environmental or hazardous materials issues/spills*
 - i. Government notifications*
 - ii. Containment, remediation and clean up*
 - *Obtain all 911 tapes/transcripts, dash cam and police audio*
 - *Obtain ECM downloads from all involved vehicles*

The Lawyer Role – Date of Loss

- **Manage the Media**
 - **Communicate company policy on media relations to all involved. Provide contact information to all involved on insured's public relations professional for referral and comment to the press.**
 - **Identify all media representatives at scene (consider who will do this)**

The Lawyer Role – Date of Loss

- **Equip Insured's Personnel**
 - Provide the following items to insured's drivers and other employees:
 - Draft witness forms
 - Disposable camera
 - Dictaphone
 - Business cards
 - Coveralls, boots, reflective safety vest, hard hat and gloves
 - Evidence log
 - Tape measure (100' or longer is preferable)

The Lawyer Role – Date of Loss

- **Train Insured's Drivers and Personnel**
 - Review and provide checklist to all drivers and company professionals involved.
 - Consider which law firm in the area will be utilized. Stress importance of availability and response of lawyers.
 - Consider notifying your law firm to research rights and obligations of driver with respect to police questions and interviews. Consider notifying your law firm to research other laws that may be applicable in the event of an accident within each respective jurisdiction.

The Lawyer Role – Post Loss

- **Following the completion of all scene related activities, and quite often long before any claim is even issued, we begin formulating the defence strategy.**
- **The lawyer will meet with all of the insured's involved representatives very early in the process to ensure that everything necessary to advance a successful defence is explored.**
- **How do you keep the insured's representatives engaged / involved? What if they leave the employ of the insured?**
- **Identify the problem areas (is it a problem witness? is it deficient record keeping? is it a poor accident history? etc.) and develop a plan to address these problem areas.**

The Lawyer Role – Post Loss

- This includes document collection (training records, prior incident information, risk management plans).
- The lawyer will also begin to prepare the insured's witnesses for their anticipated examination for discovery or provision of additional witness statements to the authorities.
- The lawyer should assess whether all necessary governmental and other authorities have been properly notified.
- The lawyer will oversee the conducting of the necessary real estate, corporate, internet, media and other searches. Accident reports, *Freedom of Information* and other requests will be made.
- The lawyer will contact and secure the retainer of the leading experts in the field.

The Lawyer Role – Post Loss

- **The lawyer must remember that their “client” is the insured and as the defence counsel on the file post-loss, they should not be providing coverage advice to the insurer or the insured.**
- **While the insurer will control the defence and typically has the right to settle any claim (even over the objection of the insured), for legal and business reasons, the lawyer always must consider the insured’s position.**

Proudly presents...

EFFECTIVE CLAIMS MANAGEMENT FOR HIGH EXPOSURE CLAIMS

Media Relations/Reputation Management

LORNE HONICKMAN, Partner
McCague Borlack LLP

Media/Crisis Management

Strategic Messaging And Response Training

Media/Crisis Management

- **Media relations and communication now plays a key role in every company's risk management strategy**
 - **Company must be in a position to deal with potential crisis**
 - **Having the CEO/President part of the communications plan adds credibility to the overall strategy**
 - **“No Comment” is never part of the strategy.**

Media/Crisis Management

- **Reputation management can no longer be a reactive process**
 - **Accepting responsibility vs. admitting liability**

Media/Crisis Management

- **CEO's and their entire executive team need to be aware of Crisis Communication strategies before a crisis occurs**
 - **Knowing who the spokesperson are going to be is part of the preparation**
 - **Communicating to employees, shareholders and stakeholders is just as important as communicating to the public at large**

Media/Crisis Management



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