

FIPI: Inter-Insurer Disputes: Lloyd's Best Practice Wording

- On a strict interpretation of the applicable policy wordings and required contractual interaction between Primary & Excess layer insurers, the provision of indemnity should typically be on a from the ground-up basis.
- However, on occasion, an inter-insurer dispute has been known to arise, containing some, if not all, of the following features (collectively "Inter-Insurer Issues"):
 - A disagreement regarding the basis for the funding of indemnity between insurers on different layers of an insurance tower (or on different years of account, or both).
 - The quantum in issue has the potential to exhaust the whole tower.
 - Coverage issues that go to the heart of policy response.
 - The Insured has indicated a willingness to receive a reduced indemnity.
- Disputes involving Inter-Insurer Issues appear to be particularly common in FI/PI claims.
- The 2010 Lloyd's Claims Scheme Clause 5.0 (see Appendix A) sets out an escalation procedure to facilitate the resolution of disputes, culminating in a market meeting to which all Lloyd's insurers must be invited, with the discussion to continue "until a market consensus is agreed".
- The Lloyd's Claims Scheme does not state how disputes should be resolved when market consensus cannot be agreed. This Best Practice Wording therefore outlines further steps that the Lloyd's market is expected take to attempt to resolve such disputes.
- The aim is to put the customer claims experience first, honour the policy terms and conditions and to minimize the delay, costs, interest and reputational harm that can occur when the Lloyd's market is unable to agree a path to resolution.
- In the event that the Clause 5.0 mechanism has failed to resolve the Inter-Insurer Issues, all Lloyd's insurers agree to refer the dispute to mediation or some other form of early neutral evaluation within 30 calendar days from the date of the Clause 5.0 mechanism being exhausted.
- The Clause 5.0 mechanism shall be deemed to be exhausted on the calendar day after the market meeting took place, unless it has been agreed at the market meeting for dispute resolution discussions to continue for a further period (of no more than 30 additional calendar days).
- The Lloyd's insurers will invite and encourage any non-Lloyd's insurers to attend and engage in the mediation or early neutral evaluation process.

Appendix A: 5.0 Resolution of Disagreements under the 2010 Claims Scheme

- As detailed above, the Lead and Second jointly manage and confer concerning the handling of Complex claims. The 2010 Claims Scheme process assumes that, consistent with long-established market practice, the agreement parties will independently evaluate the decisions to be made and, after conferring as necessary, will reach agreement on the steps to be taken.
- Additionally for Complex claims, if any situation should arise in which the Lead and Second are unable to agree, or the follower(s) representing at least 50% of the Lloyd's participation so requests, the following process applies.

Lead

- The Lead identifies with the Second a mutually convenient date, time, and location for a market meeting and the Lead provides notice and invitation to all managing agents with syndicates that are followers on risk.
- Within sufficient time to allow review prior to the meeting, the Lead identifies to the Second and the followers the matter(s) to be addressed at the meeting and any documentation or other material that should be reviewed prior to the market meeting.
- The Lead chairs the meeting and ensures that all attendees have fair and equal opportunity to ask questions and present their views. The discussion continues until a market consensus is achieved.
- The Lead records on ECF or otherwise the step(s) in the claim process agreed at the market meeting.

Second

- At the time the market meeting is called, the Second confers with the Lead about the identification of the matter(s) to be addressed at the meeting and any documentation or other material to be reviewed by followers. If the Second does not consider that the identification by the Lead is complete, the Second provides the followers with a supplementary identification.
- The Second assists the Lead at the meeting in ensuring that all participants have a fair and equal opportunity to present their views and to ask questions.

Followers

- Followers each select a representative with sufficient experience and authority to speak for the syndicate and who is available to attend the market meeting. The attendees
 - review the information and material prior to the meeting that was identified by the Lead and the Second and be prepared to comment on the matter(s) for discussion;
 - make best efforts to provide constructive input to the market discussion;
 - commit the syndicate to a position at the meeting.