Third-Party Liability Claims resulting from power outages

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Third-Party Liability claims resulting from power outages have a number of specific characteristics, especially in their management and processing, which make them different from other claims.

This type of claim, where there is a great number of affected parties, usually gives rise to substantial appraisal costs, the designation of external management teams, peculiarities in their assessment and the involvement of public authorities controlling the electrical distribution activity, among other aspects.

We should first emphasize that the final number of claims which will have to be processed, and which give rise to a Third-Party Liability claim, although huge, will usually be fewer than the total number of clients affected.

We have experience of the numbers of affected clients reaching more than 320 thousand, 450 thousand and even more than a million two hundred thousand for long-term outages, or repeated over a number of days exceeding 10, in the latter case.

The huge number of claims makes joint management of the claim with the Insured Party itself essential, because of the client database and the prime interest in dealing with them together with the appraisal team, which the company has had to appoint.

The huge number of claims that may be received during the first few days makes it necessary to draw up a contingency plan, which means the appointment of technicians specializing in the assessment of damages and loss of income, and administrative support personnel.

A call center will have to be set up providing uninterrupted service twelve hours a day, seven days a week, which entails setting up procedures and conversation protocols with the claimants, with prior training of the processors and appraisers who will be dealing with them by telephone.

All this together with the implementation of computer resources for the due processing of the information and the documents, as well as the renting of premises for the reception of claims.

The claims must be classified, first by the type of damage suffered:

- Perishable goods (domestic clients).
- Damages to property (domestic clients).
- Material damages resulting from domestic appliance or machinery breakdowns.
- Loss of earnings (companies)

Then by the manner in which the claims were received, which can be classified as:

- Written or verbal individual extrajudicial claims.
- Claims through judicial channels.
- Claims in subrogation of Home or Damage insurance companies.
- Claims filed through consumer associations, chambers of commerce, groups of lawyers and insurance company groups.
- Claims received as a result of Rulings by public entities regulating the activity of electrical energy distribution (for claims in Latin America) which pose special problems which will be dealt with below.

Claims may be received by different means:

- Email.
- Fax or telephone.
- O. box.
- Directly in the offices open for the receipt of claims.

The collaboration of the Insured Party, via his or her database, is essential for the correct classification and assessment of the claims, with the aim of avoiding unfounded claims, duplicate payments and compensation to third parties who are not clients as such.

In cases where the Insured Party itself advances compensation to the claimants, usually below a certain amount and for reasons of image and promptitude, the insurance company will present samples of these direct actions for audit to make sure that coverage under the policy has been correctly applied.

With this same objective in mind, insurance companies contract advertising and image campaigns as well as legal counsel, which are usually considered as extra costs in order to minimize the claim, under the cover of the policy, even though the amount applicable under this concept is usually subject to negotiation.

On analysis of some of these cases, we can conclude:

- **Perishable goods:**

The extraordinary cost involved in individual assessment, with the corresponding travel and costs, makes it necessary to establish scales of assessment starting from the break in the cold chain (producing the first discrepancies as to whether this occurred six or eight hours after the outage).

This scale involves the establishment of average compensations per hour of outage, which increase as the number of hours without electricity supply increases.

For the establishment of the scales corresponding to perishables we resort to the data bases of statistics institutes, from which we obtain the average value for perishable food products in fridges (refrigerated and frozen products), in the form of average outlay per home, depending on the economic level of the affected areas and other statistical sources.

These data are compared with the compensations paid by the insurance companies to the affected parties for the loss of perishable goods, which they claim in subrogation.

Finally, we conclude that the nonpayment of compensation for perishable goods could lead to a much higher final cost in the case of legal action by the affected parties in the form of sentences and costs. If the scale is rejected by the affected party, we request the corresponding documents justifying the damages for which compensation is claimed.

- **Property damage insurance:**

In the case of domestic clients, claims under this concept usually refer to the cost of maintenance away from the home due to the impossibility of being able to cook there.

For the assessment of compensations under this concept, we also resort to statistical data on the average occupancy per home and average costs for menus in restaurants (subtracting the saving on food products, which are not consumed).

- **Loss of earnings:**

Claims under this concept presented by companies or legal entities are subject to individual appraisal by means of the presentation of the corresponding certifying documents.

We should point out that the cause originating the electricity outage may determine the establishment of certain limits or criteria for compensation with respect to third parties affected.

In claims resulting from extraordinary meteorological phenomena, temporary waivers (48 hours) are applied before starting to apply the scales and assessments, based on force majeure as a justification which exempts them from compliance with obligations, albeit temporarily.

The law courts (in Spain) consider the application of temporary waivers due to force majeure by insurance companies to be within the law in this type of claim.

- **Claims received as a result of Rulings by public entities regulating the activity of electrical energy distribution (for claims in Latin America):**

A peculiarity in this type of claim in some Latin American countries is the intervention of public entities regulating the distribution of electrical energy, who usually create added difficulties in the processing of these claims, especially with regard to those legal components within the concept of third-party liability, specifically the existence of claims by third parties and compensable damages.

The difficulty largely arises from the ambiguity of the text in those resolutions concerning punitive procedures brought against the Insured Party, usually initiated as a result of alleged non fulfillment of their obligation to maintain the electrical system and non-compliance with contractual obligations in the concession contract for the electrical energy supply activity underwritten with the corresponding public body.

The difficulty arises because the regulating public entity usually establishes "sanctions to be distributed among the users", which means that this type of resolution usually mixes together such disparate concepts as the sanction or fine against the Insured Party (expressly excluded from coverage in the conditions) with compensation to third parties affected.

Since these sanctions in practice are applied as discounts in the user's invoice, we end up with a debate with the Insured Party as to the difference between "punitive" fines, which are not covered, and "compensatory" fines, and whether or not they are covered by the policy.

The assumption of responsibility pacts by the Insured Party is also excluded from coverage in the policy, even though the insured party is obliged to respect the verdict of the resolution in order to avoid a heavier sentence or even the loss of the license to operate in the country in question.

There are also doubts as to whether it is legal for the public regulatory entity to present a claim in the name of all the clients affected, whether they have suffered damages or not.

This type of action by public entities usually leads to complex negotiations with the Insured Parties in order to determine which part of these "sanctions" should be covered by the policy, involving complex calculations with regard to the real loss suffered by the Insured Party, among other questions.