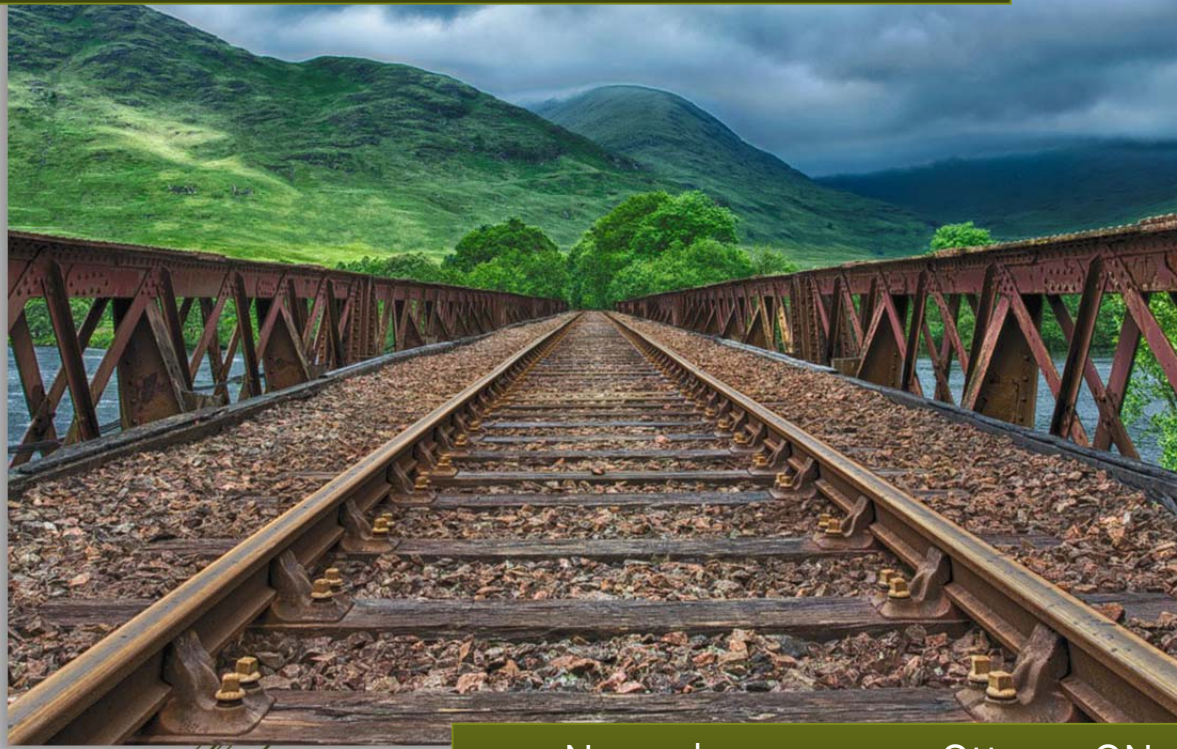


Summary of the FRAIDG Workshop



November 30, 2017 – Ottawa, ON

REVIEW OF THE FRAIDG WORKSHOP ON NOVEMBER 30, 2017

The FRAIDG held a workshop in Ottawa on November 30, 2017. The purpose of this workshop was to plan and strategize with key stakeholders in order to improve the FRAIDG's indemnification readiness and efficiency on specified issues related to claims, liability, and compensation regarding railway accidents involving designated goods. The workshop touched upon the triggering of the FRAIDG claims process, the draft Claims Manual, claims valuation and claims assessment process, and next steps. During the workshop, there were breakout groups where the attendees discussed compensation and liability issues in the context of a hypothetical railway accident.

This document summarizes the workshop, including some of the feedback provided during and after the workshop.

In the coming months, the FRAIDG will circulate the amended draft claims manual and its draft policies. It will also consolidate its key stakeholder network by engaging and meeting with various key stakeholders. Over the upcoming year, the FRAIDG will develop discussion papers that look at potential grey areas. Some of these discussion papers may be issued jointly with other agencies that share the same issue(s).

Sincerely,

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SESSION 1: THE TRIGGERING OF THE FRAIDG CLAIMS PROCESS

NOTIFICATION OF RAILWAY INCIDENTS

The presentation provided that:

- 1.1.1. While claims may be filed with the FRAIDG at any time after a railway accident, the FRAIDG will not start assessing claims when the railway liability limit has not been reached
- 1.1.2. The railway liability regime and the FRAIDG regime will not operate in parallel, but as a continuum, the FRAIDG being last
- 1.1.3. The FRAIDG wants to be informed by the relevant railway(s) when there has been a railway accident involving crude oil
- 1.1.4. The FRAIDG would like to implement a post-incident follow-up process with railways/railway insurers in order to close any file that may have been open with the FRAIDG and kept in abeyance pending settlement of the claim by the railway/railway insurer

At the workshop, attendees raised no issues with the presentation points.

ADMINISTRATOR'S COMMENTS

The above will be encapsulated into a policy and stakeholders will have an opportunity to review the draft.

Post-Workshop Feedback:

The FRAIDG received feedback after the workshop, which will inform its upcoming work and may be distributed later.

DETERMINING WHETHER AND HOW THE FRAIDG IS INVOLVED

The presentation provided that regarding the various levels of the FRAIDG involvement in a given railway accident, the FRAIDG proposes that:

- 1.2.1. When the aggregated damages are well below the railway liability limits, the FRAIDG is mainly just disseminating information and redirecting claimants to the subject railway's claims department
- 1.2.2. When the aggregated damages approach 50% of the railway liability limits, the FRAIDG will become increasingly ready
- 1.2.3. When it is probable that the limit of liability of the railway will be exceeded (i.e. ~85%), the FRAIDG will begin to ramp up its ability to process claims (e.g. make any needed changes to claims manual, collaborate with other key payers, ...)
- 1.2.4. When the aggregated damages approach 100%, the FRAIDG will issue the claims manual (i.e. make it available to claimants and relevant networks)

At the workshop, attendees raised no issues with the presentation points.

Post-Workshop Feedback:

After the workshop, the FRAIDG received the following feedback:

- A stakeholder expressed concern that a response organization could incur clean-up costs without prompt reimbursement if the railway company does not provide timely compensation.

ADMINISTRATOR'S COMMENTS

The above will be implemented into the FRAIDG processes.

COORDINATION AMONGST PAYERS

The presentation provided that the FRAIDG favours an approach of early coordination. It aspires for:

- 1.3.1. Early identification of potential payers
- 1.3.2. Early determination of whether relevant damages/losses will exceed the railway(s)'s limitation of liability to determine if there is a chance that the FRAIDG will become involved
- 1.3.3. Identification of payers who are likely to challenge liability or involvement in the railway accident
- 1.3.4. Identification of likely subrogated claimants (e.g. private claimant insurers, etc.)
- 1.3.5. Identification of the releases being signed by an initial claimant to a subrogated claimant and whether they would preclude full indemnification/additional indemnification by the FRAIDG
- 1.3.6. Information sharing mechanisms that allow for cross-referencing to facilitate full recovery and avoid double recovery
- 1.3.7. Identification of available government information/data/statistics that may be necessary to assess claims
- 1.3.8. Ensure coordination that does not impact the contractual relationship between the commercial insurer and its client

At the workshop, attendees provided that:

- Coordination amongst payers should not impair the legal rights of the parties
- Coordination amongst payers should not jeopardize any solicitor-client privilege

Post-Workshop Feedback:

After the workshop, the FRAIDG received feedback, which will inform its upcoming work and may be distributed later.

ADMINISTRATOR'S COMMENTS

Above approach will be incorporated into policy(ies) and further developed via the Key Payers' Network and the Payers' Network Preparedness Plan (see 4.2 below). Stakeholders will have an opportunity to review draft policies.

CONSIDERATION OF STRATEGIES TO IMPROVE THE EFFICIENCY OF THE OVERALL PROCESS FROM A CLAIMANT'S PERSPECTIVE

The presentation provided that the FRAIDG proposes for the pre-identification of potential claims management strategies. As well, when appropriate and agreeable, the FRAIDG proposes:

- 1.4.1. The consideration of whether to employ particular strategies at the early stage of an incident that could trigger the FRAIDG claims process
- 1.4.2. Quick assessment of initial claimants (especially most vulnerable ones)
- 1.4.3. Avoid delays in assessment of claims if there are legal uncertainties as to the liability of the railway company(ies) involved
- 1.4.4. That, if a railway company considers itself not liable, that it could still make payments and later claim to the FRAIDG as a subrogated claimant
- 1.4.5. A joint claims office as a one-stop shop for claimants
- 1.4.6. Payers to share claims assessment expertise and related costs

During the workshop:

- An attendee said that many insurers could be involved in varying capacities.

Post-Workshop Feedback:

- Regarding 1.4.1, a stakeholder provided that it may not be able to activate strategic decisions suggested by the FRAIDG, which would otherwise jeopardise available coverages, or be contrary to its insurer's claims management strategy

COORDINATION WITH OTHER RELEVANT KEY STAKEHOLDERS: MAJOR CLAIMANTS, LOCAL MEDIA, COURTS ADMINISTRATION, ETC....

The presentation provided that the FRAIDG intends to coordinate, early on, with key payers and other key stakeholders. The other key stakeholders being major claimants, local media, courts administration, and the Canada Transportation Agency.

At the workshop:

- Attendees provided that the message to the media needs to be clear and consistent;
- An attendee provided that using social media (Twitter, Facebook, etc.) may be helpful to get the word out and to capture a wider audience. The IBC found it helpful with respect to wildfires and flooding
- An attendee provided that coordination with the FRAIDG is key for response organizations

Post-Workshop Feedback:

After the workshop, the FRAIDG received feedback, which will inform its upcoming work and may be distributed later.

"PRIORITIZING" CLAIMANTS (AND ASSOCIATED GREY AREAS)

The presentation provided that

- 1.6.1. One of the FRAIDG's goals is *prompt* indemnification of *most vulnerable* claimants. Regarding 'prompt indemnification', the FRAIDG had in mind to aim for similar time frames as the insurance industry, as well as benchmarking against the Lac-Mégantic time frames for indemnification. Regarding '*most vulnerable*', a common understanding could be pre-identified with reference to particular categories of claimants depending on the profile of the claims portfolio. Foreseen "most vulnerable claimants" would likely include individuals and small businesses.
- 1.6.2. Proposed methods to achieve this goal include:
 - 1.6.2.1. Coordination amongst payers when there are multiple payers
 - 1.6.2.2. Pre-agreement regarding application of strategies
 - 1.6.2.3. Usage of red zone, convenience class, or matrix (see 2.1.3 for more on convenience class and matrix)
 - 1.6.2.4. Prioritizing payments to, and protection of, the most vulnerable claimants. For instance, where small/private claimants are prioritized over big institutional claimants (including subrogated claimants) (prioritization of payments need not necessarily apply to insurers when the compensation is within their liability limits)
 - 1.6.2.5. Triggering the FRAIDG claims process if there are undue indemnification delays
 - 1.6.2.6. The payer becoming a subrogated claimant to another payer

Some Workshop Feedback:

- Although attendees generally agreed with the goal, the particulars on how it could be reached generated discussions.
- An attendee provided that private claimants often go to their own insurance as that is often a more expedient avenue for indemnification.

After the workshop, the FRAIDG received feedback, which will inform its upcoming work and may be distributed later.

SESSION 2: CLAIMS VALUATION & CLAIMS ASSESSMENT PROCESS

CLAIMS MANUAL

ACCOUNTING FOR PROVINCIAL DIFFERENCES/DIMENSIONS

The presentation provided that the claims manual would take into account:

- Relevant provincial law with respect to property and civil rights (e.g. right to sue, ...)
- Relevant provincial programs, including those relating to economic damages, evacuation assistance, emergency assistance, bodily injuries, etc.

At the workshop, attendees raised no issues with the presentation points

Post Workshop Feedback:

- A stakeholder stated that the FRAIDG settlements should be consistent with Common Law.

EVIDENTIARY REQUIREMENTS

The presentation provided that:

- Claims may be signed before a commissioner of oaths where supporting documents are unavailable due to the derailment
- Similarly, where some documentary evidence is unavailable due to the physical destruction of records, the FRAIDG will be open to the missing evidence being provided by affidavit
- The FRAIDG will consider reducing evidentiary requirements where, as appropriate and agreed upon, claims fall within a convenience class, the claimant is part of a red zone, or the claim is assessed via a matrix (see 2.1.3 for more on convenience class and matrix)
- Future amendments to the claims manual may include changing the meaning of ‘financial assistance’ to clearly include charities, adding fields to identify further information on legal actions, requiring additional medical documentation for personal injury claims, permitting electronic proof of compensation for subrogated insurer claims, and clearly accounting for insurance payments in the proof of claim form

At the workshop, attendees raised no issues with the presentation points

ADMINISTRATOR’S COMMENTS

The above approach will be reflected in the claims manual.

Post-workshop Feedback

- A stakeholder provided that where possible, full documentation should be required to support claims including expert information
- A stakeholder stressed that the draft claims manual does not include any schedule that would capture claims from first responders/response organizations. As opposed to damage claims, there claims would be cost-recovery claims. It requested information on how these types of claims would be captured in the manual.

POTENTIAL STRATEGIES FOR FACILITATING/SIMPLIFYING/EXPEDITING CLAIMS ASSESSMENT:

USAGE OF A MATRIX

The presentation provided that the matrix:

- Would be used when there is consent from the key payers and as a first level, fast track option for claimants (i.e. both the payer and claimant would agree to use this type of expedited assessment)
- Will not be explicitly referenced in the claims manual unless it is appropriate and agreed upon with respect to specific classes of claims from a specific incident
- Will be based upon a fixed dollar amount per point and a change in points for one claimant will not impact another claimant
- Could also allow for a 'red zone'
- Has benefits of:
 - providing a faster indemnification process to traditional, exhaustive indemnification processes because, amongst other things, it requires less supporting documentation
 - potentially providing a benchmark for estimating individual claims and total claims
- is to be developed in consultation with key stakeholders
- would need to be regularly updated in accordance with inflation and new jurisprudence and in consultation with key stakeholders

Some Workshop Feedback:

- The potential use of a matrix was the most contentious issue of the workshop:
 - An attendee said that the matrix raises a number of issues.
 - An attendee commented that it could result in over/under indemnification.
 - An attendee stated that it may be appropriate for claims less than 10K (e.g. stoves, fridges...) as it provides for quick indemnification. However, in regards to assessing loss of life or large damages, a case-by-case approach is more appropriate.
 - An attendee stated that insurers do not use matrices, but documentation to indemnify.

Some Post-Workshop Feedback:

- A stakeholder provided that the fact that multiple insurers are usually involved in railroad programs will render utilizing the matrix difficult as agreement must be obtained from many different insurers.

ADMINISTRATOR'S COMMENTS

The matrix will be removed from the draft claims manual. It may be reinserted based on appropriateness and consent in a given situation.

CREATION OF A CONVENIENCE CLASS

The presentation also provided that a convenience class

- could, with consent, also be used
- could apply to economic damage claims and/or personal/moveable property damages below a certain threshold
- could expedite assessments for a large number of very small claims
- would require less supporting documentation,...

ADMINISTRATOR'S COMMENTS

A convenience class may be used based on appropriateness and consent in a given situation.

Workshop feedback:

- at the workshop, an attendee provided that the use of a convenience class may be appropriate for small losses, but not for loss of life or large damages

GREY AREAS: ASSESSING FUTURE LOSS, LOSS OF USE, LOSS OF NON-USE VALUE, OTHER NON-ECONOMIC LOSS

The presentation provided that:

- The methodology for assessing future losses/expenses (e.g. business interruptions, moving business operations, decontamination, moving/storing equipment, government payments for future claims...) is a grey area.
- For future losses/expenses and, subject to time bars, the FRAIDG will reimburse for actual costs when actual costs turn out to be larger than estimates of future losses/expenses.
- The methodology for assessing pure environmental damage (e.g. loss of non-use value) and assessing loss of opportunities relating to hunting/fishing/gathering also constitute grey areas. The FRAIDG will research and consult with relevant stakeholders and coordinate with other relevant governmental agencies to develop methodologies for assessing such claims and to eventually hold future (and potentially joint) workshops on these topics.

Workshop Feedback:

- Attendees provided that:
 - Assessing future loss and losses associated with business interruptions involves looking at the claimant's documents and may also involve seeking information from Revenue Canada (for instance, when documents were burned in the accident)
 - Regarding damage to land (e.g. oil contamination), the land owner would be compensated based on the land's pre-accident, property value.
 - Attendees do not have experience assessing loss of opportunities relating to hunting/fishing/gathering or on assessing pure environmental damage. Railways and railway insurers may be interested in being part of the consultation process for the development of methodologies relating to pure environmental damage and loss of opportunities relating to hunting/fishing/gathering. However, if the Administrator wishes to involve the insurers in assisting potential claimants to put claims together, that will be met with resistance from the insurance industry.

Post-workshop Feedback:

- No additional feedback received

ADMINISTRATOR'S COMMENTS

The Administrator accepts the input and will develop and circulate discussion papers on these grey areas in 2018.

SESSIONS 3 & 4: BREAKOUT GROUPS & FOLLOW-UP DISCUSSION

During this session, attendees discussed the claims management issues linked to a hypothetical scenario regarding a railway accident involving crude oil.

[Please note that for time management purposes, session 5 of the Workshop Agenda ("Offer, Acceptance & Other Grey Areas" was skipped]

SESSION 6: FUTURE DELIVERABLES

KEY STAKEHOLDERS' NETWORK

The presentation provided that the FRAIDG would like to:

- 4.1.1. Create a key stakeholder network for the purpose of distributing/receiving information, consultations, etc. The network would include railways, railway insurers/brokers, provinces, municipalities, the Indigenous community, 1st responders, private insurers, transportation lawyers, CBMU, Canadian Transportation Agency, ...
- 4.1.2. Continue to reach out to provinces, the Indigenous community, and transportation lawyers
- 4.1.3. Periodically run workshops (like this one)

Workshop Feedback:

At the workshop,

- an attendee provided that a unique approach may be needed for engaging with the Indigenous community;
- attendees said that the FRAIDG is currently not sending too much information and they preferred the FRAIDG to send more than less information;
- Other than the above, no issues were raised

Some Post-Workshop Feedback:

- Regarding 4.1.1, a stakeholder commented that for insurers, communication must go through the railway company. This stakeholder questioned the practicality of a network and plan that includes railway insurers. It provided that, in some cases, a railway's insurance program would have numerous insurers, in various countries, participating.

KEY PAYERS' NETWORK & PAYERS' NETWORK PREPAREDNESS PLAN

The presentation provided that:

- 4.2.1. The FRAIDG plans to create a Key Payers Network. It would be activated promptly in case of a major railway accident involving designated goods. The contact persons still need to be established.
- 4.2.2. The FRAIDG plans to create a Payers' Network Preparedness Plan. The plan would, prior to a FRAIDG indemnification process, list the key issues to address when an accident triggers the FRAIDG liability and the Key Payers Network (e.g. profile of claims portfolio, vulnerable claimants, relevant legislation, claims management resources, challenges and options, potential for collaboration, communications, relevant provincial programs, ...).
- 4.2.3. The FRAIDG intends to develop this plan with the Payers' Network.

Workshop Feedback:

- An attendee provided that competition law could impede the level of collaboration amongst insurers.
- Similarly, an attendee provided that privacy law could impede the level of collaboration amongst payers as it may impose limitations on the sharing of claimant information.
- Other than the above, no issues were raised

ADMINISTRATOR'S COMMENTS

The Administrator takes note of these comment and will consider this issue further while working on the development of the Key Payers Network and the Payers' Network Preparedness Plan.

Post-Workshop Feedback:

After the workshop, the FRAIDG received feedback, which will inform its upcoming work and may be distributed later.

ANNUAL UPDATES AND DOCUMENT REVIEW

The presentation provided that:

- The FRAIDG will keep the Claims Manual updated.
- The FRAIDG will also circulate any future guidelines/policies to the Key Stakeholders network for feedback
- Every 2 or 3 years, the FRAIDG would like to undertake a periodic review with key stakeholders. The review would be of the FRAIDG claims management and related tools/documentation.
- The review would be followed by a workshop

Attendees raised no issues with the above

APPROACHES TO GREY AREAS AND OTHER RESIDUAL ISSUES

The presentation provided that, to facilitate private claims and improve predictability, the FRAIDG will :

- First, publish policies. Stakeholders having an opportunity to provide feedback.
- Second, publish guidelines for particular heads of damages
- Third, prioritize outstanding grey issues.

Workshop Feedback

- No significant issues were raised