

EAR/ CAR

Third Party Liability

Existing and Surrounding Property

... a commodity in EAR / CAR that developed its own life

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Introduction / Summary

Definition and Main Exclusions

Conditions – Endorsements in South Africa

Site Visits and Premium Calculations

PML Considerations / Taiwan

Loss Cases

Underwriting Considerations and Loss Prevention

In the late 1960's CAR/EAR policies were normally accompanied by a separate annual liability policy.

Section II - TPL to the material damage policy was not required and therefore simply unknown.

This is still the case in USA, Canada, Germany, Switzerland, Austria and other markets.

In the sixties, when contractors accepted overseas contracts, overseas authorities required a project related liability extension.

TPL cover was intended as a commodity only.

TPL-sections provided only a low TPL-limit and, compared to Comprehensive General Liability, a restricted cover.

Later ...

TPL wordings generally became wider and wider ...

TPL coverage was extended outside the project site (sometimes even worldwide !)

Third party no longer simply meant „the man on the street“ (eg. workers on site, public frequenting areas handed over etc.)

higher TPL limits were asked for

the public claims awareness skyrocketed since some 25 years especially in liability matters

growing claims frequency in TPL

changes in some local jurisdictions

growth in quantum of awards increased cost of litigation

liability market reacted to changes in court jurisdiction and to growing claims awareness already in the 1980ies

Engineering continued sleeping !

projects are becoming more complex

each project is unique and exists in a new environment

problems of an itinerant workforce, living away from home or travelling long distances to site

use of dangerous plant and equipment

use of hazardous working methods and materials such as blasting, welding/flame cutting, tunnelling, excavation, installation high above ground

temporary construction phases (lower stability), absence of permanent fire fighting / prevention systems during exposed phases
close proximity of existing or surrounding property

Some more Problem Areas

subsidiarity - see General Conditions of the policy

unclear wording / lack of definitions (insured parties, third party, property, immediate vicinity etc.)

scope of cover : what means „legally liable for ...“

occurrence vs. claims made

contamination / pollution

cross liability extension

VRWS extension

partial handing over (Prior To Use) etc.

TPL should not include what is offered by other related products which may offer a better cover :

Motor : legal requirements, written separately

WC/EL legal requirements, written separately

Professional Indemnity : legal requirements, to be written separately

Product Liability - to be written separately

Environmental Liability - separately where required

TPL : from ground up, low limits, restricted scope of cover

CGL : higher limits, wider cover, higher rates on wages, reinsurance often on second risk

Scope of cover - basic philosophy or original intention to grant indemnity against legal liability for

accidental material damage to third party property and bodily injury (whether fatal or not) to third party persons i.e. no liability for non-material damage such as trespass, nuisance, loss of rights, loss of amenities, infringement, libel etc.
and no consequential losses whatsoever

Insureds : named under the material damage policy

i.e. Principal, Contractor/s, Subcontractor/s

careful : Architects, Engineers, Consultants
(→ Professional Indemnity Insurance);

Usually underwriters limit cover to site activities only

not : Banks, Financiers, Customers, Suppliers

During which period ?

Works plus Testing / Commissioning

Maintenance – in many markets NOT granted, imposed by law in others

In such case, TPL is usually limited to visits part only (contractor complying with maintenance obligations)

Where ? on site or in its immediate vicinity (not very clear)

General Conditions of EAR/CAR-policy :

excesses as stated in the schedule

liquidated damages, penalties

wilful act, omission, gross negligence by directors etc.

war, civil war etc.

(reversed onus of proof for political risks !!)

nuclear weapons, radiation etc.

pollution, contamination – not all wordings have this exclusion)

expenditure incurred for repair or replacing any work or property covered or

all items which can be insured under Material Damage Section (i.e. Existing Property, PLEQ etc.)

bodily injury whether fatal or not suffered by any employee or workman of the contractor(s) or the Principal or any other firm or person providing materials or services or in any way connected with the contract works or the dependants of such persons

bodily injury to or illness of any person within areas taken over or taken into use by the project owner or principal

any property belonging to or held in care, custody or control of

any accident caused by vehicles licensed for general road use, water borne vessels or aircraft

technical or professional advice given by the Insured or ..

any loss to underground services of any kind ...

loss to crops, forests, livestock and/or other cultures

2 important definitions of „Property“

Existing property :

owned by the principal resp. an insured party

= to be insured under Section I (sublimit/add.premium)

Surrounding property :

owned by Third Parties such as neighbors, passengers etc.

= covered under Section II (TPL) and within the limits

may also cover consequential losses of relocating owners / tenants !

often insufficient working standards, lack of experience, unclear definition of buildings really covered etc. - often superficial damage claimed

accumulation problems along a tunnel, around a sinking shaft etc.

Solution recommended :

cover only for total or partial collapse or imminent threat of collapse

cracks only indemnified if stability impaired

buildings to be listed clearly

survey study for each building necessary

covered buildings to be listed up in annex to endorsement

safety measures to be taken before commencement of works

sublimits e.e.l. / aggr., deductibles e.e.l (% / min)

“ ...the Third Party Liability Cover of the Policy shall apply to the insured parties named in the Schedule as if a separate policy had been issued to each party ...”

The original idea had been to grant liability cover for an insured in case another coinsured party would have forfeited the cover. Today it is mainly understood to attach for claims among the insured parties.

However, CL does not operate to increase the insurance company's overall limit of liability.

Whatever CAN be insured – whether insured or not - under Section I is NOT covered under CL. No existing property therefore can be claimed under CL. The same applies to Contractor's Plant and Equipment.

The CL endorsement should not allow for bypassing any other exclusion / restriction of the policy. A potential danger : contractor A claims against Contractor B for suffering standstill costs ...

CL often is misunderstood as a subsidiary or even a primary cover for Workmen's Compensation / Employers Liability.

Loss – collapse of diaphragm wall

Nicoll Highway, Singapore Circle Line

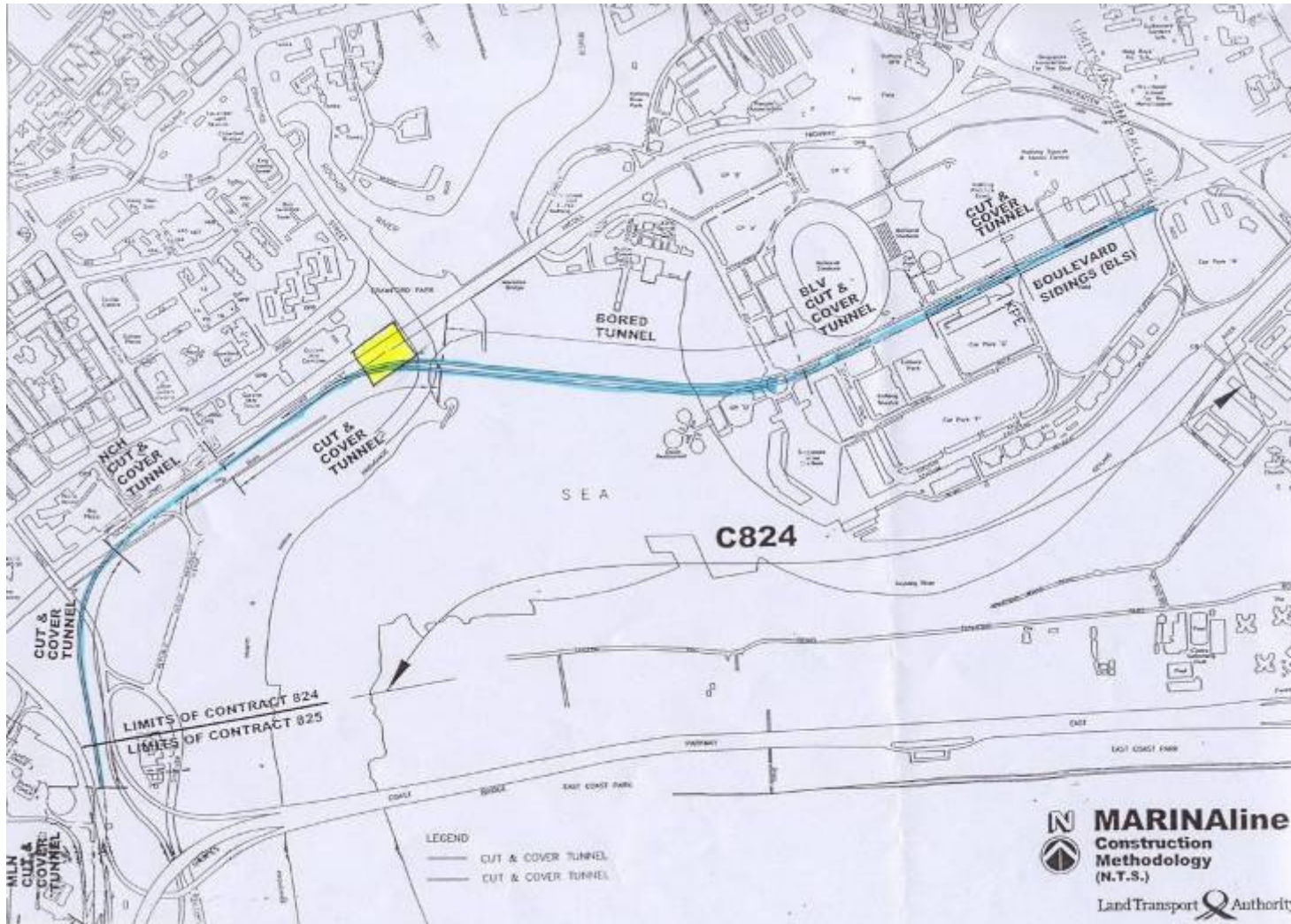
Cut and Cover section collapsed on a length of 150m

Cables, pipes, sewer lines, culverts damaged

3 fatalities (workmen)



Nicoll Highway, Singapore



Cause of loss : design / workmanship

Estimated losses :

Property (section I) S\$ 25 m

TPL (section II) S\$ 15 m

(limit as per policy 10 m)

For the official investigation report see

<http://www.mom.gov.sg/NewOSHFrameworkandInvestigationsonNicollHighwayCollapse>

Loss case – water ingress in vertical shaft



A diaphragm wall started leaking until huge quantities of water poured in.



The outside groundwater level fell and the surrounding terrain settled, seriously damaging buildings and civil structures.

Loss case – collapse of tunnel under a road



A tunnel collapse caused damage to surrounding buildings / shops and equipment.

Israel : foreign workmen of a subcontractor started an open fire in a building under construction in order to prepare their daily tea, one got seriously burnt and was partially disabled

Although the CL endorsement excluded WC/EL the subcontractor sued the principal and contractors for lack of supervision and finally won in court.

A residential complex in a Mediterranean Capital had been handed over. Full maintenance had been granted and TPL during the maintenance period was included. Due to inadequate bolting of a protective cover plate (=faulty erection) a large drainage opened and a 9-year old girl was sucked into the outlet pipe where she tragically drowned.

As the cause of loss had occurred during the construction period, the TPL cover attached.

In the past Casualty underwriters (inexperienced in CAR) were criticised for „overpricing“ TPL cover. They gladly passed this task to Engineering underwriters.

The CAR/EAR underwriter (inexperienced in TPL) concentrated mainly on the Material Damage risk assessment. TPL exposure was often underestimated. The TPL premium was frequently „guessed“ or fixed as a nominal amount (e.g. 10 % of material damage premium).

Usually premiums are not split in material damage and ALOP sub-premiums. An analysis of the TPL loss ratio is therefore hardly possible.

Interestingly, Taiwan reports for the past 8 years flg. average TPL loss ratios :

CAR 92,4 %

EAR 157,8 %

Usually creating scenarios ..

depending on type of risk

depending on scope of cover

very often 100 % of PML limit to be added to material damage PML

regular inspections

inspection report to suggest measures to minimise exposure and prevent losses, ALSO in respect of TPL

depending on type of risk and environment

(roads, tunnels, deep excavations ...)

increase awareness iro TPL exposure

The following Construction Stage Risk Register has been successfully used and takes the various phases of a project into account :

Construction Stage Risk Register (TPL)

Likelihood Categories

Score	Descriptor	Description
1	Improbable	about 1 in 1000
2	Unlikely	about 1 in 100
3	Possible	about 1 in 10
4	Likely	more likely to happen than not
5	Frequent	almost certain to happen

L= Likelihood
S= Severity
R= Risk

Severity Categories

Score	Descriptor	Third Party Structures/Infrastructures Impact
1	Minor	Non structural damages to less than 4 storey buildings
2	Moderate	Possible structural damages to less than 4 storey buildings Non structural damages to high rise buildings
3	Significant	Structural damages to buildings Disruption to public utilities for less than 8 hours
4	Substantial	Damage to high-rise building & bridge foundations Disruption to public utilities for 8 to 48 hours
5	Catastrophic	Collapse of buildings Disruption of public utilities more than 48 hours

Risk Ranking

Likelihood Score	Severity Score				
	1	2	3	4	5
5	M	H	H	H	H
4	M	M	H	H	H
3	L	M	M	H	H
2	L	L	M	M	H
1	L	L	L	M	M

Item	Hazard	Cause	Consequence	Inherent ranking			Control Measures	Residual Ranking		
				L	S	R		L	S	R
T	Tunneling works									
T1	Excessive settlement of third party structures	1. Loss of slurry pressure 2. Dewatering of overburden 3. Instability of tunnel face 4. Existence of large cavity/ void in the vicinity tunnel	Building structural damage	3	3	M	Third Party Structures/Infrastructures 1. Surface monitoring at locations and frequencies as per specifications 2. Evacuate building owner if accidental ground loss happens	2	3	M
T2	Excessive settlement of buried services	Same as T1	Damages to services	3	3	M	Third Party Structures/Infrastructures 1. Services in the vicinity to be identified and monitored 2. Surface monitoring at locations and frequencies as per specifications 3. Inform and request for information on locations of services along the tunnel alignment from JBA, TNB, Telekom, Maxis, Time, JPP & Gas Malaysia 4. Invite services authorities for joint inspections when TBM is near services, if necessary.	2	2	L
T3	Collapse of tunnel	1. Loss of support due to undetected Karstic features 2. Poor quality of tunnel lining and joint 3. Tunnel lining weakened by subsequent activities 4. Poor support at x-passages	Damages to third party structures & infrastructures	2	4	M	Third Party Structures/Infrastructures 1. Surface monitoring at location & frequencies as per specifications	1	3	L
T3a			Injury or death to workers	2	2	M	Health & Safety 1. Prepare emergency response plan for evacuation of workers	1	1	L
T3b			3rd party claim for comp.	2	2	L	Cost: Carry out remedial works immediately to mitigate further damage	1	1	L
T3c			1. Stop work order issued by authority 2. Massive repair work	2	3	M	Progress of Works 1. Pre-assemble documents to lift stop work of order 2. Prepare contingency plan for tunnel collapse	1	2	L

Underwriting TPL in CAR/EAR....



JORDI VICENT

... is an art





Thank You

