

# MARSH RISK CONSULTING

## FACS FILES

### CLAIMS PREPARATION CLAUSES - POLICYHOLDER AND INSURER PERSPECTIVE



The purpose of a claim preparation clause is to indemnify a policyholder in relation to reasonable costs it incurs in preparing and presenting a claim. The clause effectively provides funds to enable a policyholder to engage an expert. Usually the claim preparation clause is found as an extension to property damage and business interruption wordings, and is applicable to all policies

Claim preparation clauses cover the cost of preparing the claim (which is usually an obligation under the insurance contract) but exclude the cost of negotiation and/or claims advocacy.

Wordings and limits vary. However, a typical generic claim preparation clause is as follows:-

“The insurance by this policy includes the reasonable and supportable costs incurred by the Insured (including utilising by Insured of external consultants) for preparing, presentation, certification and/or verification of any claim resulting from loss insured under this policy. This is in addition to the policy limits”

What are the benefits of this clause? Does it only benefit the policyholder? Are insurers hostile to this clause or do they acknowledge that the claim preparer adds value to the claim process.

#### WHY MIGHT A POLICYHOLDER ENGAGE AN EXPERT CLAIMS PREPARER AND WHY SHOULD THIS BE A RECOVERABLE COST?

It is a common misconception that because an insurer has appointed an independent loss adjuster there is no requirement for a policyholder to engage claim preparation support. To the contrary, the role of the loss adjuster is to adjust a claim after it has been prepared and presented; the loss adjuster is not engaged by an insurer to prepare and present the claim. It is an obligation of the policyholder as set out in the claims condition to prepare its claim and submit it to insurers.

The manner in which a claim is prepared and presented can have a significant impact on the final outcome of the claim.

If a policyholder does engage an expert claim preparer to assist with the quantification, preparation and presentation of a claim, should this not be a recoverable cost? The intention of an insurance contract is to indemnify the insured against all costs associated with an incident and, providing these costs are necessarily incurred and are directly in relation to claim preparation/presentation, they should be recoverable. The purpose of a claims preparation clause is therefore to ensure that policyholders are indemnified should they choose to seek expert advice in the process of preparing the claim.

## WHAT ARE THE BENEFITS OF A CLAIM PREPARATION CLAUSE?

The value of this clause to the policyholder is self apparent; indemnity against a cost they deem necessary to incur to prepare and present the claim. However, is there benefit to the insurer, or is it perceived that the inclusion of claim preparation clauses increases the cost of the claim and offers no value in return? As this document explains, there are clear benefits to all parties in the process which is why many insurers are showing willingness to include this clause in policies, including property damage / business interruption wordings.

## FREQUENTLY ASKED QUESTIONS

### Does a client need claim preparation support on every claim?

An expert claims preparer will be of greater value on major loss and/or complex claims, particularly involving business interruption. On smaller process driven claims the service can be of less value, which is why some insurers prefer a minimum threshold for claim preparation. What constitutes a major and complex claim depends on the size and nature of the policyholder.

### Who can a client engage to carry out claims preparation work?

International loss adjusting firms work for insurers and generally clients will turn to their own trusted advisers for claim preparation support. Many of the accountancy practices offer a claim preparation service as do many brokers and risk advisers / consultants. The Marsh Risk Consulting offering in relation to claims preparation is through Forensic Accounting and Claims Services (FACS) which is a multi disciplined team comprising qualified experts including chartered loss adjusters, accountants and surveyors who have experience of preparing claims following major loss.

### What is the process that policyholders follow when engaging a claims preparation expert?

Often a client will approach more than one claims preparer to ensure that it is accessing the best available resource at a competitive price.

If FACS is advised of an incident, we meet with the policyholder, prepare an appropriate scope of work and estimate the cost. If the proposal is acceptable, the policyholder will sign a letter of engagement and, in the event claims preparation cover is in place, this is shared with the insurer so they are familiar with the proposed scope and cost of work.

## WHAT ARE THE BENEFITS TO THE INSURER?

- Expectations are managed from the outset.
- A well prepared claim can accelerate settlement resulting in a reduction in the life cycle of the claim and associated costs.
- Policyholders without resource can be completely focused on recovering the business leading to a drawn out and frustrating claim process.
- Good and prompt professional advice can lead to a shorter period of interruption and a reduced exposure. It can also enhance the 'claims experience' received by the policyholder and lead to greater satisfaction and customer retention.
- Encouraging a policyholder to access expert advice fully supports the ethos of 'treating customers fairly'.
- Additional support to avoid misunderstandings that may lead to dispute.

## WHAT ARE THE BENEFITS OF THIS CLAUSE TO THE POLICYHOLDER?

- Receive timely and expert guidance through the myriad of claims-related issues; this can often be the difference between the policyholder's successful and unsuccessful recovery after an incident.
- Ensure claim is maximised whilst being properly prepared and presented in accordance with policy cover.
- Provides expert funded resource to prepare the claim whilst key employees focus on recovery of the business.
- Creates a 'level playing field' to counter balance the array of advisers employed by the insurer to handle the large and complex claims.
- A claims preparer knows the process and requirements of the Insurer, particularly in relation to interim payments and how to speed up settlement. Timely payments are crucial to maintain cashflow.

## HOW IS CLAIM PREPARATION CHARGED?

FACS generally charges on an hourly rate which will depend on the nature, size and complexity of the claim, and possible geographical variances. FACS cost compares favourably with competitors such as accountancy practices and other expert claims preparers.

On occasions FACS can also charge on a fixed or contingency fee basis, although such manner of charging does not always lend itself to recovery under a claim preparation clause (which can often only be used with prior insurer approval). It is important to recognise that claims preparation fees are agreed as one off engagements and the costs are met by the client directly. The test of reasonableness (in relation to recoverability under a claim preparation clause) is like any professional fee and should be based on the market rate for this type of work, not the volume led procurement contracts entered into by loss adjusters as they perform an entirely different role.

## WHO IS INVOICED FOR CLAIM PREPARATION WORK?

The client, under the terms and conditions of engagement.

## WHAT HAPPENS IF AN INSURER DOES NOT ACCEPT THE FULL COSTS INVOICED?

The client would have to bear any costs incurred that don't fall within the claim preparation clause. It is important that the policyholder recognises at the outset that the cost of advocacy and negotiation is not recoverable and that the client is aware of policy limits.

The prime interest of Marsh Risk Consulting is in the wider relationship with its Client and this service will only be offered to the extent it adds value; the cost will also have to be competitive and justifiable.

## FOR MORE INFORMATION:

For further information and assistance, please contact:

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