

HYDROCARBON SPILL CLAIMS: How to Keep above the Plimsoll Mark

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(This fiction story was prepared to illustrate issues, challenges and solutions when managing this type of environmental claim. Any similarity to real persons or events is purely coincidental.)

Malcolm Plimsoll received a spate of nasty emails from subscribing underwriters on a suburban residential program. As the Claims Manager for a Lloyd's broker, Plimsoll had "the pen" to settle claims on Canadian business. The emails expressed grave concern about the severity of this program. Underwriters were concerned about the viability of this program; given significant step reserving on two separate claims involving heating oil spills. The reserve increases for both claims totalled \$700,000.00 CDN. What made the situation worse was the delay in reporting the reserve change. Each claim had been open for more than six months.

London was demanding answers and Malcolm, feeling he'd been blindsided by his adjusters, had no immediate answers. The six-hour time difference was another obstacle in the uphill battle in trying to diffuse the situation. Pacifying the heated Brits on this one would take a person-to-person conference call. Plimsoll would need a very compelling argument to retain the underwriters on the program.

Reeling from the tongue-lashing inflicted by his boss, Malcolm knew that his career had reached its own Plimsoll Mark. It was time to chart a new course, notwithstanding the load! Malcolm would need a beacon to guide him through these treacherous seas. Determined not to sink, he reviewed each file, preparing for his conference call scheduled for 3:00 AM local time.

File #1 wasn't stellar, but Plimsoll found some answers that might appease the Brits. His review uncovered that his adjuster hadn't responded urgently. The reserve increased dramatically because a qualified professional was not consulted soon enough to conduct an initial site assessment. The adjuster of record was known to be a very competent property adjuster; however, she'd never adjusted a hydrocarbon spill claim. Lesley Brulé, with years of experience adjusting major fire losses, relied on her instincts and appointed a restoration contractor to this residential oil spill. While skilful in responding to the fire peril, the contractor, like Brulé, had little experience with oil spills. Nevertheless, No-All Restoration could hardly be criticized for their response to the loss. Plimsoll remarked that the contractor had undertaken "emergencies" in an effort to contain the contamination.

They quickly brought in a vacuum truck to extract the free product floating on the basement slab around the aboveground tank. They even shut off the circuit breaker for the sump pump, but because

the adjuster had only attended three days after receiving the claim, the sump pump had evacuated a concentrated mixture of water and heating oil from the basement into a nearby ditch, which flowed into a well-known trout stream. After a number of site meetings, Brulé and No-All Restoration agreed that at least half of the basement slab had to be removed. More free product was discovered so the contractor continued to dig and dig – almost to China! After two months the adjuster and the contractor finally realized that the oil seemed to be everywhere underneath the foundation. Complicating their attempts to remove the contamination was a perched water table. Things appeared to be getting worse and the homeowners were becoming extremely frustrated at not being able to live in their home.

Overwhelmed, Brulé felt the heat reviewing the contractor's interim invoice. She had recommended an initial reserve of \$50,000.00 and was now poring over documents for work completed to date totalling \$343,552.09. She'd wanted to get her preliminary report off in a timely manner to meet Plimsoll's expectations. What to do now with the initial reserve so inadequate? Brulé panicked as she reviewed cost items for labour, heavy equipment, haulage, disposal fees – and the list went on! Brulé's detailed report was past due and she feared how Plimsoll would respond to her recommended reserve increase. Desperate and needing guidance, Brulé called an old friend, Guy Ding, who worked for a competing firm. Known as the environmental loss guru, Ding agreed to meet Brulé at their favourite watering hole. Guy Ding walked her through the next steps.

Before doing anything else, Ding suggested that an experienced remediation expert be brought in to conduct a site assessment and to prepare a remediation plan with estimated costs. Taking her friend's advice, Brulé was able to turn the claim around, working with a professional geoscientist. The estimate to complete the clean up was an additional \$120,000.00. Eventually, Brulé found the courage to complete her detailed report for Malcolm Plimsoll. By this time, under the oversight of the expert, the remediation was on track and almost complete, but nothing could be done about the reserve increase.

Plimsoll's mantel clock struck 11 bells. File #2 had yet to be reviewed. A streamlined method of reviewing the file handling fundamentals in File #2 was required in order to be prepared in time for the conference call. Plimsoll developed a set of customized Key Performance Indicators (KPIs) to serve as a measurement framework in reviewing hydrocarbon spill claims. The KPIs examined critical file handling fundamentals, including: (1) Initial Action, (2) Site Stabilization, (3) Reserves, (4) Documentation, (5) Quantum Control, (6) Reporting, (7) File Management, (8) Environmental Liabilities, and (9) Fees.

Using the above KPIs as a measurement framework to analyse the performance for all the service providers on the file, Plimsoll could see that the adjuster handling File #2, Guy Ding, had not blindsided him on the reserve. Ding had scored A to B+ on all the KPIs. He had responded urgently

to the loss and had hired a site professional to stabilize the site, conduct an assessment and prepare a remediation plan with cost estimates. The site professional, a P. Geo. by the name of Roch E. Cobbles, had prepared a remediation plan that implemented an excavation and removal approach to cleaning up the mess. Initially, the reserves appeared adequate. Satisfactory documentation and reports were on time. The file appeared to be well managed and the contractor and subcontractor pricing was in line with standard industry rates. So where did the reserve on this file get so off course?

Site conditions and poor record keeping by the City were to blame. When spilled, heating oil will follow preferential pathways. As part of his assessment, Cobbles had ordered locates for all possible infrastructures. This would ensure excavation would go smoothly. Unfortunately, only after several weeks of digging under the policyholder's underpinned residence, did the contractor unearth a decommissioned sewer line. The oil followed this preferential pathway under the roadway contaminating two other commercial properties across the street. One of the other challenges to this remediation was the prevalence of fissured clay, which allowed the oil to spread easily in unpredictable ways. A mid-April blizzard, which closed down the site for almost a week, also created additional and significant surface water run-off.

Ding did the right thing. As soon as the additional contamination was discovered, working with the site professional, he prepared a reserve worksheet to enable him to calculate the reserve change. Ding communicated the situation and recommended a reserve change to Plimsoll immediately. Initially, Plimsoll was fuming, but after reviewing the file and looking at how it scored against his KPIs, he concluded that certain aspects of the loss were unforeseeable.

The clock struck three. Time to face the music with the Brits. Later that morning, Plimsoll explained to his boss that the Lloyd's program was not in jeopardy and that his proposed solution had been satisfactory. Going forward, Plimsoll would have to stick to his KPIs when managing spill claims. Guy Ding would be his go-to guy for all environmental claims.

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