

Coverage Misalignment & Engineering Claims Examples

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Morris Mhishi



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MRoA Team
Claims Strategic Importance

Meet the Team





Our Philosophy

- To pay all valid claims quickly and effectively.
- Technical support, cooperation and assistance for large and complex losses.



Trainings and Market presentations

- Training courses, workshops and seminars.
- Claims publications, including brochures, magazines.



Claims service

- Assistance with loss mitigation measures.
- Sharing global experiences and lessons learnt to ensure claims handling and management best practices.
- Expert identification and recommendation for large and complex losses.

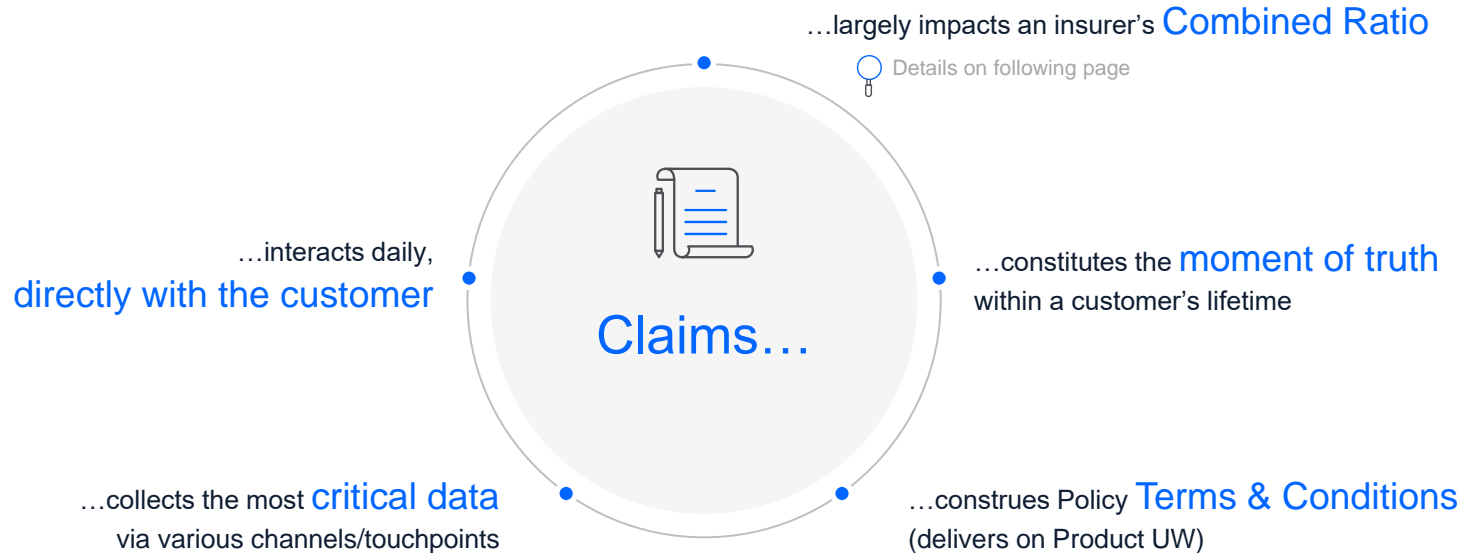


Value Add

- Wording expert support with respect to claims to ensure contract clarity and legal certainty.
- Assistance with Nat Cat contingency preparedness and activation plans.

Claims as **the** driver of an insurer's operational performance

Strategic importance of claims

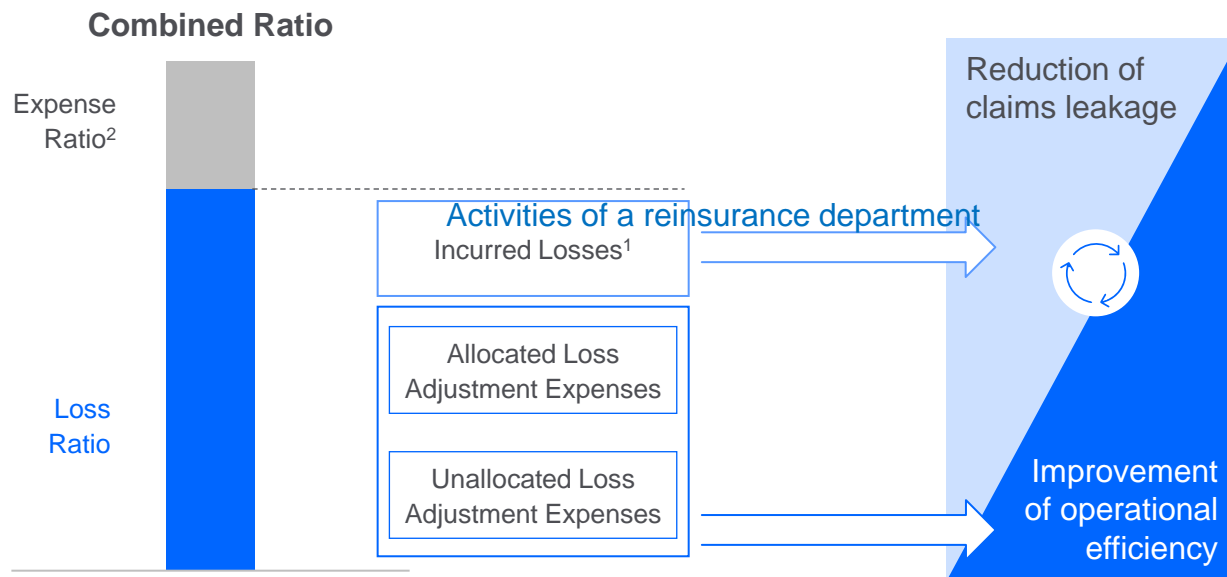


We recognize the strategic importance of Claims and its transformative impact on product, data, customer satisfaction and eventually Loss Ratios

LR improvements realized by a holistic optimization approach

Loss Ratio split in theory

Loss Ratio split, illustrative



Key levers for improvement of LR³

- **Two key** levers to reduce loss ratio:
 - Reduce incurred losses by primarily reducing claims leakage
 - Reducing loss adjustment expenses (LAE) by improving operational efficiency
 - Actions within areas of improvement **highly interdependent**
- **Holistic, sensible approach** required with focus on **reducing incurred losses as primary loss component**

Small reductions in leakage/efficiency improvements with huge potential impact on profitability

1. Including claims reserves (IBNR = incurred but not reported, RBNS = reported but not settled) and claims paid
2. Claims expenses might also be part of and impact Expense Ratio, depending on size of insurer, financial reporting / account rules etc.
3. Focus on claims-related drivers (claims, reserves, LAE = numerator of LR equation) instead of premium (denominator of LR equation)

The following three points are worth noting;-

Notification

- Reinsured should notify reinsurers within 30 days for all losses that exceed or have the potential to exceed the loss advice limit, i.e., all large losses

Cooperation

- Ongoing cooperation between reinsured and reinsurers is critical, including experts' appointment, submission of all required supporting documents, completion of the MRoA Large loss Notification/Cash Loss Form, etc.

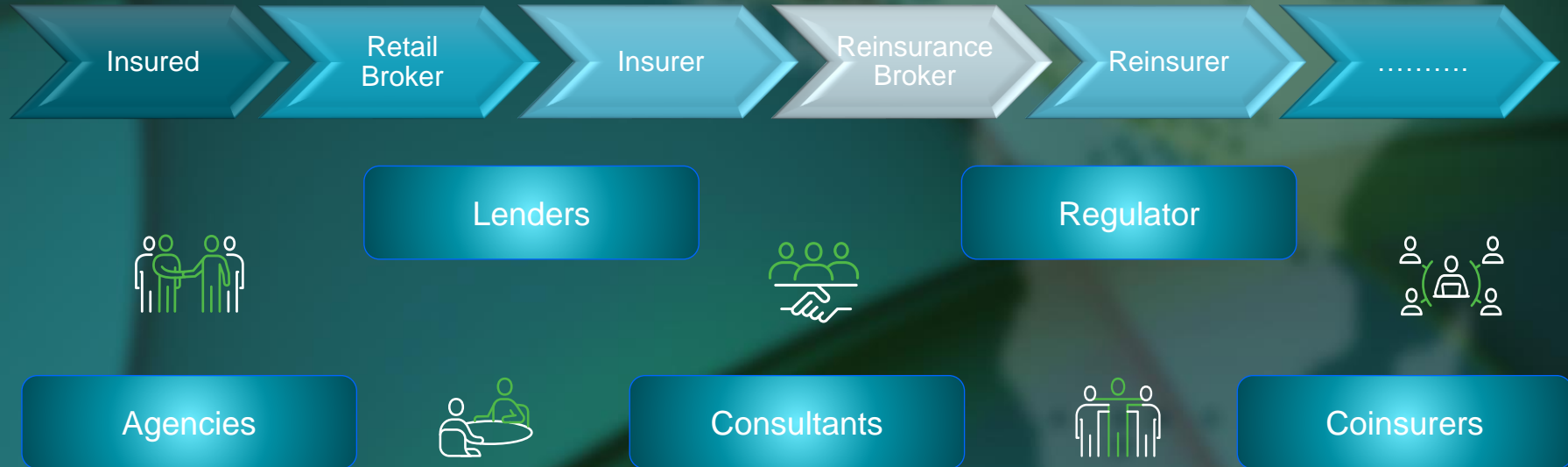
Compromised Claims

- Reinsurers' consent is required before reinsured may admit liability and settle and/or compromise claims

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Coverage Misalignment

Coverage Misalignment The Insurance Food Chain



Coverage Misalignment The Insurance Food Chain



Insurance Slip
Insurance Wording

Reinsurance Slip
Reinsurance Wording



Coverage Misalignment Reinsurance Conditions

- Typical Reinsurance clauses:

**REINSURANCE
CONDITIONS:**

All terms and conditions as per original policy except as amended herein.

CONDITIONS:

All terms, clauses and conditions as detailed in the attached Original Policy Wording, such Original Policy Wording being as detailed in the Original Conditions, except where amended herein in so far as may be applicable to this REINSURANCE.

Coverage Misalignment Reinsurance Conditions

WRITTEN LINES (CONTINUED):

MRoA 20% ex 100%

-
- Subjectivities :
- - MRoA renews policy on expiry Terms and Conditions
- - Munich Re Facultative Reinsurance Conditions
- - LMA 5397 Communicable Disease Exclusion
- - LMA 5401 Property Cyber and Data Exclusion
- - Machinery Breakdown is excluded
- - Cover for MB to be reviewed upon receipt of a satisfactory survey report
- - Original Policy wording to be agreed
- - NKORL to date
-
-

Munich Re (MRoA) Reinsurance Conditions for Facultative Engineering Business

Notwithstanding all other terms and conditions, amendments and contract changes, a Munich Re reinsurance participation will be subject to the below conditions. In case of any conflicting conditions, those below will take precedence.

- Munich Re full agreement party to all other terms and conditions, amendments, contract changes and claims.
- Sanction Limitation and Exclusion Clause (LMA3100amened as attached)
- It is agreed and understood that any kind of data including programs and software shall not be considered as insured property and shall not be covered under this policy.
- IMIA ADVANCED CYBER EXCLUSION 2018 (as attached).
- NMA 2738 Claims Control Clause (as attached).
- NMA 1685 Accidental Pollution (as attached).
- CL 370 Nuclear and Biochemical Exclusion (as attached).
- NMA 2919 War and Terrorism Exclusion Endorsement (as attached).
- NMA 464 War and Civil War Exclusion Clause (as attached).
- NMA 2919 and NMA 464 should be read in conjunction with each other, neither one is to be read in priority to the other
- LMA 5394 Communicable Disease Exclusion (as attached)

- Premium Payment Terms: LSW 3000 – PPW 90 days (as attached).
- This Reinsurance shall be governed by and construed in accordance with the laws of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.
- Ex-gratia payments excluded.
- No known or reported losses until confirmation of signed line. / No deterioration of losses until inception.
- Terms valid 30 days.
- No cover given.

SANCTION LIMITATION AND EXCLUSION CLAUSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer [and/or its parent company, its direct or indirect holding company, its capital providers or its directors and officers] to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, local sanction law of South Africa, or United States of America.

CLAIMS CONTROL CLAUSE (LM4)

Notwithstanding anything to the contrary contained in this Reinsurance it is a condition precedent to Reinsurers' liability under this Reinsurance that:

- (a) The Reinsured shall give to the Reinsurer(s) written notice as soon as reasonably practicable of any claim made against the Reinsured in respect of the business reinsured hereby or of its being notified of any circumstances which could give rise to such a claim.
- (b) The Reinsured shall furnish the Reinsurer(s) with all information known to the Reinsured in respect of claims or possible claims notified in accordance with (a) above and shall thereafter keep the Reinsurer(s) fully informed as regards all developments relating thereto as soon as reasonably practicable.
- (c) The Reinsurer(s) shall have the right at any time to appoint adjusters and/or representatives to act on their behalf to control all investigations, adjustments and settlements in connection with any claim notified to the Reinsurer(s) as aforesaid.
- (d) The Reinsured shall co-operate with the Reinsurer(s) and any other person or persons designated by the Reinsurer(s) in the investigation, adjustment and settlement of such claim.

1/1/97
NMA2738

Coverage Misalignment

- Many stakeholders are involved in placing a large risk
- Parties have different interests and try to achieve a (from their point of view) good solution
- All agreements must be made in writing and parties on involved need to be informed about the agreed scope of cover and conditions
- Insurance and Reinsurance terms should be aligned
- Gaps in cover for the insured or for the insurer can be avoided

Kenya Power Plant

- Operational Power Plant
- Sum Insured:
 - PD USD 121m
 - BI USD 28m
- Plant consists of 10 diesel units

Reinsurance Conditions

Following Original Policy Wording Reference Number: TBA

This Contract is subject in all respects, (excluding the rate and/or premium hereon and subject always to the Limits Reinsured hereon and except as otherwise provided herein), to the same terms, clauses and conditions as original and without prejudice to the

The following exclusions shall apply as Original, unless not contained in the Original Policy wording in which case the referenced clause shall apply:

- MR Endo 1366 Special condition for Repairs to Combustion Engines (Diesel)
- Expediting Expenses Limit 20% eel
- Fire Fighting expenses Limit 100,000 USD eel
- Occurrence 72hrs Clause
- Multiple Insureds (according to LEG Clause)
- Fraudulent Claims ~ LMA 5062
- Claims Control for Claims
~ NMA 2738
- Average clause ~ NMA 348
- Serial losses clause ~ Endorsement 1360

CM insurance – Endorsement 1366

Special conditions: repairs to combustion engines (e.g. diesel, gas engines)

This endorsement forms part of section 1 and is subject otherwise to the terms, provisions, conditions and exclusions contained in the *policy of insurance* or endorsed thereon.

1. Condition

1.1. In the event of loss of or damage to cylinder liners, cylinder heads inclusive of accessories and pistons, the amount indemnifiable in respect of the items thus affected shall be depreciated at an annual rate to be determined at the time of the loss, this rate being not less than 10% per annum but not more than 50% in total.

CM insurance – Endorsement 1360
Special conditions: serial losses

This endorsement forms part of section 1 and is subject otherwise to the terms, provisions, conditions and exclusions contained in the *policy of insurance* or endorsed thereon.

1. Condition

1.1. The *insurer* shall in respect of loss or damage resulting from a fault, defect, error or omission in design, plan, specification, material, casting or workmanship of the same nature to property of the same type or design indemnify the *insured* according to the scale specified in clause 2.

2. Limit of indemnity

2.1. After application of the deductible specified in the *schedule* the *insurer* shall indemnify the *insured* for:

- % of the first 2 loss amounts
- % of the 3rd loss amount
- % of the 4th loss amount
- % of the 5th loss amount

2.2. The *insurer* shall not indemnify the *insured* for the 6th and following cases of loss or damage resulting from causes of the same nature.

Kenya :Power Plant

- Circumstances
- On 17 March 2017 there was a failure of the generator. However in a space of 8 months there was 9 failures as well of generators on the plant.
- Loss amount
- USD PD 2.5 Million :B.I USD 2.0 million.
- Specific Conditions on the policy:
- Serial loss clause.
- Special clause on repairs to combustion engines

Kenya Power Plant

- Reinsurance terms based on Original Policy Wording
- Additional clauses added on the reinsurance slip ('unless not contained in the Original Policy wording')
- Reinsurance conditions limited coverage for depreciation and serial losses
- Original policy provided wider cover
- The gap remains with the ceding company

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CAR Settlements Issues

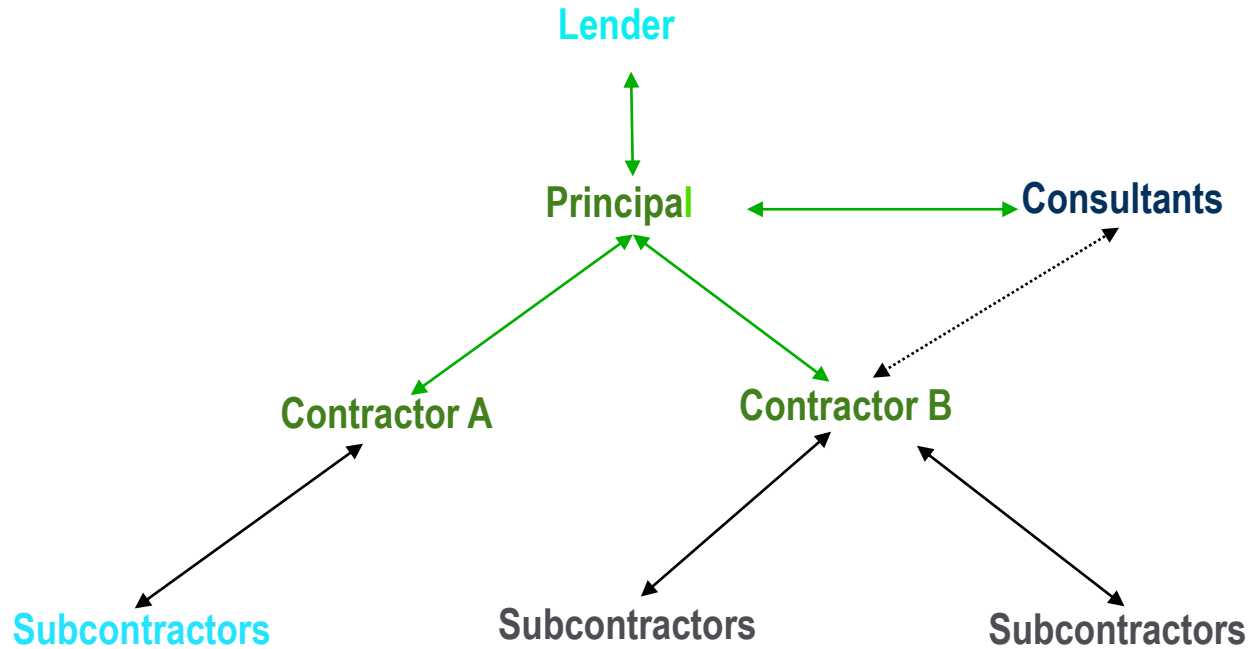
CAR Claims :Challenges In Settlement

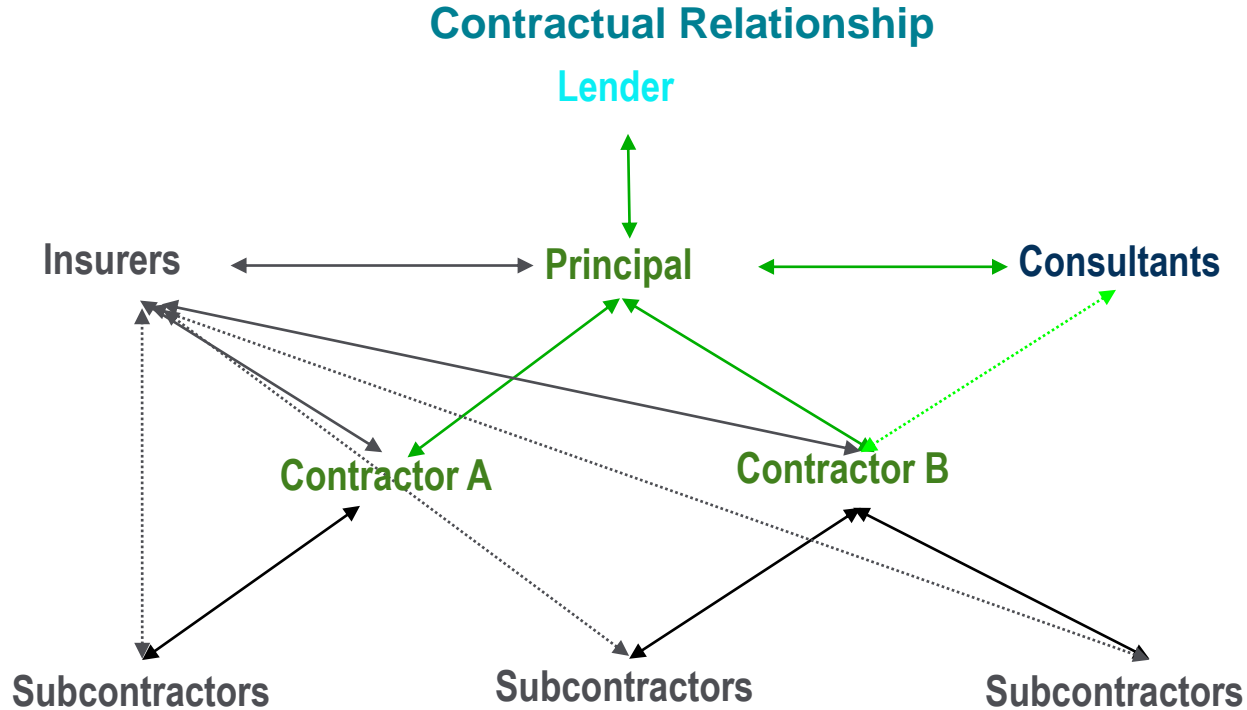
- So where do the problems and fights arise?
 - Practical completion
 - Is there physical damage
 - Subrogation rights
 - Defective design and workmanship exclusions(Modified exclusion and write back)
 - Defective workmanship – may be covered if it results in physical damage(result damage)
 - Various Parties to the contract
 - Because of all exclusions and extensions

CAR Claims : Challenges In Settlement

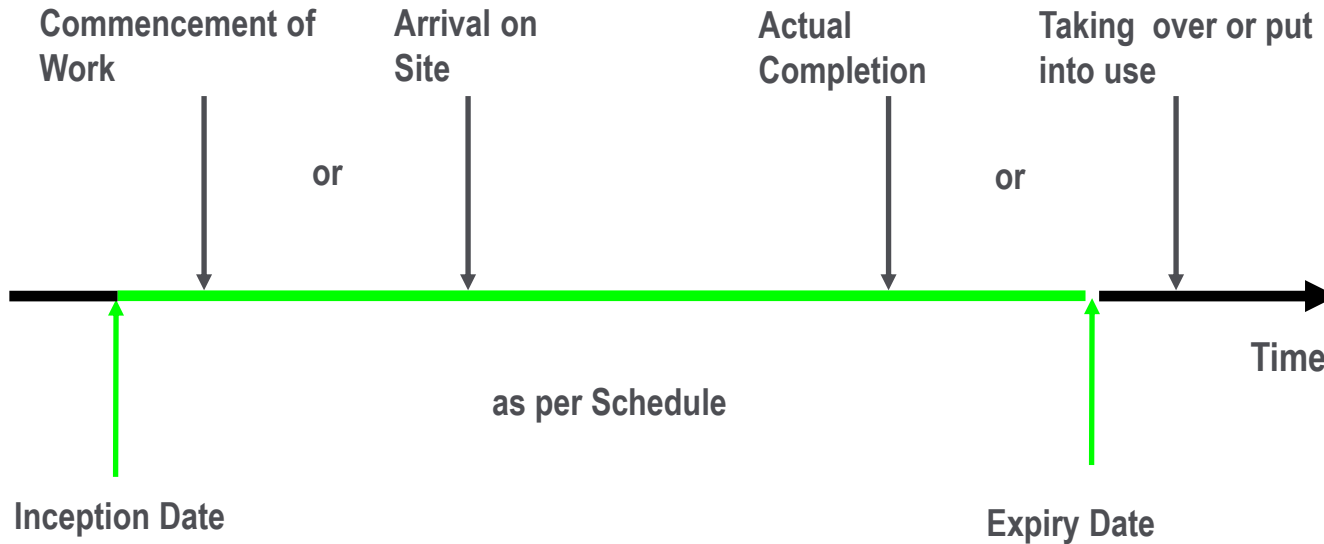
- Subrogation Rights
- The rule that co-insureds cannot sue each other.
- Composite insurance – waiver
- Cross Liabilities
- Maintenance period

Parties Involved in Construction

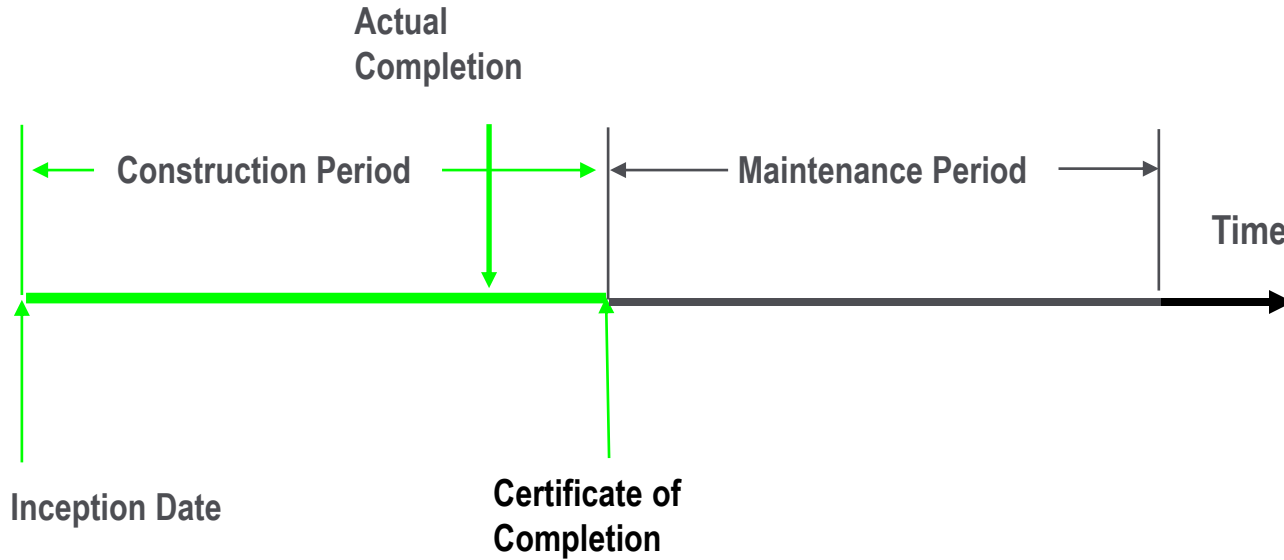




Period of Insurance – Construction Period



Period of Insurance – Construction Period



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Case Studies -CAR

Engineering loss In South Africa

- Warehouse arial view
- The biggest warehouse in Africa
- CAR Policy in place for the contractor
- Contract ZAR156 million USD10 million.
- TPL Cover ZAR20 Million (USD1 Million

Engineering loss In South Africa

- **Circumstances**
- Fire caused through by unsecured welding by a maintenance contractor.
- Hot work permit was an issue as procedures were not followed.
- DOL- 06.06.2017
- Gross Loss(100%) - R 1.1 billion(USD60 million)

Engineering loss In South Africa

- **Issues**
- Hot work permit an issue as procedures not followed.
- Various cedants were involved
- Key issues relate to non-disclosure of fire risk load.
- Fire fighting water pressure
- Storage of flammable goods

Engineering loss In South Africa

- M1 bridge was insured under a CAR policy.
- The principal was JDA who in turn contracted Murray and Roberts to do the work.
- Murray and Roberts had the responsibility to insure the project.
- Other parties , Nemaï Consulting , Form Scaff.
- Project cost R138 million

Engineering loss In South Africa

- This is the artwork of the pedestrian and cycling bridge once completed.
- Project done to have a walk and cycling bridge between Alex and Sandton.

Engineering loss In South Africa

Engineering loss In South Africa

- Circumstances
- Collapse of the temporary works.
- Cause of the loss wind blew the temporary structure.
- 14 October 2015 temporary works erected over the busy M1 motorway **collapsed** onto the passing traffic. Two people were killed and 19 were injured.
- Keys issues Murray and Roberts found liable due to Incompetence, defective work and all ,round negligence.

The case concerns a commercial and residential building compound project with a contractual value amounting to USD 70 million. One of the residential buildings was completed and partially inhabited when suddenly at 11:00 am during a Sunday a fire broke out at the entry level electrical board and spread, fed by the cabling and electrical equipment along the entire building.

The cause of the fire was determined to have been a combination of a surge from the mains after cutting from public electricity and a defect grip in the Breaker Switchboard entrance floor.

During the investigations, it was found that there had been no intervention on the electrical board by the general contractor or electrical contractor after takeover.

Case Study

Fire during maintenance period

Question:

Q1. What type of claim could this be?

- a) Property
- b) CAR
- c) TPL
- d) All of the above

Fire during maintenance period

Solution:

Q1. What type of claim could this be?

- a) Property
- b) CAR
- c) TPL
- d) All of the above

A. *All of the above. Its is probable the operational policy / commercial insurance commenced on the date of Practical Completion. However, due to particular circumstances, the CAR policy potentially could respond, and dependent on whether the project CAR operates.*

5

Conclusion

Does the insured know what cover he bought?

Does the insurance company know the Reinsurance conditions?

Has the reinsurer seen the original policy wording?

**Insurance conditions and
reinsurance conditions are often
not aligned**

Conclusion

The result is:

Ambiguity in scope of cover

Gaps in coverage

Non-payment of expected premiums

Uncertainty for claim reserves and payments

All parties involved should actively strive to ensure that all parties understand the coverage provided

It needs to be ensured that insurance and reinsurance terms are aligned.

Image: Aeriform / Ikon Images / Getty Images

Thank you
Morris Mhishi

September 2023

Munich RE 