

2024 Insurance Sector Webinar Programme

Natural Catastrophes and Reinsurance Implications

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What we will cover

01 Non-Natural and Natural Perils

02 UnipolSai v Covéa – “Catastrophes” and hours clauses

03 Best practices for managing claims

04 Brazilian perspective and developments

05 Italian developments



1 Non-Natural and Natural Perils

Non-Natural Perils

- Sudden:

- Terrorism
- Explosion
- Fire
- Malicious Damage
- Theft
- **Cyber?**

- Less sudden:

- Riots
- Strikes
- Civil commotion



Natural Perils

- Sudden:

- Earthquake
- Hurricane
- Windstorm
- Tornado
- Tidal Wave / Tsunami

- Less sudden:

- Flood
- Winter weather / Freeze
- Subsidence
- Wildfires



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UnipolSai v Covéa – “Catastrophes” and hours clauses

UnipolSai v Covéa – Background (1)

- English High Court and Court of Appeal decisions which found that Covéa, an insurer, was entitled to recover its UK COVID-19 business interruption losses from its reinsurer, UnipolSai.
- The High Court and Court of Appeal decisions are significant because they consider two key reinsurance issues:
 - the meaning of “catastrophe” under reinsurances - the English Courts’ first decision on this issue; and
 - the application of hours clauses, which had not previously been considered in detail by the English Courts.



UnipolSai v Covéa – Background (2)

- The reinsurance contained a definition of “Loss Occurrence” clause, which stated, in part:

“1) The term ‘Loss Occurrence shall mean all individual losses arising out of and directly occasioned by one catastrophe.

2) The duration and extent of any “Loss Occurrence” so defined shall be limited to:

... vii) 168 consecutive hours for any Loss Occurrence of whatsoever nature which does not include individual loss or losses from any of the insured perils mentioned in any of the paragraphs (i), (ii), (iii) or (v) above

and no individual loss from whatever insured period, which occurs outside these periods or areas, shall be included in that “Loss Occurrence”

UnipolSai v Covéa – Catastrophe (1)

- The Courts rejected that “catastrophe” was limited to some special meaning, e.g. that it must be capable of causing physical damage or sudden and violent.
- The Court considered that factors pointed strongly away from anything but the most generous application of the unities of time and area, including:
 - a 504 hours period for flood; and
 - a “two risk” warranty.



UnipolSai v Covéa – Catastrophe (2)

- The Courts declined to give an all-encompassing definition of “catastrophe”. However, in this specific context, the Court considered that a “catastrophe”:
 - must be something capable of directly causing individual losses.
 - can fairly be regarded as a coherent, particular and readily identifiable happening, with an existence, identity and “catastrophic character”.
 - must have an identifiable beginning and ending, even if an attempt at a precise temporal delineation is subject to legitimate debate and dispute.
 - will involve an adverse change on a significant scale from that which preceded it.
- Broad, flexible definition likely to capture range natural catastrophes, whether sudden or more gradual.



UnipolSai v Covéa – Hours clause

- The Court rejected Reinsurers' arguments that non-PD business interruption occurs “day by day” and should be treated differently to PD business interruption.
- The Courts found that the “*individual loss*” occurs “*when a covered peril strikes or affects the insured premises or property*”.
- As a result, the entirety of the business interruption losses occur when the relevant peril strikes. Provided peril strikes during hours period, all ensuing losses therefore fall within that period.





Best practices for managing claims

Best practices for managing claims (1)

- **Best to be prepared in advance, where possible, prior to any Nat Cat happening:**
- “Clause Drawers” – aim to neatly categorise your key loss defining clauses and have a list of clients per category. These might typically include:
 - Definition of Loss – Is the wording “event”, “cause” or “catastrophe” based?
 - Hours Clause – What duration per wording? 72 / 120 / 168 etc.
 - Geographic / Radius based? Is the parameter set by geographical rather than time restriction? Or a combination?
 - Reinstatements – Often overlooked but important. Do they apply? How many?



Best practices for managing claims (2)

- **As the event happens, switch to real time, actual event focus:**
- Consider the specific CATs unique characteristics, to bring the above into play and to set the agenda for possible areas to channel attention. For example:
 - Does the loss have a short-term impact such as wind? Or longer term such as flood or wildfire? How is it defined?
 - Causation – Is this clear? Is Flooding from storm surge? Or prolonged rainfall / riverine?
 - Jurisdiction – Important in any coverage context. In some territories, a clear position will need to be set out within a certain timeframe. Make sure this is well known and clear immediately.



Best practices for managing claims (3)

- **From here, aim to build out a client specific profile and ensure you “keep pace” with developments. It is easy for these to get away from you.**
- “Communication” – this becomes crucial both internally and externally. Key focal points for each should be:
- Internal – important to have regular and consistent dialogue:
 - Modellers / Actuaries – What do exposure models suggest is at risk? Which clients need the most focus?
 - Underwriters – Will know the client best, including their likely exposure and immediate needs.



Best practices for managing claims (4)

- External:

- The Client – Meeting the client's needs and expectations, whilst also protecting the bottom line. Seek to obtain a clear line of sight early as to potential “Payers” versus necessary “Focus Zones”.
- Exposure – Did the client model as heavily exposed? Where do losses attach? What is their limit (Annual)?
- Needs – Will cashflow be important? Are they a smaller client or do they face key operating challenges? Actively consider making interim or advance payments either per contract, or via UW discussion. This can buy goodwill and allows for greater focus on the question marks.



Best practices for managing claims (5)

- **This should all leave us well set to have a clear target list of the “Payers” and “Focus Zones”.**
- Aim to pay those with no real coverage issues, but heavily exposed, or in need of assistance as promptly and regularly as possible.
- Focus time on the “grey areas” then to gain clarity.
- Communicate transparently with brokers / clients on those flagged as red. An open honest dialogue, held early helps.





Brazilian perspective and developments

Role and importance in Brazilian Cat XL reinsurance (1)

- Cat XL reinsurance played a crucial role in the financial stability of insurers following catastrophic floods in Rio Grande do Sul between May and June 2024, which resulted in significant losses.
 - As of September 20, 2024, the total of insurance claims exceeded USD 1.1 billion
 - Large risks: USD 580 million
 - Auto: USD 220 million
 - Homeowners: USD 110 million
- Around 75% of insurance payouts to date are expected to have been covered by reinsurance.



Role and importance in Brazilian Cat XL reinsurance (2)

- Specific details about the reinsurance arrangements for the Rio Grande do Sul floods are not publicly disclosed
- Hours clauses are typically used in reinsurance contracts
 - Under the US standard model, 72 or 168 hours commonly used for floods
 - Captures the immediate and proximate losses caused by the floods themselves (rather than by the other natural event which resulted in the floods – hurricane, cyclone, tornado, typhoon, etc.).
- Advisable to determine the term “event” in a plain and clear manner by reference to the so-called unities of cause, space and time.



Importance in Brazil of Reinsurance Customs and Practice

- Customs are a secondary source of law in Brazil and thus can be relied upon by Brazilian courts as legal grounds to their decisions.

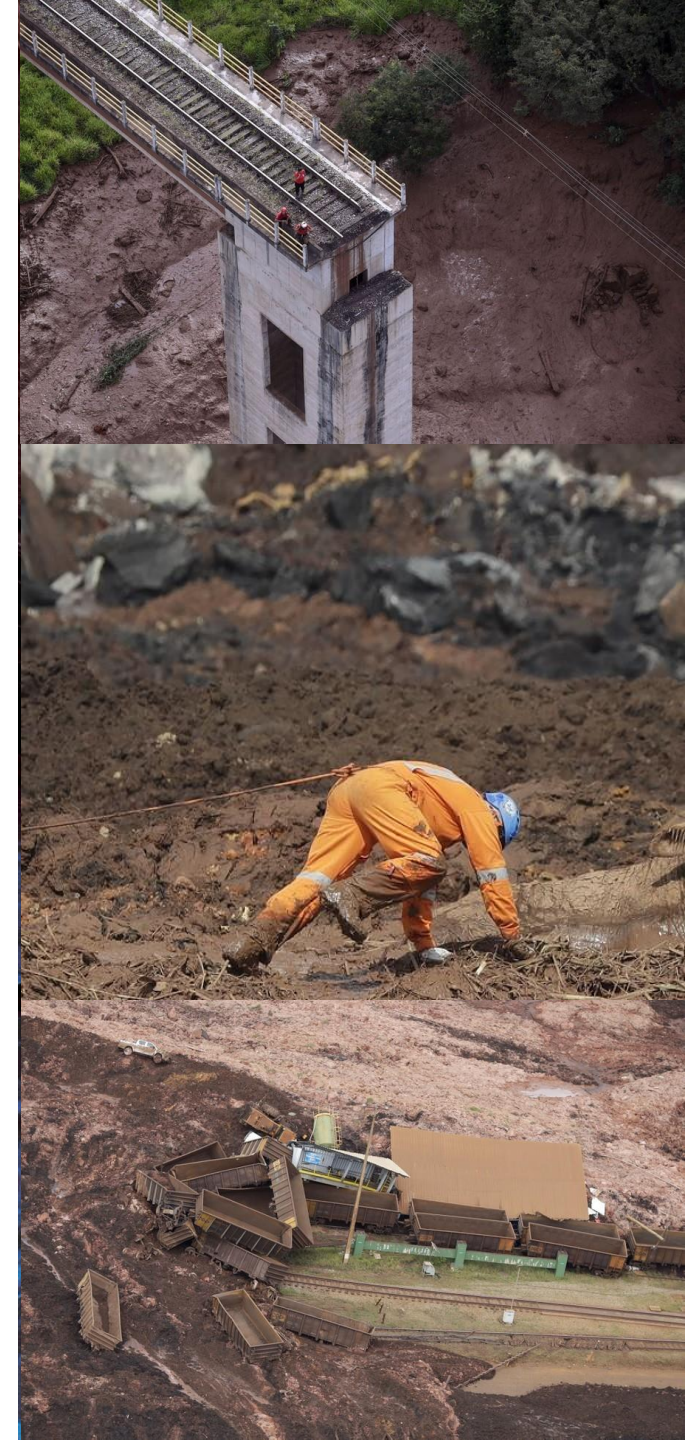
*“When the law is silent, the judge shall decide the case in accordance with analogy, **customs**, and the general principles of law.”* (Article 4th of the Law of Introduction of Brazilian Legal Norms)

- English law is important. Absent specific rules, the Brazilian courts may consider English law as an expression of reinsurance practice and customs, similarly to what other jurisdictions do and have done in the past.



Dam collapses

- Catastrophic tailings dam collapses in Brazil, notably the Mariana disaster in 2015 and the Brumadinho disaster in 2019, led to extensive discussions regarding insurance and reinsurance indemnifications.
- While hours clauses are standard in many reinsurance agreements, their role in the indemnification discussions for these dam collapses was likely minimal. The focus was more on the immediate impact and the extensive environmental and human losses resulting from the collapses.
- In these cases, the unique nature of the disasters likely led to indemnification discussions that centred on the immediate and severe consequences of the dam failures, rather than on the temporal aggregation of losses as defined by hours clauses.



Recent developments

- In November 2024, the Brazilian Congress approved a new law devoted to regulating insurance (and reinsurance) in the country, which has yet to come into force.
- Article 70 states:
“The insurer is liable for the effects of the loss occurring during the term of the contract, even if they manifest or continue after its termination.”
- The provision could potentially impact the application of hours clauses
 - Does the reinsurance contract then also cover the extended effects of the hurricane/flood/storm beyond the policy period or the hours clause will pose a limit to coverage?



5 Italian developments

New Nat Cat scheme

- In December 2023, the Italian government introduced a new Nat Cat scheme, which will come into force in January 2025.
- Enterprises, except agricultural entrepreneurs, must purchase a policy covering catastrophes, such as earthquake, floods and landslides.
- Insurers will have a corresponding obligation to offer insurance for such perils with the option to cede 50% of their exposure to SACE, a state-owned insurer, for the years 2024 – 2026.
- Insurers are also empowered to establish a risk pool.





Questions?



Thank you!