

Ten Fundamentals of Effective Nuclear Liability Claims Management

Claims management plans are vital to mitigating the risk and uncertainty of a major incident. Operational challenges, financial and economic impacts, and reputational and political consequences of liability claims following nuclear incidents, make it critically important to have robust and tested plans. These plans should integrate with the wider national and international response. Plans should also take advantage of technology and best practices at all stages of preparation, event management, and recovery, both for site based and transportation nuclear incidents.

Regulators, governments, and operators place emphasis on the prevention of nuclear incidents from occurring. Perhaps as a result, planning and testing readiness for claims management and compensation have to date received less attention than they should. Traditionally, responsibility for nuclear liability claims handling has been given to insurers without assurance that plans are fit for purpose, and with an attitude that loss adjusters will handle it. Plans lack details on exactly how these critical activities will work and how many suitably qualified adjusters are available to respond, while crisis exercises simulate the initial emergency and containment phases and then stop before testing the insurance response.

More work is needed by the nuclear industry to ensure that claims response plans are indeed fit for purpose, despite the devastating consequences. After the Fukushima incident in Japan, more than 2.5 million claims resulted in payments costing almost US\$80 billion. There also has been reputational damage to government special measures, and socio-political implications from 45 lawsuits as of March 2018, of which 29 have been filed by over 10,000 plaintiffs.¹

A future large nuclear incident will, by its nature, be widespread, impacting hundreds of thousands of people and businesses across jurisdictional borders. Managing the claims arising from such an event is likely to quickly overwhelm the limited pool of loss adjusters — nationally



and globally. Layer on that the complexity of coping with multiple languages and legal obligations and the need for robust claims plans with smart contingencies becomes clear.

There are no established national/ International Organization for Standardization (ISO) standards or codes of conduct governing or guiding operational aspects of nuclear liability claims management. Reference to the role of insurance is sometimes found in the emergency response plans held by site operators, emergency services, and government agencies. While they typically mention that a process for handling insurance claims and making compensation payments is important, an actionable plan of how to deliver against this requirement is all too often missing.

1. TEPCO. "Compensation for Nuclear Damages" available at: <https://www7.tepco.co.jp/responsibility/revitalization/compensation-e.html>, accessed 1 July 2019.

Bridging the Gap

To help bridge this gap in liability claims preparedness, there are *ten fundamentals of effective nuclear liability claims management* that you can follow.

For various reasons, a degree of mystery surrounds the details of how liability claims should be effectively handled when a significant event occurs. From a risk management standpoint, this is deeply concerning. To address the issue around claims liability management, lessons learned from nuclear incidents — together with observations of good and bad claims practices following other major catastrophes over the past 20 years,

including the Christchurch earthquake and hurricane Katrina — can be used to provide a structured framework for building end-to-end claims management solutions, and can provide an illustrative concept of operation for what nuclear claims management best practice can look like in action.

Stakeholder's have certain legal obligations, critical questions they should be ready and able to answer, and documentation to ensure that plans are robust and ready for exercising and deployment (see Figure 1).

FIGURE
1

Critical questions, documentation, and legal obligations for nuclear liability claims management.

SOURCE: MARSH.



OWNER/ OPERATOR



INSURER/POOL/ LOSS ADJUSTER



GOVERNMENT/ REGULATOR

	OWNER/ OPERATOR	INSURER/POOL/ LOSS ADJUSTER	GOVERNMENT/ REGULATOR
CRITICAL QUESTIONS TO ASK AND ANSWER	<ul style="list-style-type: none"> How will an event resulting in a large volume of claims be handled? Under what scenarios will you be exposed through policy exclusions? What if the event crosses international borders? What if the value of claims exceeds your insurers' liability limit? Are crisis management and claims response plans connected? 	<ul style="list-style-type: none"> Are you confident in your ability to cope with a large volume of claims? Do you have the technical skill to manage all liability classes? Do you have sufficient legal support? Can your system cope with millions of claims, from notification through to payment? Who does what if multiple insurers/pools are involved? How will claims eligibility and proof of loss be established? 	<ul style="list-style-type: none"> Who is responsible for handling claims above insurers' limit of liability? Who meets the cost of excess claims and how are these costs provisioned for? How will government be kept updated on the insurance response and emergent issues? Do government crisis recovery plans link to and consider the entire end-to-end claims handling process? Is there a plan for transboundary response and international claims cooperation?
NECESSARY DOCUMENTATION	Site emergency and crisis management plans with insurance response embedded into the command and control structure.	Policy documentation and claims response procedures, made available to the insured and government during crisis exercises.	Multi-agency and government nuclear response plans and crisis exercises with a particular focus on claims during the recovery phase.
LEGAL OBLIGATION	Strict legal liability for settling nuclear claims under the Paris and Vienna conventions, including scenario where insurance policy fails to respond.	Demonstrate ability to meet claims management responsibilities under the contract of insurance and national nuclear liability legislation.	Demonstrate ability to meet responsibilities under national law and the Paris and Vienna conventions and Brussels Supplementary Convention, even if insurance policy fails to respond.

The Claims Requirement

The nuclear insurance industry is in a unique position for claims response because events are low frequency and high severity, and there are relatively few case studies to learn from. The limited number of historical examples and the colossal potential scale of a nuclear event underscore why more planning needs to be undertaken.

Whilst being a non-nuclear example, the importance of integrated planning that brings together government, regulators, operators, insurers, and loss adjusters came into the spotlight after the 2011 Christchurch earthquakes. When the earthquake occurred, New Zealand’s government stepped in and changed the basis of claims settlement from compensation to reinstatement. When strategic changes like this happen, having the foresight and contingency plans to cope is critical. Being ready means acting now to pre-test scenarios and ensure

ramp-up measures are in place. In the case of Christchurch, new organisations had to be established, processes defined *in situ*, systems built, technical policies developed, and thousands of overseas adjusters and inexperienced contractors drafted in. This ramp-up was reactive and expensive; emotional and political lessons were learned along the way.

In today’s claims world there is no excuse for inadequate planning and pre-testing. Sophisticated tools and models are available, which means that in peacetime, operators, insurers, and governments are able to prepare, build, and stress test robust and comprehensive liability claims management solutions. This ensures all are ready to meet future response requirements and more immediate stress testing and exercising obligations.

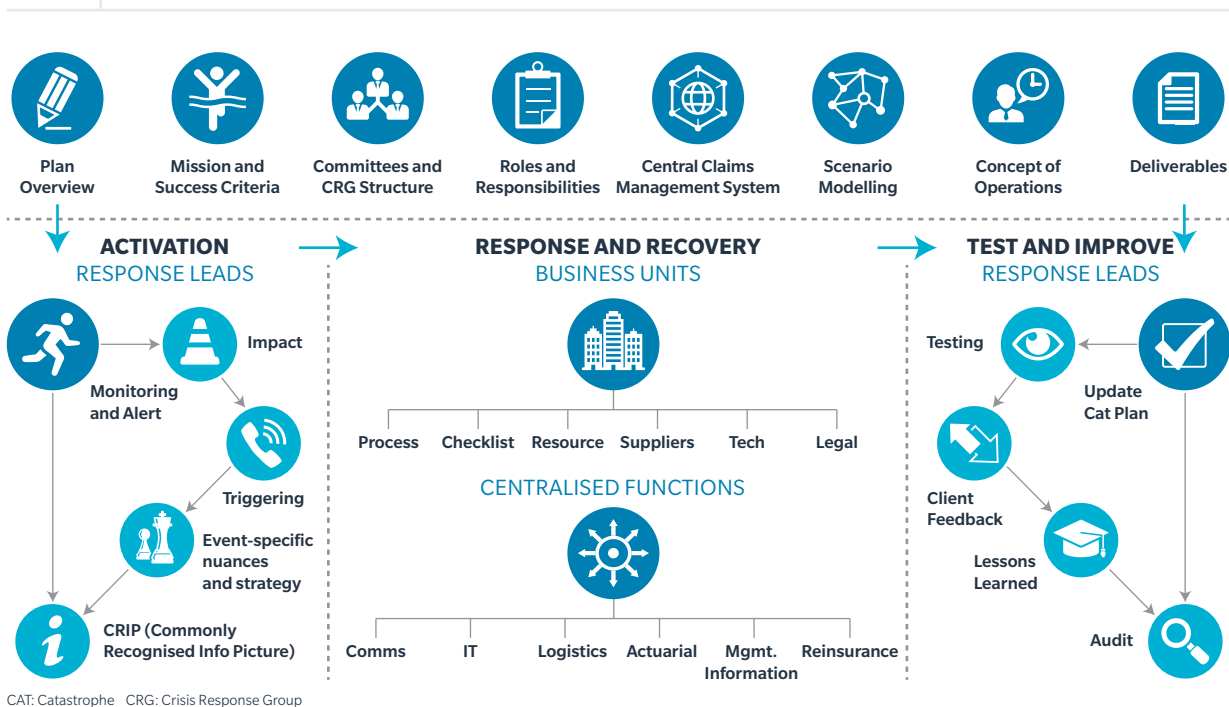
These tools and models leverage knowledge and learnings from Fukushima and draw upon the huge industry knowledge base from other global catastrophic claims events, like Christchurch. Importantly, they also consider the wave of fast-evolving

InsurTech claims technologies and practices that are revolutionising business-as-usual online claims operations. Real-time chat, app-based imagery and evidence upload, and fraud detection enable swift — sometimes immediate — claims settlement, minimising costs and delivering a new level of customer service.

Fundamentally, liability claims management involves common building blocks — whether the system is intended for nuclear, hurricane, or earthquake claims (see Figure 3).

When these building blocks are used in a nuclear context, they will help to review existing capabilities and actively guide nuclear liability claims plans, developments, and upgrades. Organised into four end-to-end stages, the system covers command and control, activation, response and recovery, and testing and improvement (see Figure 2).



FIGURE 2 Benchmarking nuclear liability claims planning using CAT-CHECK
SOURCE: MARSH.



Introducing 10 Fundamentals of Nuclear Claims Handling

The geographical, regulatory, and political environments for each nuclear country and/or operator are unique. This means that written plans for each situation have to be bespoke, although there may be some underlying commonality between national facilities. It is essential that a system ties together the operator, insurers, third-party administrators (TPAs), and government, and is capable of dealing with a large volume of highly complex claims. Developing this would be a multi-stage activity, requiring existing capabilities and systems being reviewed, the operating model established (or enhanced if an existing model exists), and a plan produced.

Once written, a plan must work in practice, not just theory. Today, plans can be stress tested and exercised in peacetime using “digital twin” simulation modelling techniques. Models should mirror the liability claims operation, including all of the different people, processes, and systems along with their agreed ramp-up potential. This type of modelling has already saved global insurers and pools many millions and protected their reputation by pre-testing “what-if scenarios”, identifying process bottlenecks and breaking points, and ironing out critical linkages between government and insurers.

10 FUNDAMENTALS	DESCRIPTION	CONSEQUENCES (COST, REPUTATION, PEOPLE, WELFARE, TIME)
 <p>1 INTEGRATED INTO THE NATIONAL RESPONSE Has claims management been integrated into national emergency response plans?</p>	<ul style="list-style-type: none"> • Insurance has a seat at the national table during both the planning and response phases. • Government emergency plans consider claims management on an end-to-end basis, from incident notification and emergency response to recovery and claims payment. • Plans consider the scenario where insurance is triggered and where liability reverts to the operator due to policy exclusions. 	<ul style="list-style-type: none"> • Assumptions left unchallenged leading to plans that may not work. • Delays to starting the claims process. • Inefficiencies in the process as organisations take time to learn what is needed (particularly in a multi-stakeholder environment like nuclear). • Multi-visits leading to increased costs. • Lack of data flow, or delays to data flow leading to inaccurate claims decisions, delays, or inappropriate payments.
 <p>2 SCALABLE CAPABILITY Can your claims operating model handle catastrophic events?</p>	<ul style="list-style-type: none"> • Sustainable “out of the box” solution that can be implemented quickly by staff with no previous experience of handling claims for catastrophic events. • People, processes, and technology must be sufficiently resilient and adaptive to a range of scenarios, underpinned by resource modelling. • Because it may be used “once in a generation” it must be cost effective to maintain and train staff in its use. Close to following existing processes as much as possible. • Easy to follow processes for the claims handlers and for claimants — no large forms that will slow down the process. • Innovative technologies deployed to improve usability and speed up the response. 	<ul style="list-style-type: none"> • Inability to respond at the pace/scale needed. • Significant reputation damage to organisation and industry. • Threat of litigation, costs escalate. • Leakage as claims are paid under stress, with pressure from citizens and governments to do so. • Increased threat of government policy, legislative response.
 <p>3 COMMUNICATIONS Are communication channels clear?</p>	<ul style="list-style-type: none"> • Working with other agencies involved in the response to agree and deliver a single version of the truth and a common message to stakeholders. • Single data management system to support consistent decision making and messaging. • Single communications plan to prevent multiplicity of messaging and speculation. 	<ul style="list-style-type: none"> • Claimants receiving mixed messages on what is covered and what is not. • Significant reputation damage. • A perception of not being in control could contribute to the nuclear “dread factor”.

	<p>MULTI-AGENCY RESPONSE PLANNING Is the response pre-planned and integrated with roles understood?</p>	<ul style="list-style-type: none"> • Clarity of responsibilities linked to policy wording. • Pre-established command and control structures, committees, and escalation criteria to deliver a coordinated response. • Processes that make use of existing data systems available to responders (e.g. local authority and police data), subject to data protection. • Involvement of insurance experts in multi-agency crisis exercises to support pre-event planning. 	<ul style="list-style-type: none"> • Delays to the claims process. • Mixed messaging to stakeholders undermine confidence in the system. • Leakage of claims.
	<p>SCENARIO STRESS TESTED Are you confident your claims process is capable of managing a full range of scenarios?</p>	<ul style="list-style-type: none"> • Linking claims capability to the scenarios driving emergency response plans. • Modelling the number, timing, and size of claims. • Using modelling to understand the tipping point at which the system would fall over. • Modelling participation from multiple insurance organisations to understand shared capacity/ capability. 	<ul style="list-style-type: none"> • No way of knowing whether plans will work. • No means upon which to build case studies for further investment.
	<p>LIABILITY CLASSES Are all classes of potential liability covered?</p>	<ul style="list-style-type: none"> • Pre-agreement with site owners and government on limits of liability — containment and clean up versus a new baseline for decommissioning. • Exploring fixed and mobile assets (transport risks) and directors and officers (D&O) liabilities. 	<ul style="list-style-type: none"> • Coverage may fall short of what will be needed. • Decommissioning strategies fail, or are unable to address the “new normal”.
	<p>LIMITS OF LIABILITY What would you do when claims go beyond the limit of your insurer’s liability?</p>	<ul style="list-style-type: none"> • Agreeing the limits of liability with asset and title holders, and provisions for covering losses above this. • Scenario modelling by operators and title holders on contingencies for supplier or operator failure (bankruptcy, force majeure, management walk-out). 	<ul style="list-style-type: none"> • Liabilities lack sufficient provisioning.
	<p>FUTURE LEGISLATIVE AND POLICY LANDSCAPE Are you confident your model could adapt to future legislative changes?</p>	<ul style="list-style-type: none"> • Room to flex with potential changes to the Paris Convention. • Agility to respond to fast paced decision making from governments that may change the policy/regulatory landscape during a live response. • Flexible to adapt to working under emergency powers (if provided for by constitution). 	<ul style="list-style-type: none"> • Gaps in coverage as legislative framework flexes. • Lack of agility. • Claims could be paid twice — once by newly introduced government mechanisms and then by insurers.
	<p>INTERNATIONAL DYNAMIC Can you handle complex international claims and litigation?</p>	<ul style="list-style-type: none"> • Impact of catastrophic event felt globally, would become a political issue between state leaders. • Capability to deal with large overseas claims including class action lawsuits. • Ability to address complex claims that chase liability through a supply chain. • Capability to manage claims with a long tail (health effects arising 30+ years from event). • Strong legal advice with expertise available to decision makers. 	<ul style="list-style-type: none"> • Significant and lasting damage to reputation. • Exposure to significant litigation costs and D&O liabilities. • Increased cost of claims if longer term effects are not properly managed.
	<p>TECHNOLOGY INNOVATION Are you making the most of innovation and automation in claims handling?</p>	<ul style="list-style-type: none"> • Using the best technology solutions to improve the efficiency of the claims process. • Self-service systems to drive quicker claims resolution. • Auto-settlement capability for certain classes of liability, freeing up time to concentrate on complex claims. • Investments in technology justified on the basis of a business-as-usual use (investment too high for a system that may never be used). 	<ul style="list-style-type: none"> • Resources not optimised. • Slow response and slow claims handling. • Frustration by claimants; financial hardship. • Greater chance of governments stepping in.

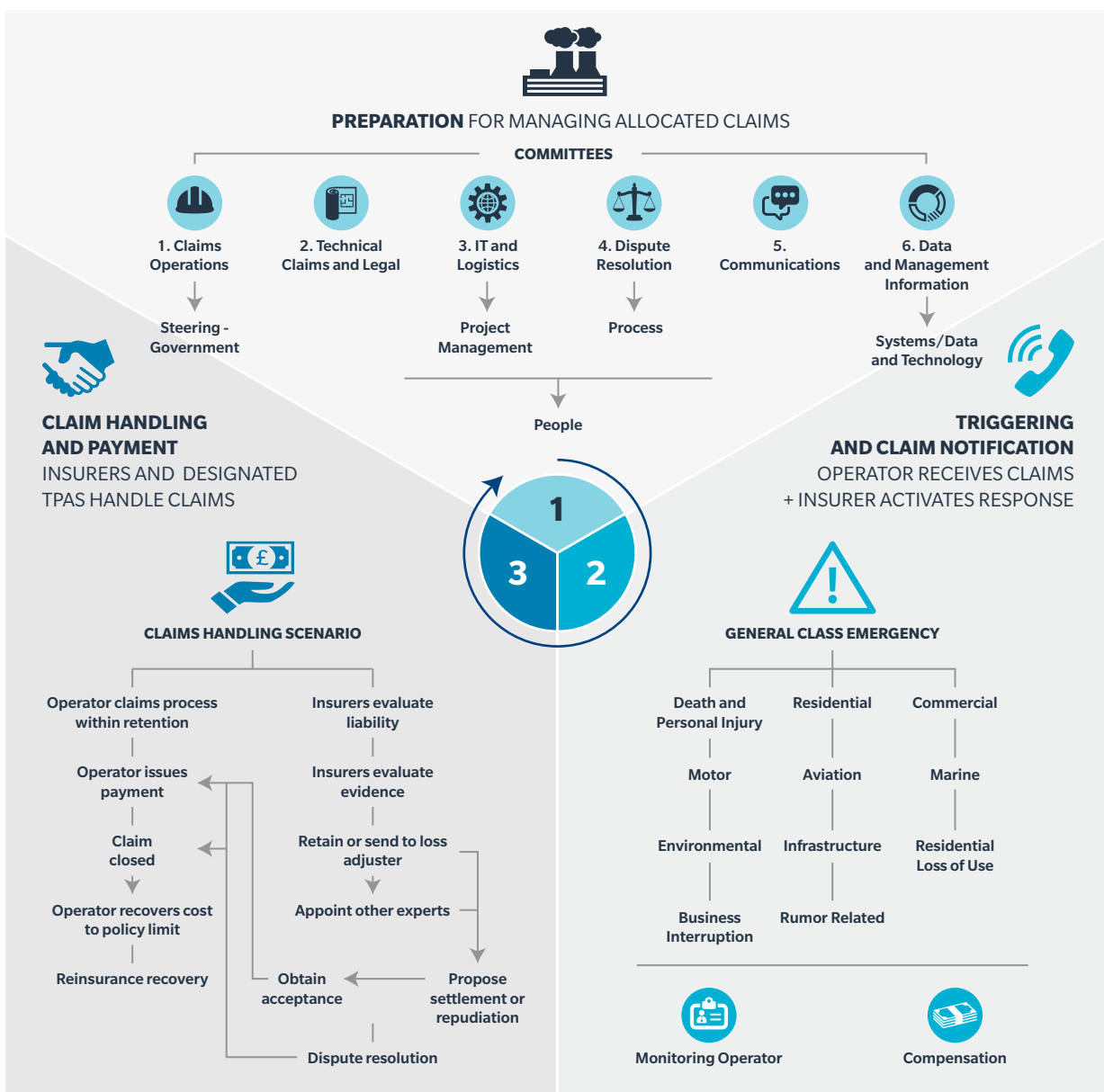
Conclusion

Addressing these 10 fundamentals is essential to taking ownership of liability claims management for property and transportation risks, and demonstrates an active approach to preparedness in this area. The days of relying on an opaque, untested claims solution are over.

Organisations would benefit from an end-to-end process for nuclear property liability claims management for a nuclear site, developed in full within a claims response plan (see Figure 3). Once plans have been defined, stress testing is advised and can be carried out as part of recurring crisis management routines.

FIGURE 3 Concept of operations for nuclear liability claims response preparation, triggering and notification, and claims handling and payment.

SOURCE: MARSH.



The importance of a structured, tested, and transparent approach to liability claims management is increasingly becoming accepted. Liability claims planning and management needs to be actively discussed at a strategic level by the nuclear industry. It should become an integral part of ongoing risk management, and a routine agenda item at industry events, meetings, and response exercises to ensure visibility and promote adoption. We would like to see a wider debate and more publications on this topic.

An industry code of practice may be required to help drive consistency and standardisation, delivering a framework for effective, scalable, and robust claims management arrangements which takes advantage of emerging technological innovation in claims.

Moving forward, immediate objectives for stakeholders are:

1. Owners/Operators

Owners and operators need to retain “ownership” and have full sight and control over their liability claims process. They should know exactly what will happen if an event occurs — whether or not insurance is triggered. To mitigate scenarios where insurance is not triggered or provides partial financial coverage, a transparent process with insurers is vital, along with a direct relationship and ability to activate and task loss adjusters and claims experts, and access to the reporting tools, key performance indicators (KPIs), and systems to manage the process.

2. Insurers/Poolers/Adjusters

It is important to take responsibility for the full capability; loss adjusters are one small part of the total claims solution. The people, processes, and systems needed to manage large volumes of complex claims need to be proven and tested. Business as usual claims processes are unlikely to be sufficient to cope with the nuances of a nuclear event.

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A shared understanding between insurers and operators over what is covered and what is not covered is essential. The policy wordings need to be comprehensive in their coverage of risks and clear on the situations when insurance will not be triggered, to provide transparency to stakeholders on what is and what is not covered. The scenarios under which insurance will not be triggered, or the limit of cover is exceeded, need to be fully understood by all parties to provide an opportunity to adjust insurance coverages and put other mechanisms in place (for example, to engage directly with loss adjusters and TPAs).

3. Government/Regulators

The ultimate financial, economic, and environmental costs of catastrophic nuclear events may go beyond the limits of most insurers’ liability cover. As a duty to citizens, governments will need to demonstrate that mechanisms are in place to cover costs and manage the claims process under scenarios where they fall above or outside of an insurer’s or site owner’s liabilities.

As an initial step, government’s should encourage participation from the insurance industry in national crisis exercises.

Large-scale nuclear claims events have unique characteristics. Their potential scale and complexity, the possibility of government policy interventions, and the challenges of visiting the scene all make them different to most claims scenarios. However, being prepared for the very worst case scenario has wider business benefits. The same systems, people, and processes can be applied to a wide range of claims events ensuring organisations see a quicker return on their investment whilst ensuring that if a major nuclear event does happen they will be prepared.

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