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RECHTSANWÄLTE

Restoration after insured events

How to deal with disputes  
about the reimbursement  
of costs

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## How to deal with disputes about the reimbursement of costs

**Fires in a company are one of the major business risks. Damage to buildings, machinery and raw materials can quickly go into the millions, with the usually associated loss of production posing a huge threat to a company's survival. Risk management in companies therefore includes the transfer of risk to insurers. If an insured event occurs, it becomes apparent that the indemnification depends on many disputed issues, but in particular on the claims management of the company.**

In the beginning everything goes very fast. The company reports the insured event to the insurer. The next day, a first meeting takes place on site with the insurer's claims adjuster, together with one or more experts who are commissioned by the claims adjuster to determine the cause and amount of the insured event after visiting the site. The claims adjuster recommends the company which was harmed by the insured event third-party companies for the remediation work and releases the first immediate measures for the elimination of the damage. In order to carry out further measures to remedy the damage, the claims adjuster asks the company to submit of-

fers for approval by the insurer. This almost ritualized claims management is widespread, although it does not correspond to the usual contractual agreements. In principle, it is up to the company to determine the amount of the damage and to prove it to the insurer. In any case, this is not the task of an expert commissioned by the insurer. It is also not the responsibility of the insurer to authorize restructuring measures and costs. The company decides on the type and scope of the restructuring. Surprisingly, however, decision-makers in companies often hand over control to the insurer in the insured event. This is due to a lack of experience with damage incidents, but also to a lack of knowledge of the rights and obligations arising from the insurance contract and to trust in the experience and honesty of the insurer. This conduct is not advisable. Companies should actively arrange their claims management, especially since they pursue other interests than the insurer.

### **Complex claims calculation**

The occurrence of the insured event obliges the insurer to indemnification payments. The amount

of the restoration costs is often disputed, thus the costs for the efforts required for the reparation or replacement of the destroyed or damaged object, e.g. the building or machine damaged by fire. For the insurer's calculation the insurance value agreed by the parties is essential, whereby payments on a replacement or current value basis are usual. In the case of damage to a building, the replacement value, i.e. the sum of all local construction costs including all ancillary construction costs (construction and planning costs, fees) necessary for the construction of a new building of the same type and purpose, is to be reimbursed first and foremost.

The technical and commercial operating equipment is also regularly insured at replacement value. In this case, this is the amount required to purchase items of the same type and quality as new or to manufacture them again (the lower amount is decisive). It is also possible to insure the goods at their current value, i.e. at the value which the insured object had on the day the damage occurred. It results from the reinstatement value deducted by age, wear and tear, use, defects and other factors which influence service life and usability.

Furthermore, the indemnification paid by the insurer is determined by the scope of the loss, whereby a distinction is made between total loss and partial loss. It is often disputed whether the one or the other is the case. A total loss is given when restoration of the item is no longer technically possible because there are no usable re-

mainders or because the restoration is economically not reasonable because it exceeds the new construction value customary in a place. In the case of partial damage, the repair costs are to be reimbursed, plus a reduction in value caused by the damage which cannot be compensated through the repair.

There are regularly discussions between insurers and policyholders about the compensation of a mercantile depreciation (against the background of a possible later sale of a renovated building). The latter is not obliged to repair the damaged object in order to claim the insurance benefit, contrary to what is often asserted in claims settlement. Companies can demand reimbursement of repair costs on the basis of cost estimates or expert opinions ("fictitious invoicing"). However, this only applies to a limited extent if the damaged object (building, machine) is insured at replacement value. If the policyholder demands reimbursement at replacement value in the case of partial loss, the claim, insofar as it exceeds the current value loss, only exists if the company guarantees the restoration of the item.

### **Also own costs reimbursable**

After the occurrence of the insured event, companies often use their own employees or equipment (materials, raw materials, electricity, gas) to repair the damage, especially when it comes to repairing specially designed machines and systems. This repair of damage by the company's own employees using the company's own equip-

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ment is permissible. The insurer has to reimburse the resulting own damage, even though it is often difficult to assert the claim. This is due to the fact that the substantiation and proof of the damage incurred is more ambiguous than when commissioning other companies, which can be proven to the insurer by means of invoices. Companies should therefore document their own costs in detail from the outset, as the subsequent reconstruction of the costs is very difficult. This proof should sustain comparisons with third parties. The standard is the market prices.

These few examples show that the indemnification paid by the insurer depends on the assessment of many points of dispute. The company that became subject of an insured event should not leave this assessment exclusively to the insurer and the experts commissioned by him, but should control the claims management with its own experts in a target-oriented manner.

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