

TECHNICAL BULLETIN NO. 6
APRIL, 1996



The Reinsurance Research Council
Le Conseil de Recherche en Réassurance

Treaty Clauses titled

- Special Termination Clause
- Claims Reporting Clause - Casualty

were recommended by the Directors of RBC at their meeting of March 20, 1996.

Enclosed are copies of the subject clauses along with “Notes to Accompany” each. The notes provide information on the development and intent of the clauses.

CLAIMS REPORTING CLAUSE - CASUALTY

1. The Company shall give immediate written notice to the Reinsurer of any occurrence which may give rise to a claim,
 - (a) Where the expected undiscounted value of the loss, irrespective of any apportionment of negligence, exceeds fifty percent (50%) of the retention of this Agreement;or
 - (b) Where the applicable policy limit exceeds fifty percent (50%) of the retention under this Agreement and where the occurrence involves serious bodily injury including, but not limited to:
 - (i) Fatal injuries with surviving dependents of the deceased, but no notice is required where coverage is afforded only for automobile nofault benefits;
 - (ii) Brain injuries;
 - (iii) Paraplegia or quadriplegia;
 - (iv) Any other major permanent disability.

These serious injuries shall be reported when incurred by either an insured person or a third party, regardless of the company's assessment of liability;

or

- (c) where the Company is liable for an automobile no-fault claim, including loss transfers, and where any injured party is claiming benefits for more than eighteen (18) months from the date of the accident.
2. The Company's loss notice shall include the following:
 - (a) A description of the loss and the injuries or damages sustained,
 - (b) Paid and reserve details,
 - (c) Liability assessment,
 - (d) If bodily injury is involved; age, occupation, marital status, dependents, wage loss and eligibility for benefits from sources other than the original policy, for each claimant ,
 - (e) If automobile no-fault claims are involved, a breakdown of reserve and payment details for income replacement or the equivalent, medical costs, rehabilitation, attendant care, and other benefits, however such coverage may be referred to in the original policy, the expected duration of periodic payments, and the basis of discounting if any.

Notes to accompany claims reporting clause - Casualty

1. This clause is intended for use for all casualty business.
2. This is a claims reporting clause only, and does not contain other essential conditions such as claims settlement, co-operation, etc. that normally form part of a treaty. Additional paragraphs may be added to describe how claims should be handled after the initial reporting stage.
3. Changes have been made to accommodate automobile no-fault claims, both in terms of the criteria that should trigger a claims notice and the type of information that should be provided to reinsurers.
4. The reporting requirement for fatalities has been amended to eliminate unnecessary reports where coverage is limited under automobile no-fault policies to a level that does not threaten the treaty.
5. This clause now contains a clearer outline of the basic information required by reinsurers. This will assist reinsurers in establishing adequate reserves and should reduce requests for additional information from the cedent.
6. It is strongly recommended that RRC's "ONTARIO STATUTORY ACCIDENT BENEFIT SCHEDULE REINSURANCE REPORTING FORM", or its equivalent, be used when reporting automobile no-fault claims.
7. Part 1(c) refers to "loss transfers". While this phrase has no specific legal or regulatory meaning, it is a commonly used and understood phrase within the insurance industry.

RRC March 1996

SPECIAL TERMINATION CLAUSE

It is understood and agreed that should either party to this Agreement:

- (a) fail to meet the minimum asset requirement of regulatory authorities;
- (b) go into liquidation or have a receiver appointed;
- (c) cease writing new or renewal business under the direction or order of an appropriate regulatory authority;
- (d) enter any arrangement either by way of share holding or management or otherwise under which effective legal or presumptive control is assumed by any individual or organization other than that which pertained at the time this Agreement became effective;
- (e) in the case of the Company only, effect a reduction in the net retained share of the business reinsured hereunder without the prior written consent of the Reinsurer;

The party which is subject to any of the foregoing shall immediately notify the other party.

2. Acting upon actual or constructive notice, the other party shall have the right to terminate this Agreement by registered letter, telex, facsimile transmission, or telegram, stating therein the date and time of termination, which shall be not less than 30 days from delivery of such notice. In the case of condition (b) above, notice of cancellation by the Company may be effective retroactive to the beginning of the current Agreement year in order to effect replacement reinsurance.
3.
 - (a) With regard to that part of this Agreement which is reinsured on a proportional basis (if any), such notice of termination may, at the option of the party giving notice, include termination of the business in force at the date of termination against return of the unearned premiums less applicable commission thereto.
 - (b) With regard to that part of this Agreement which is reinsured on a non-proportional basis (if any), the premium due to the Reinsurer shall be calculated (or first calculated, in the case of Agreements subject to rate adjustment) by the Company within 40 days of the date of termination, and, if not earned in total or in part by reinstatement provisions, shall be based upon the subject premium income of the Company up to the date of termination or pro rata of the annual minimum premium, whichever is greater.
4. If the performance of this Agreement is prohibited or rendered impossible de jure or de facto in particular and without prejudice to the generality of the preceding words in consequence of any law or regulation which is or shall be in force in any country or territory or, if any law or regulation shall prevent directly or indirectly the remittance of all or any part of the balance of payments due to or from either party, the party concerned shall inform the other party immediately, and termination rights shall apply to both parties as under the conditions of paragraph 2 above.

Notes to accompany Special Termination Clause

- Clause 1 Termination “triggers” are taken or adapted from contracts in current use. Redundancies and ambiguities have been addressed.
- a) The oldest, but most problematic trigger, “lose or impair its paid-up capital,” has been replaced by the more easily defined “fail to meet the minimum asset requirement of regulatory authorities.” Also, this wording avoids reference to stock company “capital.”
 - b) Modified to include only “appropriate” regulatory authority, so that unrelated disputes in foreign jurisdictions do not trigger termination.
- Clause 2 This section had been streamlined and modernized. Methods of giving notice have been updated, but the clause now recognizes that knowledge of Cedent or Reinsurer difficulty comes in many ways (“Acting upon constructive notice-.”). In the case of trigger (b), when it is the Reinsurer who has gone into liquidation or had a receiver appointed, the Cedent has the option of effecting termination retroactive to the beginning of the treaty period. However, this can only be done to effect replacement reinsurance.
- Clause 3 This item addresses special provisions for proportional and for non-proportional treaties.
- a) This item gives the cancelling party the right to return the portfolio of unearned premiums.
 - b) Considerable attention was paid to the settlement of adjustable rates and to the calculation of subject premiums, The clause was framed with certain assumptions in mind. In a mid-term cancellation, minimum premium agreements may be invalid, but adjustable rates (which may be subject to loss development over the coming years) are not. It is implicit that the reinsurance premiums of treaties containing certain reinstatement provisions are fully earned at the time of loss.
- Clause 4 Section 4, is adapted from a widely used international clause, and has been modified only to the extent that the prohibition of some *minor* part of the Agreement need not render the entire Agreement invalid.
- The addition of a war clause (should war or hostilities break out between the countries of the reinsuring parties) was rejected as this issue is More thoroughly covered by the laws of contract
 - The addition of an assignment clause was rejected on the grounds that such a clause should stand on its own.