



2019 CLM Southeast Conference

October 3-4, 2019

Orlando, FL

How is the Market Falling Short in the Handling of CAT Claims and How Do We Improve?

The presentation will focus on different areas of the industry with an emphasis on how each area must work together to ensure the success for dealing with the massive catastrophic events which very well could lie ahead. While we all agree on the areas where we fell short those areas represent the areas of opportunity for improvement training, education, development of resources, preparation, and partnerships within the industry. The panel will give ideas, solutions, and recommendations for improving the handling of CAT losses for the future in claims and litigation management.

Claims Processes and Delivering on the Promise—things to consider:

Obstacles in rapid claims response; avoiding the bottleneck at the beginning of response; How many resources will you need; & efficient workflows and processes. There is also the idea of the gap between keeping pace with consumer expectations and technology. We must identify how technology has changed consumer expectations; various technology levels among carriers creates different experience throughout industry; & managing technological deficiencies. In addition, there are CAT Planning and Preparations to observe which include continuous improvements based on lessons learned of prior responses; identification of resource/staffing needs that are scalable; and finally, vendor partner relationships (Adjusting firms, engineers, emergency services vendors, staffing firms, call center etc.)

Training and Development of Resources

Shortage of qualified and trained resources for a CAT Event

When our industry experiences years without a significant catastrophic event the adjuster resources are diminished with otherwise independent adjusters seeking full time or steady employment in other areas. Training, education, development of skills and learning how to implement and use new technology also suffer during these times. Complacency and less than strong solid catastrophe planning occurs. During the years of no catastrophic events the adjuster force that would normally handle storm claims is significantly diminished. When an event then occurs and we have an active storm season, for example 2017 with Harvey in Texas followed by Irma in Florida and then Maria in Puerto Rico and losses estimated at \$92 billion there were not enough trained and qualified adjusters. Usually the state issues an emergency declaration that allows for the requirements for an adjuster licenses to be issued quickly and with few requirements. Many issues are caused by unseasoned adjusters handling such large

catastrophic losses. The carriers are stressed with getting someone out to the policy holders' home with rapid response and expediting getting money and relief to the devastated property owner. Whether it be their home or their business, the need to have their carrier make good on their promise to put them back like they were before the event is urgent.

Partnership between the resources and the lawyers and clients/carriers

The industry as a whole must become better communicators and consolidate the processes to share information with their industry partners. The collaboration between carriers, adjusters, engineers or other experts and lawyers has fallen short and the shift of these resources to compensate for weaknesses has failed. In recent catastrophic events it was not understood the volume of claims coming in and the capability of handling those claims would breach certain limits as set forth in their CAT Plan. Industry lawyers, the plaintiff bar, has examined and taken a public stance that the mishandling of claims caused by too much work flow being handled too fast by too few people, as caused by the adjuster shortage along with claims pending in litigation years later as a huge failure within the insurance industry. Better communication and cooperation is needed between agents, adjusters, experts and lawyers is needed to the handling of catastrophic claims and a better outcome.

Education of resources about the importance of proper handling and the future outcome of the claim

Adjusters and all of those involved in the beginning of the claim from the FNOL to payment of the loss need to be trained and have a thorough understanding of the importance and impact that the initial loss handling has on the claim. If it is whether to make good on the promise of good faith and fair claims handling or to prevent litigation the importance of proper claims handling is key. The timeliness and quick turnaround time has a bearing on customer retention. Studies show that keeping cycle time low is in direct correlation to customer retention. A J.D. Powers survey indicates that the shortest cycle time in the industry is 11 days (Amica) and the greatest customer retention rate is with the same carrier (Amica). The importance of managing and education of adjusters and other resources cannot be stressed enough. The impact that these resources have on the business that has been built by a company is critical to industry success in the face of catastrophic events.

Completing a proper investigation

Thorough claim investigations are key to properly servicing the consumer, dealing fairly with the insured, and ensuring compliance with certain duties and obligations. Our insureds deserve a prompt and comprehensive investigation when catastrophe strikes. Too many times, however, when analyzing the claim investigation after litigation ensues, there are many unanswered questions and missing information.

First, prior to rendering a coverage decision, the claims professional should have all of the information relating to the loss available to him or her. Documents, including estimates, contracts, invoices, etc., should be obtained. Perhaps more importantly, the carrier should know the "story" of the loss from the insured. What happened? What is damaged? Who is involved? Many times these questions are left unanswered before the investigation is concluded.

How can we do better? There are many tools at the carriers' disposal to help assist it with the claim investigation. These tools are often overlooked or underutilized. For instance, if you have not spoken to the insured, set up a time to conduct a recorded statement. If you are unable to speak with the insured, coordinate an Examination Under Oath. Obtaining the facts and circumstances of the loss from the insured (or perhaps tenant or other witnesses) is vital. Further, request a proof of loss and/or damage estimate/repair receipts to fully understand the damage claim. In summary, ensure the claim investigation is completed prior to rendering a coverage decision.

Raising a defense with regards to late reported claims

Late reported claims should raise a red flag from the beginning. It's not to say there isn't a viable excuse from the insured for failing to timely provide notice of the loss, but the carrier should fully investigate the reasons why the loss was not reported timely. A reservation of rights letter should be sent out as soon as practical in order to protect the carrier's interest and place the insured on notice.

Again, a complete and thorough investigation should be completed prior to rendering a coverage decision. Many times the carrier will send out an adjuster who determines the amount of damages are under the policy deductible. A less than deductible letter is then mailed to the insured without fully analyzing the claim or understanding the damages. At that point, coverage is opened and many defenses that could have been appropriate are waived.

Policy conditions are an important part of the contract between the insured and carrier. The first condition is to provide prompt notice of the loss. When defending cases based on the insured's failure to provide prompt notice, a two-step process is evaluated: (1) was there prompt notice; and (2) was the carrier prejudiced. The second prong is critical in defending late notice cases, as the investigation must be such that the carrier is unable to complete its investigation, and is truly prejudiced. However, if coverage is accepted, even if under deductible, it is likely the prejudice argument will be waived.

It should be so much better than the battle of the experts

If you are left defending a first-party property case over a "battle of the experts", you are in a tough position. The deck is already stacked against insurance companies. Indeed, sometimes there is no choice, or the value merits the risk of trial. However, in my experience, many of our experts are hesitant to completely commit to one side or another, hedging their bets. Discussing the expert's opinion and conclusions from the outset is key to evaluating the strengths and weaknesses of a case. Even if you have a solid opinion, you can bet the plaintiff will select someone just as good.

Thus, defending first-party property cases based on coverage exclusions can be difficult. If, however, the claim investigation is done properly, there may be various options to raise policy defense/condition violations. This presentation is geared towards having a full understanding of importance of the claim investigation, not only to ensure the correct decision is made, but to protect the carrier in the event of subsequent litigation.