

IMIA Working Group Paper WG 92 (15)  
IMIA Conference Merida, Mexico Sep. 2015

Engineering Insurance:  
Best Practice - Claims Protocol



IMIA Conference, Mexico, 2015

Prepared by:

Christian Müller, XL Catlin Insurance, Zurich Switzerland (Chairman)  
John Forder, Willis, London United Kingdom  
Javier Rodriguez Gomez, Insurance Consultancy, Tlalnepantla Mexico  
Peter Hazell, Charles Taylor Adjusting, London United Kingdom  
Ilona Strauss, Munich Re, Munich Germany  
Tom Tannion, Overseas NEIL, Dublin Republic of Ireland  
Martin Valk, XL Catlin Insurance, Munich Germany  
Michel Vilijn, Amlin Europe, Amstelveen The Netherlands

## Table of Contents

<b>1</b>	<b>THE CLAIMS PROTOCOL .....</b>	<b>3</b>
<b>2</b>	<b>PURPOSE OF THIS PAPER .....</b>	<b>4</b>
<b>3</b>	<b>DO'S AND DON'T'S CHECKLIST .....</b>	<b>5</b>
<b>4</b>	<b>COMMUNICATIONS.....</b>	<b>6</b>
4.1	Identify the Key Stakeholders to be involved in the Claims Handling process.....	6
4.2	Appoint a nominated claims team.....	7
4.3	The team should agree a communication plan .....	7
4.4	Alignment of interests .....	8
<b>5</b>	<b>LOSS NOTIFICATION .....</b>	<b>9</b>
<b>6</b>	<b>INFORMATION EXCHANGE.....</b>	<b>10</b>
6.1	Initial Investigations.....	10
6.2	Management Information and Bordereau .....	11
6.3	Data Set .....	12
<b>7</b>	<b>FINANCIAL CONCLUSION.....</b>	<b>13</b>
7.1	Settlement .....	13
7.2	Fee fund .....	13
7.3	Subrogation .....	14
<b>8</b>	<b>RESOLUTION PROCEDURE.....</b>	<b>15</b>
<b>9</b>	<b>APPLICATIONS OF THE PROTOCOL: OPERATIONAL POLICIES .....</b>	<b>16</b>
9.1	Machinery Breakdown - MB .....	16
9.2	Business Interruption - BI.....	17
<b>10</b>	<b>APPLICATIONS OF THE PROTOCOL: PROJECT POLICIES.....</b>	<b>18</b>
10.1	Contractor's All Risks (CAR) and Erection All Risks (EAR) .....	18
10.2	Maintenance .....	18
10.3	Delay in start-up (DSU) / Advanced Loss Of Profits (ALOP) .....	19
10.4	Third party liability (TPL) .....	19
10.5	Marine Cargo.....	20
<b>11</b>	<b>LEGAL .....</b>	<b>21</b>
11.1	Consequences of breach .....	21

## 1 The Claims Protocol

**Definition:** A pre-defined written set of guidelines for dealing with larger and more complex claims.

- 1) Expect a loss to occur and plan accordingly.
- 2) Create and agree a process that involves the key stakeholders.
- 3) Establish a team to oversee that process.
- 4) Ensure that team members have adequate authority.
- 5) Communicate effectively and frequently.
- 6) Conduct meaningful status reviews.
- 7) Agree a process for handling objections / challenges and disagreements.
- 8) As far as is practicable, encourage transparency.
- 9) Recognise that key details of the process may differ when applied to projects or to operational risks.
- 10) Maintain progress, if necessary through partial claim payments.

## **2 Purpose of this paper**

Insurance is a people business and, in this context, claims are certainly not simply about money. The process of claims handling and the engagement of the parties during the process can be as important as the outcome itself. The aim of this document is to proactively set out how claims are to be pursued and concluded through the active involvement of all parties in the process. The protocol seeks to set out principles that will assist in the avoidance of the most common significant challenges experienced in recent major losses:

- Lack of communications
- Lack of transparency
- Costly inefficiencies
- Distrust between stakeholders

This protocol identifies the key guiding principles that can apply to all claims procedures, which if followed or incorporated into individual claim processes should help avoid the pitfalls referenced above. However, this Protocol cannot remedy poor Policy drafting – please refer to the “Legal Character” Section.

The principles can be summarised as follows:

- Transparency of communications
- Fairness of outcome
- Efficiency of effort and costs
- Mutual Co-operation

The remainder of the document now focuses on our recommended “best practice” elements to meet those guiding principles. It is preceded by a general Do's and Don't's checklist and concludes with chapters on how these principles apply in specific covers:

- Communications
- Loss Notification
- Information Exchange
- Financial Aspects
- Resolution procedure
- Applications of the Protocol
- Legal Considerations

### 3 Do's and Don't's checklist

#### Do:

- Involve the right people.
- Have clarity of the process.
- Agree the process and clearly define the focal points and reporting frequency.
- Appreciate the vital importance of timely “incident notification”.
- Agree that time and money will be invested in setting up the investigation process at Policy inception.
- Recognize the value of effective determination of the actual cause of the damage - this should precede Policy interpretation.
- Agree that verbal communications take precedence and should be pursued where possible. Action points are then minuted and agreed.
- Avoid linear communication and ensure all parties are fully informed.
- Obtain confirmation from all stakeholders at each stage of the process - set expectations.
- Understand and accept that each stakeholder has obligations and clear responsibilities both to the team and his / her employer.
- Agree response time parameters – and stick to them.

#### Don't:

- Cut corners at the outset – time invested here reaps rewards when / if a loss occurs.
- Ever “assume” that
  - ticking a box on a form is the same as communication
  - what you say is what is heard – check that the message and the intent of the message is communicated
- Exclude stakeholders

## 4 Communications

In reviewing a number of claims and “what went wrong”, it’s clear that sometimes, even when a claim is paid, there remains unhappiness relating to the process. We conclude that much of this can be avoided if adequate and effective communication takes place throughout the process of a claim and at all stages. All parties should clearly be aware of their duties and responsibilities.

For large projects, there is value to investing time and effort as early as possible to put in place an effective claim process. Time and effort here, can save time, effort, costs and dissatisfaction in the event of a major incident. Hoping that a claim will not occur is not an effective metric. Putting in place a process that has lots of box-checking and box-ticking will not mean that an incident is processed with the interests of all parties effectively represented. We recommend there should be an anticipation of a large claim for every Policy issued.

If you work on the assumption that a loss will occur, you can (and should) plan more effectively for what to do in the event of that loss. A good motto would be something like – “hope for the best, but prepare for the worst!”

Here are some of the actions to be addressed ahead of the project:

### 4.1 Identify the Key Stakeholders to be involved in the Claims Handling process

The interest of each team member should be recognised (because interests are not always aligned). Those interests will include:

- Representatives of the (Re-) Insurance carrier(s)
- Representatives of the Insured(s)
- Representatives of the Broker(s)
- Nominated Loss Adjuster(s).

Recognise that there are interests of additional stakeholders that may need to be considered in the communication process. These could include:

- Main Contractors and Subcontractors
- Local Broker
- Local lead Insurer / Cedant / local Insurance panel
- Reinsurance Broker
- Co-Reinsurers / international Reinsurance panel
- Financiers.

It should be the common objective of the above mentioned stakeholders to establish a transparent, fair and efficient method of handling claims such that losses are resolved between the stakeholders.

## **4.2 Appoint a nominated claims team**

For major projects and for complex operational covers, it is suggested that a Claim Team is nominated and in place before any loss occurs. As a failsafe, a nominated deputy should be appointed for each team member. To be effective the team should consist of those capable and authorized to make decisions.

To keep the claims process on track the team will need:

- Key stakeholders to be represented by personnel with appropriate levels of authority.
- The team should consist of focal points (contacts) whose role beyond being on the team would be to communicate back to their own entities.
- Ideally the team should be no larger than five members.
- The team should appoint a chairman. The role, responsibilities and authorities will be set by the team according to the circumstances.
- The team should have at least one preliminary meeting before any event has occurred. If possible the process should be tested pre-loss.
- To agree that “smaller claims” might not require full team oversight.
- Agreement in respect of the “pre-loss” remuneration of the adjuster and thereafter, the fee schedules.
- Additionally, a site visit by all parties may be necessary / appropriate.

## **4.3 The team should agree a communication plan**

This might include such matters as:

- Frequency of meetings – post-event.
- Methods of communications to be adopted.
- Dealing with “issues / complaints” raised.
- Team members confirm at each stage that issues do or don’t exist (i.e. all stakeholders to highlight legitimate unresolved issues).
- Team members should honour their responsibilities including that of reporting back to their own stakeholders.
- Potential conflicts of interest that exist should be acknowledged but this should not prevent team communication – even if that communication is to confirm difficulties.
- Bullet points of actions agreed should be kept.
- A review process should be adopted to double-check the effectiveness of the team and the process.

#### **4.4 Alignment of interests**

Whilst theoretically the interest of all parties involved in making and resolving a claim is to obtain a settlement that is in accordance with the terms and conditions of the Policy, in reality the interests of at least some of the parties may not be fully aligned and conflicts can and do occur. Wherever possible, these should of course be addressed by the Claims Team at an early stage of the claim handling process, although the misalignment or conflict can arise at any stage during the claim resolution process.

Primarily there are only two interests to be aligned i.e. those of the insured and insurer. However, in practice there are a multitude of other parties involved in the process such as Loss Adjusters, various experts (e.g. Forensic Investigators), Brokers, Reinsurers and sometimes Lawyers. Moreover, risks are often placed with a co-insurance panel of Insurers which in turn may have behind it multiple reinsurers that may have their own views on Policy liability and they may wish to enforce a claims co-operation or even control clause. In some cases the terms and conditions of the Reinsurance may vary from the Insurance.

In an effort to minimise conflict arising from the misalignment of interests of one or more of the parties involved, the Claims Team should seek to:

- Identify misalignments of interest at the earliest stage possible.
- Create an atmosphere of trust amongst all the Team members.
- Be open and direct in all discussions.
- Create a common understanding acceptable to all stakeholders.
- Finalize the claim settlement whilst recognizing (and in spite of) differences of opinion.
- Consider agreeing indemnifying non-disputed elements of the claim whilst negotiations continue.



## 5 Loss Notification

Initial notification should be made as early as possible and in accordance with Policy stipulations. In addition to fulfilling the legal Policy requirements, the first notification may be made via any of the following:

- Telephone
- Email (incident form)
- Web application.

Where a claims team has been set up, the notification should be communicated via a pre-agreed manner to the whole team and an acknowledgement must be sent to the notifier.

If losses are notified via a web-based loss management system, it is important that the system is maintained and current.

## **6 Information Exchange**

The investigation and development of a claim is largely predicated on the information supplied by the Insured and the enquiries undertaken by the appointed loss adjuster. Frequently, unfortunately, these investigations can be held-up / stalled due to reticence on the part of the Insured, or their advisers, to provide all the necessary information and documentation requested, in a timely fashion. The involvement of Claims Assessors and / or Public Adjusters can be a further complicating factor that will need to be resolved.

A lack of trust will be a major stumbling block to the smooth progress of a claim, which has been found to stem from a lack of transparency between the parties. It is therefore imperative that all parties have a clear understanding, from the inception of the Policy, as to who will be involved and the nature of how the necessary information will be disseminated in the event of a loss.

Too often, when information and documentation is sent through to the adjusters and Insurers, it is in a format that cannot easily be read and interrogated. Accordingly, the parties need to agree that all documentation will be supplied in its original or pre-agreed format. Every attempt should be made to ensure there is mutual cooperation, to try to reach a fair and correct outcome and that at every stage there is a clear understanding of what is required.

### **6.1 Initial Investigations**

When a claim is first notified, arranging immediate access to the site is vital, so that every opportunity is available for a first hand inspection with the ability to secure all evidence relating to cause, particularly if there is going to be any possibility of a recovery against a third party. Once this first site inspection has been completed, a detailed “wish-list” should then be compiled and circulated to all parties.

If this investigation involves an adjuster, he should also be provided with copies of the applicable policy wording, together with all endorsements if any. Consideration should also be given to making this information available to adjusters, pre-loss, when and if there is a nominated adjuster agreed by the parties. Similarly, if there has been a pre-risk survey report then again this should be made immediately available to the adjuster to assist the overall process.

The Insured’s site personnel should be encouraged to compile an immediate photographic record of the event, as soon as it is safe to do so, with all and any witnesses being identified. Statements will then need to be taken from the witnesses at the earliest opportunity.

Detailed below is a summary of the type of information the Insured would normally be required to supply, at the earliest opportunity, to the appointed adjusters, the Brokers and Insurers. The following relates to a property loss:

- Full Contact Details - names, telephone numbers and e-mail addresses.
- Confirmation of the time and date of loss.
- Description and location of the loss.
- Initial Internal Inspection Reports with any initial findings / conclusions.
- Details of the damaged property / equipment at the location.
- Operational history and previous maintenance schedule.
- Maintenance Records.
- Root cause of failure / damage.
- Original colour photographs.
- Any additional information not previously provided.
- Details of the current situation regarding operations and any repairs undertaken.

All parties should strive to remain pro-active in their approach to the claim and specifically to the supply of all requested documentation and information. This should be made available as soon as is practicable.

## **6.2 Management Information and Bordereau**

An effective claims administration process and system is necessary, not only for the straight forward claims but more especially for claims on policies where there is an annual or aggregate deductible in place - here it is an absolute necessity.

Where applicable, details of all the Insured's losses will be maintained on a bordereau which will be held on an agreed platform, viewable by all authorised users online. The bordereau will show Reserve, Payments and Comments setting out the present position on all cases.

The bordereau should be exportable in Excel or other common format and therefore be broken down into separate spreadsheets where required.

The Comments section of the bordereau should identify who is responsible for what actions, so that it will be clearly visible what steps need to be taken to progress any given claim.

Only authorised administrators should be able to update the bordereau.

All authorised users should be able to access reports on each claim by clicking on the claim reference.

### 6.3 Data Set

Find agreement to and a common understanding of the source data to be used as reference should be reached. Prior to binding a Policy it should be highlighted, for example, that the following documents might be of broader interest to all stakeholders (if applicable):

- Common source meteorological data normal action of sea, precipitation return period, flood.
- Common source geological data especially for tunnelling / underground projects.

If parties work from different data sets, confusion and increased costs associated with misunderstandings arise.

## **7 Financial conclusion**

Once liability has been admitted and the partial or final claim amount payable under the Policy established, a letter of settlement, release agreement, proof of loss or other document may be required by local law, duly signed by the Insured will be provided to stakeholders. Upon receipt, the claim will be settled and the amount paid to the Insured or to the designated party as per loss payee clause under the Policy.

### **7.1 Settlement**

Settlement agreements should be made in accordance with applicable regulatory, statutory and common-law requirements.

If a settlement is partial, or settles claims across different Policies or Policy years, then the settlement documents should record that fact and also how the settlement has been apportioned. This is important for recovering from reinsurers. This should also be clearly reflected in the claim file of all stakeholders.

Foreign Exchange rates can be an issue when partial payments are made or significant time delays exist between date of loss and final settlement. If not addressed within the Policy these matters require attention.

### **7.2 Fee fund**

An insurance claim that involves multiple Insurers and levels of insurance can be simplified by creating a fund to meet common expenses. Funds are especially helpful on large projects that may extend over a number of years. The administering party should not be involved in the direct claims handling. They can be administrated by lawyers, public trustee or forensic accountants. In any event, the independence and integrity of the nominated administrator should be beyond question.

The Claim Team should have the authority and responsibility to agree and sign-off invoices, timesheets and expenses. The team should also address such issues as fund top-ups, taxes, transparency and compliance.

Some advantages include:

- Easy administration
- Less dependency on late payments
- Reduction of payment processes in particular for scattered panels
- Less cash flow problems for third party experts.

Calculations on the size of the fee fund based on estimates from adjusters and experts may be overstated. It might be considered prudent to lower the value and reinstate the fee fund before it is exhausted.

### 7.3 Subrogation

The topic of subrogation can be complex and might best be addressed separately and specifically in the protocol.

In many project covers it is a common market practice to grant a waiver of subrogation against all Insured's by Policy provision. For the purpose of a substantiated risk analysis it is recommended to restrict such a waiver where possible, e.g. to the main (or named) contractors. If such a waiver is granted for all parties involved in the project it is a challenging task to pursue any subrogation action.

The jurisdiction applicable to the Policy may have an impact upon the status of the extent to which the various parties are insured (e.g. "additional insured" or "additional named insured" etc.). However, in general terms, it is not normally possible to subrogate against an insured party unless there is some clear restriction in the Policy as to the extent to which such a party is insured.

An example might be where architects / consulting engineers etc. are insured under the Policy as regards their "on-site activities" only and not as regards their design input. Similarly, suppliers are often only covered for their activities on site and there would therefore be rights of recourse against them should it transpire that the indemnifiable loss or damage was caused by for example a manufacturing error made at the suppliers factory.

There will normally be a duty upon the Insured to fully assist the Insurers in exercising rights of subrogation against all parties responsible for the indemnifiable loss or damage. This will include access to the site to secure evidence at an early stage, disclosing contracts and other pertinent documentation.

However, there is often some discussion between the insured and the Insurers as to the timing of any such subrogation action as the primary concentration should always be upon the appropriate settlement of the claim under the Policy – whilst of course seeking to ensure that any rights of subrogation are maintained.

Furthermore, how any recovery will be distributed amongst the parties to the contracts must be addressed. This is strongly recommended for there to be complete transparency between the parties.

## **8 Resolution procedure**

In the event of a claim, fundamental differences of opinion can arise. In order to avoid arbitration or litigation, options which might be exercised include:

- Have the issue reviewed by senior management.
- Ask for an independent view of an acceptable and mutually agreeable third party.
- An agreement to submit the issue to informal arbitration, expert appraisal or mediation.

Whatever is decided must be agreeable to and not in conflict with the parties (and local procedures / systems). Regular and open review meetings will do much to defuse any developing concerns or issues and the importance of them cannot be overstated.

## 9 Applications of the Protocol: Operational Policies

During the Underwriting process and in all likelihood during detailed Risk Surveys, a general loss mitigation concept (or business continuity plan) for the Insured's operations will be addressed. This can comprise an extensive list of measures to assist the Insured to restore operations as quickly as possible after an incident, such as:

- alternative production, storage or office facilities
- specific agreements with restoration companies or equipment suppliers
- spare part supply
- internal processes and procedures

A basic outline of the loss mitigation plan including key contacts – such as the name and telephone number of a restoration company – should be included or referenced in the Claims Protocol, to promote a seamless coordination of initial measures when an incident occurs.

Specific aspects may be discussed when drafting the claims protocol. Much will depend on the nature, scope and breadth of cover in force. Of course, this is an example list only and not exhaustive.

### 9.1 Machinery Breakdown - MB

#### Valuation

Quite often an Insurance Policy and / or the attached schedule does not include a detailed and agreed list of values for individual Insured objects (value breakdown), it rather lists a general overall value for the full location which can be several billions of EUR / USD for larger installations like power plants or refineries. Ideally, the methodology for calculating values in the event of a loss will be clearly set out in the Policy. In the event of a claim, significant dispute can still arise around the specific values (NRV – new replacement value, ACV – actual cash value, or book value) of the damaged property. In this case an expert may be appointed to evaluate the value of damaged items. A recommended option is that involved parties compile a list of potential valuation experts for early involvement in the event of a claim.

#### Maintenance companies and Original Equipment Suppliers

For large industrial operations like factories, power plants or chemical processing units maintenance is frequently either partly or fully outsourced to external providers, based on Long Term Service Agreements (LTSA). These contracts can be limited, providing just a basic framework for spare parts or staff, or range up to very comprehensive contracts comprising operation of the plant as well (O&M – Operation and Maintenance) with extensive warranties for availability and reliability.

Suppliers can be Original Equipment Suppliers (OEM) or third party providers. Involved parties, in particular Insurers, should consider the impact of potential LTSA or O&M contracts in the event of an incident, as this might provide a



significant potential to mitigate the claim by rapid involvement of qualified personnel and access to critical spare parts via these contracts.

Be aware, however, this might restrict potential to involve alternative suppliers.

Furthermore, the contractor might have contributed to the damage through faulty workmanship, for example, and could therefore be a target for subrogation. Remember that OEMs or LTSA contractors can be named Insured's under the Policy. In any case the Claims Protocol should mention the existence of any such agreement and list contact details of Maintenance contractors to allow an early involvement in the event of a claim.

## **9.2 Business Interruption - BI**

### **Critical Spare Parts**

For specific machinery like compressors, turbines, transformers and similar items there might be very long lead times of a year or more. This can result in very large BI losses, which might be avoided if an effective spare part strategy exists. If addressed early enough, relevant contact data for access to strategic spare part pools, or alternative suppliers or repair companies can effectively contribute to loss mitigation and reduction of downtime which is in the interest of all parties.

### **Economic Data and Contracts**

The settlement of a BI claim can require comprehensive documentation of economic data, including contracts like delivery contracts with suppliers and clients, Power Purchase Agreements (PPAs) or "Take-or-Pay" contracts. For a Claims Protocol the nomination of a Forensic Accountant familiar with the type of industry and geography is recommended. The working group recommends that appointed Experts work under the direction of the Nominated Adjuster. An example of a document request list can be added to the claims protocol, to create awareness of the Insured about the minimum level of information that will be required in the event of a claim.

## **10 Applications of the Protocol: Project Policies**

Project covers are unique. Compared to operational risks we often face multi-year contracts, complicated by new technologies, location, capacity or political environment.

The cover can consist of several lines of business including:

- CAR / EAR
- Maintenance
- DSU / ALOP
- Third Party Liability (TPL)
- Marine Cargo / Transit

Cover can be in effect for several years with limited rights of cancellation. When setting up the claims protocol it is necessary to recognize the different phases of construction. The potential risks can be so diverse, that it might be prudent to consider nominating alternative adjusters for different project risks. It is also necessary to ensure that the protocol is updated as necessary.

When multiple parties are insured, their interests may differ or even be contrary. This needs to be recognized and accommodated when the protocol is put in place. As far as it is practicable the stakeholders must be made aware of their rights and responsibilities.

### **10.1 Contractor's All Risks (CAR) and Erection All Risks (EAR)**

Damage under a project Policy produces different challenges which need to be taken into account when the protocol is drawn up. Often, there are many insured parties and, as a result, identifying causation can often be a complex process and therefore it is essential to involve all parties. For example, parties can agree on one forensic engineer being appointing for root cause analysis.

In addition, one needs to consider which terms, conditions and exclusions are relevant during the different stages of a project. For example higher deductibles which are usually in place during testing and commissioning.

### **10.2 Maintenance**

In practice it is often difficult to identify which parts have been handed over and thus fall under the maintenance cover. By tracking the project status and associated handovers, the task of identifying the correct situation is more easily resolved.

By appointing an independent project monitoring organisation all parties should then clearly understand the progress of the project at any given time. This will also prove very beneficial when we come to the DSU / ALOP section.

### **10.3 Delay in start-up (DSU) / Advanced Loss Of Profits (ALOP)**

When seeking to determine compensation under the DSU / ALOP section of the insurance Policy, two key components must be established:

- The actual date the business commenced
- The scheduled business commencement date
  - this is the date the Insured's Business would have commenced, had the delay not occurred.

The gross loss is calculated from the difference between the two dates multiplied by a financial "per day" loss.

DSU / ALOP Policies require specific handling in the event of a claim which should be addressed in the Claims Protocol. As mentioned above in the "Maintenance" section, by appointing an independent project monitoring organisation, there should be less difficulties and disagreements between the parties with regard to the delay periods. Progress reports issued by the principal or the contractor are also valuable information sources to enhance transparency during the entire lifespan of a project. These must be in native data format (PrimaVera or SAP) for detailed analysis to separate delays caused by insured or uninsured events.

Similar to BI insurance, first efforts when a claim occurs will focus on effective loss mitigation methods, to reduce the impact on the works schedule and to avoid or at least reduce a delay of the business commencement date. Due to the complexity of a DSU claim it is essential that suitable experts are evaluated beforehand and named in a claims protocol.

### **10.4 Third party liability (TPL)**

For TPL claims it is a condition of the Policy that the insured does not take any action, either to respond to any claim or to admit any liability, without Insurer's prior consent.

The Insurer not only has the obligation to seek a recovery, but also to defend the Insured's rights. Therefore the Insured must provide all relevant information to assist in the conduct of the proceedings.

In the Claims Protocol a specialist TPL adjuster should be considered. These claims are often high frequency and thus need a different approach.

## **10.5 Marine Cargo**

Again, in the Claims Protocol, a specialist marine adjuster might be considered for these claims depending upon the extent of the risk. Advice in this regard should be sought from the Marine Underwriters. Often, special documents need to be provided, such as Bills of Lading, including Incoterms 2010 and others, which require detailed knowledge and experience in this area.

Furthermore the specialist adjuster will be able to advise on the need to oversee loading / unloading. Such information can help identify where any damage occurred. Although most policies contain a 50/50 clause it should be in the interest of all to have certainty about the cause of loss. Otherwise this can result in disputes regarding applicable deductibles, DSU / ALOP cover, etc.

## **11 Legal**

Note that the applicable law and jurisdiction can have a significant impact on the validity of certain stipulations.

It is essential that the protocol is clear on the legal character: either having a binding effect or as a best practice document. Consequently, the protocol can form part of the Policy or it can be established as a separate document.

To avoid ambiguity there must be a clear statement as to whether the Policy wording or the protocol takes precedence. The working group recommends the latter because the protocol will (likely) describe the claims process in more detail than the Policy.

By having the claims protocol as a separate document other relevant parties can be included. This will align interests and establish a transparent process of mutual cooperation.

As a best practice document, the parties are not necessarily legally bound to comply with the provisions, but it still sets out a common understanding and at least binds the parties in a “moral” way.

### **11.1 Consequences of breach**

If the protocol forms part of the Policy any breach of obligations stipulated in the protocol would trigger the same consequences as outlined in the Policy.

The consequences of a breach differ depending on whether the obligation is a condition precedent or a simple condition. In some jurisdictions a condition precedent is not recognized, but under English or US Law this is very important.

Generally any breach of or non-compliance with Policy / protocol stipulations will have an impact on the liability of the Insurer, which can include entitling the Insurer to deny coverage. As an example, if an Insured does not comply with the notification requirements (e.g. a late notification) this can either have no legal consequence or could entitle the Insurer to deny coverage. An Insurer could also feel the consequences of breach. As an example, if an Insurer is not responding on Policy liability or is not paying on an account payment this can have legal consequence too.

It is vital to clearly define the consequences of breaches – whether these are breaches by Insurers, Insured's or other contractual thirds parties. This is even more important if the protocol does not form part of the Policy.