



The **2008 Lloyd Sadd Construction Seminar** was held on April 8, 2008 at the Edmonton Marriott at River Cree Resort.

This year's seminar consisted of six presentations covering a broad range of topics significant to contractors on the topics of Insurance, Surety and Risk Management.

We were very pleased with the attendance, with 78 clients and prospects as well as 11 underwriters attending.

Due to the favorable response we have received, we look forward to continuing to provide this seminar as a value-added service to our contractors every year.

Pollution Mania

The pollution presentation at our construction seminar generated a lot of phone calls to our service team with interest from contractors on their exposures and specific claims examples.

We are pleased that the information provided in the seminar has driven contractors to consider pollution from an exposures perspective rather than as a contractual obligation.

With the current soft insurance market, this is a good time to consider rounding out your program and protecting your bottom line.

We are happy to provide additional information and obtain quotations on your behalf.



We'd love to hear your feedback!

If you have any comments about this newsletter, please contact Christine Tenove at ctenove@lloydsadd.com or 780-930-3818

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Will a Claim Push Your Limits?

By PATTY FISCHER

The recent seminar specifically addressed the topic of contractors' equipment valuations and the reasons why there can be discrepancies between the values determined for the renewal equipment schedules and the amounts determined by adjusters at the time of loss.

Underinsurance is a concern on every line of coverage. Claims are obviously not a pleasant experience and when you add inadequacy of limits to the formula, it not only impacts your bottom line but also adds a significant amount of frustration and aggravation.

PROPERTY VALUES

Tangible assets should be the easiest values to determine, but they become problematic because you may not clearly understand what should be included with this value.

As we all know, construction costs have increased dramatically in Alberta over the last few years making this number a moving target.

Insurance limits are based on the cost to rebuild new and must also include additional costs for demolition of existing structure, debris removal, and increased costs due to applicable bylaws.

In the event of a total loss, the limit applies. In the event of a partial loss, you could face co-insurance penalties if you do not have adequate building limits.



The only way to truly establish adequate insurance limits is to have a Replacement Cost Appraisal completed for insurance purposes. It is important to note that Market Value Appraisals do not accurately represent insurance values.

CGI Insurance Business Solutions offers independent loss control and property assessment reports. The costs vary depending on the complexity of the report, and start at approximately \$500 per location with more comprehensive reports ranging from \$750 to \$1,000.

The advantages of obtaining this type of report on your building are:

- The building is assessed from an insurance perspective, ensuring adequacy of limits.
- Loss control perspectives can be included in the report, and this information pertaining to processes and risk factors can assist you in managing your exposures.
- Insurers view the report process favorably as they can now be assured that limits are accurate and are also comfortable in knowing you have taken a proactive approach in reducing your exposure to loss.

If you are interested in reviewing and discussing your property limits, or taking the additional step of having an appraisal conducted, please contact a member of our service team and we will be happy to assist you.

EXTRA EXPENSE

Extra Expense provides funds for the additional expenses necessary to conduct your business after a loss by an insured peril.

The expenses include rent for a temporary location, replacement equipment, and installation of operations at the temporary location. Extra labor costs are also covered, including overtime for existing employees and temporary hires required for additional support.

Our recent experience with contractor property claims has been that minimum limits of \$100,000 should be maintained, and depending on operations on premises (if you have a shop for example), \$250,000 to \$500,000 may be more representative of the actual extra expenses you will incur.

In order to determine an adequate limit for Extra Expense coverage, it is important to take the time to consider all of these costs and determine the level of funds your organization would require in the event of damage to your premises.

LIABILITY

We all know that recent changes to the CCDC#2 will require contractors to carry minimum liability limits of **\$5mm**, but how much is really enough?

This question eludes even the most experienced insurance broker and informed construction business owners. We've certainly seen an increase in the liability claim settlements in Canada proving that we are following in the litigious footsteps of our American neighbors, particularly regarding automobile liability.

Below is a brief snapshot of some of the large Canadian judgments handed down in 2007:

- **March 2007** - Single vehicle accident. Defendant driver and two plaintiff passengers were drinking heavily. Two passengers who were not wearing seatbelts were ejected from the vehicle sustaining serious injuries and will require care for the remainder of their lives. The Superior Court determined that the driver and the leasing company will pay the two men and their families approximately **\$12mm** each. (It is thought that the judgment will be decreased by 10-25% for contributory negligence.)
- **June 2007** - Diabetic employee driving company vehicle loses consciousness and causes a head-on collision resulting in fatality. The employee was held liable for the accident, and the employer vicariously liable. **\$6.4mm** judgment
- **June 2007** - Parking lot incident results in paving contractor being found 30% responsible for improper design and construction of the parking lot and inadequate signs and lighting. **\$4.7mm** judgment.
- **June 2007** - Child fell out apartment window. **\$13mm** judgment
- **August 2007** - Cyclist accident. Vehicle owner and city shared in lawsuit. **\$5.6mm** judgment
- **August 2007** - Chimney fire caused by negligent work of masonry contractor. **\$2mm** judgment

NEW CANADIAN RECORD FOR A SINGLE INJURY AUTOMOBILE CLAIM; OVER \$17MM

2008 - A jury in Ontario concluded a 30-day trial by awarding record damages to a young man who was seriously injured in an automobile accident in June 2000.

The plaintiff was driving straight through an intersection when he collided with a left-turning truck. Injuries were serious and permanent; damage amounts include future guardianship and future legal costs.

With costs and judgment interests, it is believed that the damages will exceed \$18mm in total.

The defendant was found 61% to blame and the plaintiff 39% for contributory negligence. Although the plaintiff will only receive only 61%, this will amount to almost \$11mm.

While it remains difficult to determine your maximum liability exposure at any time, these awards serve as examples where awards for damages can be well over the minimum \$5mm required contractually. Consider the number of projects that you have going on at any one time, and add the completed operations exposures from past projects.

Our laws are such that the victim will be made whole, and with Canada's "Joint and Several" liability doctrine; if you are responsible for even 1% of the damages, you can potentially be held liable for the entire amount of damages.

It seems evident that liability exposures will continue to rise for the foreseeable future. It is critical that you are aware of the trends evident in Canada and select liability limits to protect your organization accordingly.

Look for future editions of the Lloyd Sadd "IN TOUCH" newsletter for information relating to Insurance, Surety, and Risk Management.

Upcoming topics will include:

- **How Construction Contracts Cause Litigation**
- **Reasons to Insure the Existing Structure under the COC Policy**
- **Risk Management 101: How Can Loss Prevention Influence my Total Cost of Risk?**
- **Liability for Construction Defects**
- **Managing Mold Exposures**



Reporting Claims and Incidents

WHEN SHOULD YOU REPORT?

It is a condition of your insurance policy that you report claims as soon as practicable. Prompt notification is essential to enable the claims department to provide you with early advice and insure that your rights and interest are properly projected.

WHAT SHOULD YOU REPORT?

Even if you're not completely sure that you will be making a claim for damages under your policy, it is important that the insurer is advised of all incidents that may give rise to a claim, including:

- damage to insured property;
- property damage or bodily injury to third parties;
- allegations of property damage or bodily injury damages;
- any situation that could reasonably give rise to a claim.

WHAT INFORMATION SHOULD THE REPORT CONTAIN?

- Details of the property damaged, including cause of damages if known
- Location of property damaged
- Date and time damages occurred

If you become aware of circumstances that may give rise to a claim, then include the following:

- Specific reasons for anticipating a claim to result based on circumstances or threats
- Specific nature and date of the alleged act or omission which gave rise to the incident
- Details of the alleged injury or damages
- Full names of the potential claimants

HOW TO REPORT

Contact a member of your Lloyd Sudd service team and we will be happy to assist you.

WHAT ARE THE CONSEQUENCES OF LATE REPORTING?

A delay in the notification of claims could prejudice the insurer's position and thereby result in a denial of coverage.

GENERAL CLAIM GUIDELINES

- Inform a member of your Lloyd Sudd service team as soon as possible
- Do not discuss the claim with anyone, especially not the claimant or claimant's lawyer. Any statement you make at the time can be used against you as an admission of liability. **You are not permitted under the terms of your policy to admit liability.**
- Gather any information that may be useful to move the claim forward or to defend you in the case of a liability allegation.
- If you are unsure as to whether or not a matter should be reported, please call your Lloyd Sudd service team for advice, or to discuss a claims situation on a confidential basis. We are here to help you.



FELIX FERENCE, Claims Advocate

Felix is a recent addition to the Lloyd Sudd commercial team. In his role he will act exclusively on behalf of our clients to ensure the satisfactory resolution of claims. It is our aim to improve claim-handling timelines, reduce the additional financial and legal costs arising from loss incidents, and minimize the interruptions, as well as the total cost of risk, to our client's business.

KEY RESPONSIBILITIES

- Overall accountability for internal claims protocols and processes;
- Active monitoring and oversight of the claims adjustment process;
- Audit and evaluate the vendor, independent adjuster and insurer conduct to ensure compliance with industry accepted practice;
- Client focused claims advocacy on all aspects of reported claims from initial investigation through to indemnity negotiations and ultimate settlement;
- Consultation to clients on management of self insured losses.