

A low-angle photograph of several skyscrapers under construction against a blue sky with light clouds. The buildings are covered in orange and yellow scaffolding and safety netting. Several tower cranes are visible against the sky. A blue geometric pattern is overlaid on the bottom left corner of the image.

# CAR – Claims



# Overview

- The policy is All Risks – This is a policy in terms of which compensation is available for most risks unless excluded as opposed to a perils policy.
- Claims are often speculative and exaggerated that hide a host of unrelated issues and time related cost which is often not recoverable. (excluded)
- Betterment (redesign) is common post loss
- Design-related losses are the most challenging
- **Is the loss because of a DEFECT OR DAMAGE?**
- Application of deductibles - important to qualify damage at hand against the appropriate Policy cover

# Overview

- The following are often the cause of a loss:
  - Carelessness
  - Recklessness (to a point)
  - Negligence
  - Poor design
- Most claims are “**fortuitous**” to at least one party on site
- One person’s error is often another's loss due to **multiple party** nature of construction projects





# The Importance of the Construction Contract



# The Importance of the Contract

## CONTRACT IS KING

### The contract

- is the subject matter of the policy. The Insured parties are those who have an interest in the subject matter

### Insurance clauses

- in the construction contracts state who is responsible for providing insurance of the works and for whom

# Contract Framework

## Several Parties to the contract:

1. Employer
2. Main Contractor
3. Sub-contractors (specialist trades)
4. Labour Only Contractors
5. Consultants (client and contractors)
6. Material and Equipment Suppliers

## Main Contract between Employer and Main Contractor

- Main Contractor usually sub-contracts the various packages directly with Sub-contractors, who also then sub-contract to labour only, material and equipment suppliers
- Free Issue Materials can also be provided by Employer

## Intention of Clause

- The cover is only intended for damage suffered that is outside of the reasonable control of the contractor
- No cover for claims related to defects

## However

- **Care of the works clause** – contractor **has to** make good damage to their respective works **irrespective of the existence of any insurance**
- There is nearly always a shortfall between the loss and payable amount which creates tension and exaggerated claims
- For example, damage to a critical path item will delay the project so **standing charges/delay** will cost money – **this is not a direct cost of repair** (this is where features like DSU's come in to protect the Main Contractor)

# Assessment Criteria





# Assessment of Claims

## Cost or Value:

- Contractors seek “Value”, but adjusters only assess on “**actual costs incurred**” (Measured Value)

## Contract rates should not be relied upon. Instead:

- Assessment of Repairs – Materials, Labour, Plant and Equipment
- For wages, we look at timesheets and payslips
- Site diaries, weekly and monthly progress reports
- Tender/Quotations, Purchase orders, Invoices
- Payment Requests

## Preliminary/Management Costs

- Must be an additional cost incurred (i.e., was overtime paid)
- Is there prolongation to the project because of the insured incident – is it on the critical path
- Is profit covered? Depends on the cover

## General Information Required for Assessment of Claims

**The content of the Document Request List is dependent on the type of claim. Generally, the following are requested:**

- Contract between the Head Contractor and Principal, complete with annexures. A copy of the Subcontractor agreement is also requested if pertinent to the loss at hand
- Design documentation such as drawings, scope of works, Bill of Quantities, Geotech reports (pre-loss and post-loss), a copy of the engineering calculations (if required) and approvals from local authorities
- An Incident report complete with a sequence of events that lead to and follow after the loss event
- Steps taken to mitigate the damage
- Audit documentation, usually from the Project Manager, that independently supports a particular work has been adequately carried out
- Copies of purchase orders for materials sourced from hardware suppliers



## Do we need consultants?

What aspects do we require them for

1. Causation
2. Quantum
3. Engineering
4. Expediting
5. Forensic Accountants – BI / Stock losses

## Do we need lawyers?

- Coverage issues.
- Recoveries
  - Time bars specific incidents may have a time bar
  - Specific contracts may be subject to time constraints.

## **Contract Works/All Risk Policies are amongst the most complex of insurance covers available**

- The scope of coverage varies wildly from Insurer to Insurer, Contract to Contract.
- In our many years of operations in the Asia/Oceania developing region, it is extremely rare that a claim for repairs/restoration under CAR has been less than the original construction/erection cost.
- With the benefit of hindsight, our view is that provision must be made (or at least considered) for removal of debris, demolition, expediting costs, temporary works, professional fees, additional increased costs of working, negotiated contractor profits/margins *pre-loss*, and agreed levels of escalation to price of materials.
- Design issues create the most problems in terms of resolving policy cover (and costly claims). It then follows that the designer (more often than not the structural engineer) must have adequate Professional Indemnity insurance – a prudent mechanism of risk transfer.



## Hindsight is 20/20 – DSU or ALOP Covers

- It cannot be stressed how important it is that sufficient provisions be made in the Contract and Policy to protect the innocent parties from being liable for increases in costs.
- Our region is known for its frequency and intensity of natural disasters.
- Generally speaking, when (and not if!) a cyclone hits, all parties to the Contract are generally innocent and a standard CAR is likely to respond. However, the delays to the project due to restoration works are not recoverable under a standard CAR.
- For large and/or complex infrastructure projects – especially those that are donor-financed – Delay in Start Up (DSU) or Advance Loss of Profit (ALOP) is essential.
- This insurance covers economic losses from construction delays that postpone commercial operations, protecting project owners and financiers from unearned revenue and ongoing expenses.
- Even if a project is not-for-revenue, DSUs serve to ensure that expected debt repayments are protected in the event of delays to the completion.

# Case Studies



# 1. CAR in response to TC Winston - Hospital

## **Situation: A USD 20 million hospital under construction in the West encountered CAT 5 TC Winston (2016)**

- The Main Contractor put forward a claim in the order of USD 500,000 for damage to earthworks, materials on site stored before TC Winston, along with plant and equipment in a temporary site structure that also got damaged by the cyclone. Around USD 400,000 of the claim attached to plant and equipment “P&E”.
- Whilst the Policy did not specifically exclude plant and equipment, the Main Contractor confirmed that the Contract Sum (which provided for demolition by escalating insurable value by 10%) did not include the P&E values.
- Following a review of the Policy and Contract documents, it appeared that this Policy indemnified the Insured for costs and loss following loss/damage to the permanent and temporary works executed in performance of the Contract and quantified within the Contract Sum.
- The policy did not exclude plant and equipment but because the value of these items were not contained within the Contract Sum, they had not been declared to Insurers or included within the Sum Insured. It then appeared that these were not intended to be covered by this policy. As a result, the Main Contractor was out of pocket for associated repairs.
- Key lesson here was for the Main Contractor to get adequate **separate** cover for plant and equipment as these are not naturally part of the Contract Sum.

# 1. CAR in response to TC Winston - Hospital



- Some of the damage to the temporary works, plant and equipment and general site have been demonstrated here.



## 2. CAR in response to TC Gita - WTP

### **Situation: A USD 18 million Water Treatment Plant under construction in the Central Division encountered CAT 4 TC Gita (2018)**

- The Main Contractor put forward a claim at USD 200,000 for damage to weirs, inlets, culverts, earthworks, and roadworks that allowed access to the remote site.
- Approximately 50% of the claim attached to the restoration of roadworks.
- On detailed review of the contract, it was found that said roadworks were not part of the deliverables scoped under the head contract. Given that the CAR Policy does not respond to works outside the contract, all roadwork-related costs were adjusted against.
- It is essential that all works necessary for the delivery of a project is adequately captured in the Contract documents if these documents are going to be the primary point of reference by the Underwriters.



## 2. CAR in response to TC Gita - WTP



- Irish crossings had washed away, drainage culverts had been exposed and significant amounts of earthworks had to be re-done.
- The photo on the far right is of a major landslide covering an access road. It is difficult to observe this with vegetation overgrowth promoted by the site's prevailing weather conditions.

### 3. CAR in response to Flood

#### **Situation: A USD 1.5 million Fuel Retention structure under construction in the Western Division was inundated by flood waters from the adjacent river (2023)**

- The Main Contractor put forward a claim at USD 50,000 for damage to the earthworks, fuel storage and processing buildings after these had been exposed to elevated storm water runoff. A few days later, however, (in the middle of restoration works) the perimeter retaining wall had collapsed, further escalating the claim to USD 200,000.
- On detailed review of the circumstances, we engaged a structural engineer to assess the integrity of this wall prior to the loss event. It was found by the consultant that the incumbent engineer's design was severely flawed.
- The Policy has an exclusion against work performed to a defective design. However, it did not exclude the balance of the damage to the site and the CAR Policy responded to this loss.
- It is our understanding that the Main Contractor put the incumbent engineer on notice to activate their Professional Indemnity Insurance.
- For infrastructure projects, we have the capacity to assist Insurers with pre-loss independent assessments of design documentation as part of risk mitigation. For this Forum's reference, a peer review of engineering work is only carried out by a third-party engineer after a loss has occurred. Moreover, the local building authorities are not equipped to identify flaws in the incumbent's design rationale and only enforce improvements after the fact.



### 3. CAR in response to Flood



Damage to the earthworks due to the retaining wall collapsing into the river