



THE CHARTERED INSTITUTE  
OF LOSS ADJUSTERS

# Navigating the parties involved with EAR/CAR claims

## A CEE adjuster perspective

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## Who may be an interested party in an EAR/CAR contract works claim?

I was recently asked by a colleague, “Do you see multiple parties’ involvement in Erection/Contractors All Risks (EAR/CAR) contract works losses?” The answer is yes.

Starting with the parties involved in arranging the insurance cover and the Insured, an Erection All Risks (EAR)/Contractors All Risks (CAR) insurance policy organised via the broker may be a CAR annual policy, real estate commercial policy with a CAR section or a project-specific policy. An annual policy sets out who the policyholder is (i.e. the contractor) and may contain a ‘Principals Clause’ extending cover to the Instructing Principal/the employer. Conversely, a commercial real estate policy covering the premises owner, with a CAR section, will provide cover for the contractor employed by the premises owner. Hence, by and large, on the more standard annual policies the parties involved are the Insurers, Brokers, the Contractor and the Employer. On large annual policies, the position may alter and there may be provision for other parties.

On EAR/CAR project insurance policies, as the policy is taken out for the benefit of the project and those parties involved with that project, the parties insured under the policy expand.

A project policy will be arranged by the Brokers for the Primary Insured for example; the Project Employer under an Owner Controlled Insurance Policy (OCIP), or the Main Contractor under a Contractor Controlled Insurance policy (CCIP), and others. For example, such as under an OCIP, the other parties insured besides the Employer extend to include:

- Main contractor
- Subcontractors of any tier
- Consultants, suppliers, vendors of any tier whilst carrying out physical works associated with the project
- Funders

The policy wording may follow up the above with the words “Subject to the rights and interests”. The extent of the access to the project policy is governed by the contracts that will apply and the agreements that are in place. A mere informal belief or understanding may prove insufficient to provide access to the project policy.

There may also be layers of cover and agreed substantial excesses.

The nature of the insurance claim presented for damage to the contract works may involve factors such as:

- A defect in design (interested parties in the course of a claim may therefore include the designers and their PI insurers)
- An incident concerning the transport of materials (potentially involving Goods In Transit, engineering policies and parties engaged by these insurers)
- The offsite fabrication (manufacturers and suppliers and their PI and Public / Products Liability insurers)
- The project management, site management, and other consultants (their PI insurers and even their Directors & Officers insurance in the matter is RIDDOR notifiable)
- A workmanship issue



- An event during the testing and commissioning process by specialists (who may need to notify their PI insurers)
- Works that have been handed over and certified as completed, forming part of an existing structure (Buildings insurers)
- Subcontractors and suppliers might not be covered under the EAR/CAR policy and, thus, these parties may need to involve their own respective CAR works insurers. They may also need to involve their public and products liability insurers. There may be tiers of subcontractors and sub-subcontractors down the contractual chain that are not afforded cover under a project policy.
- The main contractor under an OCIP insurance claim may still seek to notify its annual CAR contract works insurers, in the event the Difference in Conditions (DIC) clause in the policy is identified as relevant.

Any or all the above parties may consider it prudent to appoint loss adjusters, their own forensic experts, and lawyers etc.

The loss may affect the project timeline, and the EAR/CAR policy may provide Delay in Start Up/Advanced Loss of Profit, ostensibly cover for the benefit of the employer and funders, in which case:

- Programme Delay Analysts/Planners & Forensic Accountants may be appointed; and
- The funders may have a direct input and their own representatives.

First Loss clauses in the Policy may require payments on amounts over certain sums to be made to the Funder.

Project EAR/CAR policies may not provide cover for plant and machinery. Consequently, the Insured may have arranged insurance separately:

- A contractor plant/engineering policy may be in place, and the insurers may appoint separate loss adjusters to investigate and comment on policy response

Where the EAR/CAR claims are on projects reinsured by insurers with reinsurers, the lead reinsurers will appoint loss adjusters. The reinsured insurer (the cedant) may also have appointed a loss adjuster.

The Insured may appoint a public loss assessor or utilise the claims advocacy/claims presentation facility provided as part of the insurance cover arrangement.

Efforts to identify those parties involved in a claim that may become germane to the settlement of the claim and recoveries should commence as soon as possible. Where appropriate, it is advisable to collect contact details, insurers details policy, and claims numbers.

It may be the case that, as the enquiries take place, the number of interested parties expands. An example of this is where the investigations into causation may raise subrogation issues. Insurers may consider it prudent to instruct solicitors to comment on policy and subrogation matters. These may not necessarily be



the same insurers. In claims in other territories outside the UK, such as the US, this is standard practice on larger losses.

So, not all the parties identified as having an interest in a CAR/EAR claim will be the insured parties. In some cases, it will be necessary to understand contractual relationships to determine who does have access to the project insurance cover. A good starting point is to read the policy and determine the contractual relationships.

Whether all these parties will be indemnified under that policy will depend on factors such as the contractual position, causation, and, of course, the policy wording, policy schedule, and endorsements.