

Not who you know, but who is right choice.

Now that accountancy firms have moved into claims handling alongside loss adjusters and solicitors, **Tom Battell** looks at the existing best practice and the role of forensic accountants

891 words
5 May 2005

Lloyd's List

6

English

(c) 2005 Informa UK Ltd

TODAY'S main bout for the major claims handling title is a three-way heavyweight contest between the loss adjuster, the lawyer and the forensic accountant.

In handling any such claim underwriters need support in investigation of cause, review of policy application, determination of quantum and negotiation of settlement.

The support that the loss adjuster provides is well known, negotiating the best settlements. In disputed matters underwriters turn to the services of law firms.

However, for many the role of the forensic accountant is unknown territory except for business interruption claims.

This should not be a surprise. The London market works on a "who you know" basis and an accountant might not feature too highly on most dinner party guest lists.

The forensic accountant's role is to report on the financial aspects of any kind of investigation or analysis.

He may have experience in statutory accounts and accounting standards (the "published" figures), management accounting (the "real" business figures), taxation (avoidance and evasion, of which only the former is legal) and corporate governance (how a company should be run).

His experience, almost certainly, would involve economic forecasting and future accounting (loss of profits), investigations into money laundering and false accounting (fraud).

He will also be familiar with the principles and application of depreciation, indemnity, interest and inflation (valuation).

All such skills can relate directly to insurance, whether in claims or underwriting, and can be invaluable in any dispute.

The accountant investigates, analyses and translates facts or actions into a range of relevant financial values, highlighting inconsistencies.

Calculating an early accurate reserve on a claim is becoming increasingly important for reinsurance notifications, for auditors, for shareholders, for solvency calculations and, most importantly of all, for the successful resolution of the claim.

Underestimating a major loss can result in losing the benefits of mitigation and failure to control costs or direction.

Forensic accountants are trained in giving evidence and the preparation of expert reports that stand up to legal scrutiny. The appointed accountant will be prepared to present his findings as an independent expert in court.

Independence, as an expert witness, is paramount. The duty of an expert is to the court and all evidence is required to be genuinely balanced and independent.

Cross-examination of an "advocate" expert witness can lead to his evidence being negated. Advocacy should remain firmly in lawyers' hands.

Best practice requires that professionalism and impartiality are pre-requisites to claims handling and the Financial Services Authority, in regulating the claims function of insurers, seeks to ensure that claims are handled "fairly and promptly".

Best practice would be the day one appointment of the adjuster, together with the accountant, to gain an in-depth understanding of the business and how it was performing before the event and to determine the key drivers or contributors to profits. This also creates a relationship with the insured which brings dividends in mitigating losses, while fulfilling the FSA's expectations.

There is a need to treat the insured as a customer rather than a traditional claimant. The customer is not always right, but you do need impartial and professional experts to deliver that message.

Understanding both positions in a dispute is the best route to achieving settlement or repudiation with closure. If potential fraud is discovered, that is the time to instruct the lawyer.

Appointing a lawyer on day one, while potentially having the benefit of privilege, is likely to be seen as provocative.

So when would you engage a forensic accountant? Obviously when the financial consequences of any loss are substantial but also where a break in business continuity would have severe impact. Concentrating on rebuilding may have little benefit on a business that receives all its orders or sales from an imminent annual trade show.

Other opportunities would be claims for professional liability, or where economic forecasting is required, or the business is "high-tech" or if there is need to calculate loss of reputation or brand value or damages relating to profits lost or loss of chance claims.

Product recall or manufacturing type losses need an understanding of manufacturing accounts.

Claims are often required to be measured by the annual accounts under the policy wording.

However, these accounts should never be relied on for a true picture of the viability of the business and will have undoubtedly been "window dressed" if the company had failings. Accountants will understand the true figures.

Successful repudiation of fraudulent claims can be achieved by diligent investigation and analysis combined with the ability to demonstrate appropriate evidence to the courts.

Accountancy services include computer forensics to retrieve deleted electronic data such as e-mails or crack encrypted documents.

Retrieval must be in a manner evidently acceptable and allied to an appropriate accounting analysis to reveal the intention of any device that is financially motivated.

The key to successful claims handling is professionalism. By all means use "who you know" but also know what professional is right for the claim in question.

Tom Battell is a chartered loss adjuster and director of the company Forensic Accounting. [www. forensicaccounting.co.uk](http://www.forensicaccounting.co.uk)