This article will be of interest to those persons involved in assessing and reviewing insurance liability or ‘Third Party’ claims, including Loss Adjusters, Claims Handlers, Brokers, Lawyers and self-insured entities.

Whilst some of the information may be self-evident, it is worth revisiting the general process involved in assessing this class of claims and particularly from a Loss Adjusting perspective to Insurers and advisors, such that an understanding of how investigation results may differ if an inadequate or inappropriate approach is taken.

The nuances and soft shoe shuffle exploits of a competent adjuster can markedly reduce liability claims leakage as is explained below.
What do the instructions look like?

The first element of any claim involves receiving a new instruction to act. Upon receipt, it is good practice to speak with your client to confirm the nature of the retainer including receiving any ‘background’ information relevant to the claim. Often the instructions will be a disjointed notification from an Insured which an Insurer can make little sense of.

Liability claims whether involving personal injury, property damage or products often involve complex factual matters and it is vital to understand the specific requirements of the client from the outset and to avoid providing information which may not be required.

In addition, experience dictates that the needs of individual clients do vary; and depending on the individual claims managers’ experience, available time and the amount of background material that they already hold will all be factors in determining exactly how much and what specifically is required from the Loss Adjuster.

After speaking with your client the receipt of instructions and the specifics of the brief should always be confirmed in writing along with actions that have already been or are shortly to be made.

These instructions could include simply a series of photographs of third party damage through to an articulated letter of claim crafted by a third party lawyer.

First Contact

Prior to speaking with the Insured to carry out enquiries, contact should be made with the Insured’s Broker (including the ‘wholesale’ Broker if there is one), to notify them of the Adjusters’ involvement and to discuss the matter. Claims are important to Brokers given that this is often a time which impacts their clients calling for a high level of communication and commercial sensitivity.

The Broker also has an existing relationship with the Insured and can provide assistance in relation to the information gathering process throughout the claim. In liaising with the Insured, it is also prudent to keep the Broker informed of all salient developments on an interim basis assisting their overall management.

Bringing the Broker and the Insured into the fold as collaborative working partners for the duration of the case has a multitude of benefits, not least of which is the ability to manage expectations of the latter in regard to process and issues associated with liability and indemnity where applicable.

The last thing the process needs is for a claim to result in broker / client / adjuster friction because of lack of communication.
The Enquiries

As discussed, the ambit and scope of enquiries which Adjusters can be instructed to carry out may vary. The enquiries may be limited to a more investigatory role to obtain certain specific facts or to obtain a witness statement, through to more detailed reporting in relation to complex facts including commentary relevant to considerations of liability, indemnity and recovery.

As a starting point for the investigation, after considering the initial material supplied an experienced Adjuster will formulate a ‘checklist’ to identify the issues to be addressed, documents to be collected and examined and personnel to be interviewed. In many cases instructions from Lawyers will incorporate the issues, and in such cases it is critical to ensure that each matter is addressed accordingly.

In conducting the investigation it is important to have regard to the original instructions including any requests for specific particulars and to identify information and documents directly relevant to those instructions. If information is ascertained during the enquiries which are relevant but not necessarily a part of any original instructions, such information should be raised with the client to be included in the report if it is relevant.

Case Study - Scent of Mosi…

By way of an example in one claim, a Third Party alleged that a mosquito had been captured during manufacture within a bottle of perfume, which had been purchased as a gift. Upon the recipient using the perfume and later discovering the hapless mosquito, it was contended that thereafter the Claimant developed a physiological injury resulting in a claim for significant compensation being made against the manufacturer for alleged mental distress. While the claim was not ultimately proven, it is critical in these circumstances for the Adjuster to align the initial handling of the enquiries with the preference of the client and the Insured, to ensure that the relevant facts are ascertained and that the Insured’s reputation is not unfairly ‘stung’ in the process. In this case it was asserted by the claimant that the mosquito could have somehow led to contraction of disease. On review of the contents of the perfume it was established that the alcohol content present was sufficient enough to confirm a sterilized product.

A concise report, with witness statements where applicable directly responding to the instructed enquiries will also assist the client to more accurately consider matters impacting upon liability and indemnity, in the shortest possible time.

At Charles Taylor Adjusting (CTA) we look to ensure that the most appropriate expertise is brought to bear on claims of a technical and complex nature. In this way, concise queries cut straight to the issues that affect the determination of whether a legal liability exists. Some cases might therefore involve the use of our legally qualified Adjusters who are assisted by our in house qualified engineers for example.
What type of information is required?

After initial meetings and to confirm the information discussed, it is often necessary to issue a request for information (the ‘RFI’). An RFI may confirm matters discussed at the meeting including seeking additional information, contractual documents and plans referred to, issuing drafted witness statements or requesting information as to Third Party quantum for example.

The RFI should be relevant and concise and must address each element of the Adjuster’s instructions in order to allow for a better understanding of the claim and for the drafting of an appropriate report upon the completion of the enquiries. The RFI should also be issued in a polite and professional manner as with all correspondence. Claims can be a stressful time for the respective parties involved and requests for information should always be made with this in mind. As a representative of your client, the Loss Adjuster is also often the only person with whom the Insured or Third Party may meet in person and have consistent dealings with, during the life of the claim.

In many cases, such as those involving significant personal injury or property damage, it is often the case that concurrent investigations are being performed by WorkSafe, Department of Mines and Petroleum in mining / energy related matters and Fire and Emergency Services. It is important that the Adjuster liaises with these parties to confirm his / her involvement and query with the instructing principal whether a Freedom of Information request should be issued for copies of available documentation to be unearthed in the course of such investigations.

Simply put, if the RFI is convoluted and contains irrelevant questions and requests, then it should not be a surprise that the Insured and/or claimant will no doubt provide a disinterested response and any revisiting of the pertinent questions in this scenario are likely to fall of deaf ears to the detriment of the claim. It is important to get the RFI right first time.

The Third Party

Subject to the Adjuster’s instructions, the Adjuster may need to liaise with the entity or person making the claim and to which the Insured (and its Insurer) are responding to. While such parties are independent to the Insured and Insurers, professional courtesy should always be exercised noting that it is also often the case that parties involved in a claim may have an ongoing commercial relationship operating independently of the dispute. All key matters discussed with the Third Party and / or its legal representatives should be confirmed in writing and every effort should be made to manage expectations as to the claim process and timeliness. This is especially important in liability claims where the process may take some time to complete due to the involvement of a number of different parties.

Most discussions will be on a without prejudice basis simply because at the time of interview not all of the relevant information will have been discovered and digested. Thus, the determination of a legal liability may yet to be determined and furthermore any consideration of such a liability will rest with the instructing Principal to which the Adjuster is reporting.
Collation of information – now what?

The Adjusters report is the ‘shop window’ and consolidates the extent of efforts in investigating and assessing the claim pursuant to the issued instructions. The report should therefore both address the instructions and deliver the information obtained in a clear and concise manner. At this time it is important to review the Adjuster’s brief along with any specific requirements the client may have as to reporting protocols. For example, should the report:

1. Include specific comments relevant to liability and policy indemnity, or is this information not to be included?
2. Is the report being delivered to an Insurer, a legal consultant or to a self-insured entity?
3. Is information about potential recovery required? While the character of the document remains a form of business correspondence, the report should still flow, such that it appropriately imparts the facts of the claim in context with the instructed requirements.

The report should contain an identification of the parties to the claim; the facts of what occurred; a visual description of the area or product and circumstances involved; a discussion of what is being claimed and how it is assessed; what caused the loss complained of; and (if required), direct commentary as to considerations relevant to liability, policy response and recovery.

While the form and content of the report will be dictated by the nature of the original instructions along with any other requirements mandated by the client, the report should in essence relay an accurate story of the claim and its disparate elements in a cohesive manner. In many instances this will include the use of photographs and, in some cases additional film content to include footage recorded on site, CCTV where available and, increasingly, drone footage for a broader perspective.

The above sounds simple but often by the time the Adjuster has been appointed there has already been much discussion and potentially self-serving investigation and commentary offered. It is the Adjuster’s role to review all information and identify the wheat from the chaff. On occasions, the version of events advised by the Insured might be quite different to that of the third party – so who is right? This is what the Adjuster has to ascertain before reporting to their client.

Sounds complicated - do we need an ‘Expert’?

Liability claims are invariably concerned with determining the cause of damage or injury including the party or parties responsible for the occurrence. This often requires concerted investigative enquiries to be exercised by the Loss Adjuster and may also require the appointment by Insurers of a particular subject matter expert; for example a consulting engineer in a construction related loss or a materials analyst where claims of insufficient adhesion are relevant. Generally, however, depending upon the amount of the claim and the cost of the expert, it is common for a request to be made for the Loss Adjuster to carry out the bulk of enquiries relevant to establishing the cause of an incident and damage. The Loss Adjuster is often able to identify the issue or issues relevant to causation and to therefore allow for a determination of the cause of damage to be quickly made by the Insurer. If there remains doubt requiring a technical opinion, with the issues having been narrowed, an expert may then be appointed to provide further discreet advice.

Keeping in mind that certain claims might end up in a Court, the Adjuster would not be a suitable expert witness and careful consideration of the selection of the subject matter expert would be required if the cause is contentious or obscure.

The issue of the cause of damage is a central part of any factual report dealing with considerations of liability and policy response. A detailed canvassing of the issues surrounding causation is therefore required including providing options to retain expert advice if relevant. If this occurs then there is a reasonable chance of bringing the matter to settlement or declinature that is supported by facts and logic.
Case Study - Of course it was the hose...

In another example involving a significant fire to a mining shovel it was alleged that an onboard hydraulic hose which had been installed by the Insured had failed leading to a catastrophic fire that destroyed the multi-million dollar shovel.

In this situation the Insured's liability insurers were contacted and CTA appointed to investigate. As the damage was severe much of the ‘evidence’ was destroyed. On this occasion it was determined that a forensic engineer with mechanical background and fire investigation experience was required.

This consultant was briefed to investigate the nature of the hose, its installation and whether the fire pattern and damage observed supported that the cause of the fire was the failure of the hose. Through investigation it was determined that the fire started elsewhere and thus the Insured's position was successfully defended. This finding could only have been achieved by having the right expert look at the pertinent issues.
Case Study - Full steam ahead…

The proper investigation into the cause of a matter can yield interesting results in terms of responsibility, including… the truth! One such claim involved alleged damage to underground fibre optic cable located along a railway corridor, claimed as a result of nearby Insured demolition works. The building company in control of the site had passed the claim onto the Insured, who were left facing a significant bill for rectification of certain railway assets.

After it was verified by Insured personnel with supporting documentation showing that not only was the Insured not present at the site at the time of the claimed damage but had also documented relevant works done by others on the claimed date of loss, same was telegraphed to the Claimant who then sought to... amend the date of loss.

On the basis that a loss of signal from physical impact occurred contemporaneously in time resulting in the immediate alerting of the asset owner, a deep investigation into the facts including the issue of causation in terms of the operation and timing of optic cable loss, resulted in the complete derailment of the claim, to the Insured’s satisfaction. In this instance the ‘right’ forensic experts were deployed to tease out the critical facts.
Conclusion

After the report has been issued the client will provide instructions which may include a direction to finalise the claim to settlement. The settlement of liability insurance claims with Third Parties are issued on a without prejudice basis based upon a Deed of Release to be signed by the Third Party. It is important for the Adjuster to confirm the form of the Release with the client and to ensure that the Release is comprehensive and duly signed. Upon completion, the Release should be provided to the Insurer and the Broker and the Insured informed of claim settlement.

In assessing liability claims regard should be had to the nature and extent of the instructions provided with regular communication provided to all parties as to the claim process including its progress. Adherence to these general principles will assist with the delivery of best practice in the assessment of liability insurance claims.

About Us
Charles Taylor Adjusting (CTA) is one of the leading loss adjusting businesses in the market. We provide loss adjusting services across energy, marine, aviation, property, casualty and special risks along with average adjusting services for ship owners. The business primarily focuses on larger and more complex commercial losses arising from major insured incidents and claims. CTA is a business of Charles Taylor Plc (www.ctplc.com) which is quoted on the London Stock Exchange (CTR).

Charles Taylor plc is a leading provider of professional services to clients across the global insurance market. The Group has been providing services since 1884 and today employs over 1,800 staff in 71 offices spread across 28 countries in the UK, the Americas, Asia Pacific, Europe the Middle East and Africa.

The Group offers services, principally on a fee-based model and operates through three businesses – Management, Adjusting and Insurance Support Services. It also own insurers in run-off. Charles Taylor’s vision is to become the professional services provider of choice to the global insurance market.