



The Chartered Institute of Loss Adjusters

Associateship Examination 2010 (April)

Paper C3

Adjustment of Claims Subsidence

3 ½ Hours

Maximum Marks 200

Answer ALL questions in Part 1 and 2 questions from Part 2

Where appropriate, answers should make reference to relevant case law or statute

PLEASE ENSURE THAT QUESTION NUMBERS ARE ENTERED CLEARLY AND IN FULL ON THE COVER OF YOUR ANSWER BOOK AND IN YOUR ANSWER BOOK



PART 1

ANSWER ALL QUESTIONS

QUESTION 1

a) In a typical Business Interruption Policy explain briefly what is meant by the following terms:

1. Gross Profit
2. Additional Increased Costs of Working
3. Alternative trading clause
4. Professional Accountants Clause
5. Denial of access extension

(15 Marks)

b) You are dealing with a claim for fire damage which has occurred in a local suburban licensed restaurant. The restaurant is in family ownership and has been established for several years. It is open for business seven days a week providing lunch and evening meals. The same family members also own a fast food takeaway only restaurant located about one mile away from the licensed restaurant.

The fire has caused severe damage to the building and to trade fixtures, fittings and equipment. All the stock comprising foodstuffs and beverages, etc, has been destroyed. The Insured will not be able to trade from the premises again until the necessary building repairs have been carried out and the various trade contents and the stock has been replaced.

Your Principals' policy covers all the trade contents including stock and provides cover for business interruption with a twelve month indemnity period. The building is insured by the Landlords and their Insurers have appointed their own Loss Adjusters. Your principals' Insured have not engaged Loss Assessors or other advisers to act on their behalf and, for the purposes of the claim negotiations, it has been agreed that you will be dealing direct with two of the family members who own the business.

With specific reference to the Business Interruption element of the claim, the following issues arise:

1. You are told that the building owners wish to take the opportunity to incorporate certain improvements and alterations during the course of the work. Some of these improvements etc will be carried out to enhance the premises for the subsequent benefit of the Landlords but certain others will be necessary to comply with current



statutory requirements. If reinstatement had been carried out to the original specification then a contract period of approximately eight months would have been anticipated but to allow for the additional work a revised contact period of approximately eleven months has been projected. Explain how you would deal with this situation and detail what advice you would provide to your Principals and their Insured.

2. Explain the measures that could be taken to mitigate the effect of the interruption to the Insured's business and the ultimate financial liability of your Principals.

3. Following the closure of the restaurant the Insured have laid off a number of casual and part time staff. However, they also employ a number of key staff including their head chef. They wish to continue to employ them whilst the business is temporarily suspended so that they are immediately available once normal trading can be resumed. Detail the likely cover and explain how you would deal with this.

4. In relation to the Material Damage element, the sum insured on trade fixtures and fittings etc was not adequate. Following the application of average the Insured have incurred a shortfall of £10,000 on that part of the claim. They now seek to include the shortfall within the Business Interruption item on the basis that this is a "consequential loss resulting directly from the fire". Explain the response you would provide to the Insured.

(25 Marks)

40 MARKS



QUESTION 2

1. Explain the difference between contribution at Common Law and Contribution in accordance with ABI Rules.

Give one example of each.

Give two examples where contribution is specifically excluded by ABI rules.

(10 Marks)

2. Where applicable, in all parts of the following questions all workings must be shown:

a) In a policy with a pro rata average condition calculate the amount payable:

(i)

| | |
|---------------|-------------|
| Agreed Loss | £100,000.00 |
| Sum Insured | £150,000.00 |
| Value at Risk | £200,000.00 |
| Excess | £500.00 |
| Salvage | Nil |

(6 Marks)

(ii)

| | |
|----------------------------------|-------------|
| Agreed Loss (subject to salvage) | £150,000.00 |
| Sum Insured | £100,000.00 |
| Value at Risk | £150,000.00 |
| Salvage | £ 20,000.00 |
| Excess | £ 250.00 |

(6 Marks)

b) In a policy with a 20% Co-Insurance Clause calculate the sum payable for loss of stock:

| | |
|----------------------|-------------|
| Agreed Loss | £ 50,000.00 |
| Sum Insured on Stock | £100,000.00 |
| Value at Risk | £100,000.00 |
| Salvage Value | NIL |
| Excess | £ 1,000.00 |

(6 Marks)



c) Using the same figures as detailed in b) above explain if any different considerations would apply if the Insured had arranged additional cover for stock with separate Insurers. The Sum Insured on the said policy is £25,000.00.

(6 Marks)

d) In dealing with a business interruption claim with cover arranged on a declaration basis, calculate the amount payable:

| | |
|--|----------------------------------|
| Agreed Loss of Gross Profit | £150,000.00 |
| Sum Insured | £200,000.00 (declaration linked) |
| Insurable amount | £250,000.00 |
| Accountant's fees for certifying turnover at Insurers' request | £ 1,000.00 |
| Loss Assessor's fees | £ 3,500.00 |

(6 Marks)

40 MARKS



QUESTION 3

1. a) Define warranty in relation to an Insurance Policy.
(4 Marks)
- b) List six warranties which might typically apply in a Commercial Policy.
(6 Marks)
2. Discuss briefly the effect of breach of warranty when dealing with a claim under a domestic policy.
(6 Marks)
- 3 Explain briefly the relevance of the following legislation and how it might apply to the adjustment of a claim:
(16 Marks)
- Third Parties (Rights Against Insurers) Act (1930)
 - Water Industry Act (1991)
 - Rehabilitation of Offenders Act (1974)
 - Hotel Proprietors Act (1956)
- 4 Explain briefly how you would deal with any salvage realisation in the following cases:
(8 Marks)
- Fire damage which has occurred to stock at a retail pharmacy
 - Flood damage which has occurred to the contents of a private dwelling
- 40 MARKS**



PART 2

ANSWER 2 QUESTIONS ONLY

QUESTION SB 1

You are instructed by Insurers to investigate cracking to the single storey rear extension of an owner occupied mid-terrace house, approx 100 years old. The occupant who you meet is rather elderly advises that the cracking is in advancing years, and tells you that the damage is not new but only became a concern when it was raised at the point of sale of the building by the surveyor of a prospective purchaser. The owner tells you that he has been a loyal customer of the Regal Insurance Company for over 50 years and has never made a claim.

On inspection you see clear evidence of old repairs having taken place which have reopened. The general pattern of cracking is one of rotation of the extension away from the main part of the building structure. A rainwater down pipe serving the insured property is located on the rear elevation, down the party wall line, and there is also a downpipe serving the extension itself.

There are a selection of small trees and bushes in the rear garden, including along the boundary. Most of these are overgrown.

The insurance policy in operation is typical and provides cover for subsidence, heave and landslip both buildings and contents. The policy has been in operation for at least 25 years, and the sum insured is deemed adequate, but the property appears poorly maintained. There are no reports available regarding the condition of the property at the time of inception.

The homeowner is also concerned about the progress of the sale of the house as a result of the discovery of damage, and is keen that the house sale proceeds. You are dealing with the claim under a 'standard' delegated authority arrangement subject to a limit of liability of £25,000



Explain the key issues in your initial consideration of the situation.

(10 Marks)

In your report to insurers, detail whether the policyholder's personal circumstances are relevant in respect of the policy position? Explain your viewpoint?

(5 Marks)

The owner is worried about the sale of the house. What reassurance might you give on that topic?

(5 Marks)

Insurers agree to fund the investigation on a without prejudice basis. Detail the typical enquiries you would make or expect to see, to establish the cause of the problem, taking into account the limited and localised degree of the damage.

(5 Marks)

As part of the investigation, the drainage system is found to have collapsed. It is of shared ownership. Insurers agree that any late notification is innocent and they instruct you to proceed to settlement, although taking into account the late notification and its affect on claims cost. What considerations might you have in terms of the basis of settlement?

(5 Marks)

You confirm that the drainage system is of shared ownership but the next door neighbour refuses to get involved. Indicate three options which might be available to you.

(6 Marks)

Mid way through the claim you receive an angry call from the insured's son saying his father is confused and does not understand why the entire claim is not being dealt with in full. What action might you wish to take as a result of this intervention?

(4 Marks)

40 MARKS



QUESTION SB 2

Under a standard delegated authority scheme for subsidence handling, you are instructed to investigate cracking to an estate-type detached dwelling built circa 11 years ago on the site of an old orchard.

Upon examination you discover that the cracks appear recent. The insured has owned the property for 24 months and confirms that she has not carried out any repairs nor are there any signs of earlier repair.

A row of 5m high apple trees owned by the insured is located approx 4 metres away from the side of the house, running parallel to the gable. The pattern of cracking seems to indicate that there has been downwards movement of the gable of the house adjacent to the line of trees.

What initial investigations would you wish to undertake given the circumstances and the scale of the problem?

(10 Marks)

Detail the enquiries you would make or expect to see, to establish the cause of the problem.

(10 Marks)

A period of monitoring commences and shows that, contrary to expectations, the cracks appear to open in winter and close in summer. Offer one explanation why this might be occurring.

(2 Marks)

You decide that expert investigation is needed. Outline three things that you would specifically expect to see in the expert's report.

(3 Marks)

During the course of the investigation you are urgently contacted by the policyholder who complains that the site investigation company that you have introduced appear to be acting dangerously, and have left a deep trial pit open. She is concerned for the safety of her young children. Explain what action you would take, and why.

(5 Marks)

The expert identifies old roots beneath the main part of the dwelling and live roots beneath the gable. Bearing in mind the seasonality of the damage, and the relatively new damage what might this reasonably lead to you conclude? What considerations might arise in respect of any policy exclusions? What impact might your conclusion have on your reserve advice to insurers?

(10 Marks)

40 MARKS



QUESTION SB 3

As the regional subsidence expert, you are presented with a large file of papers comprising the results of a detailed investigation following alleged subsidence to the ground floor of a **commercial** office premises. You are appointed by the insurers of the tenant. The building was constructed at the turn of the century but significantly refurbished, and multiple partitions have been built off the concrete floor. Any major works will have a significant effect on the day to day business operation of the tenant, which is a well-known High Street bank.

Investigations indicate that downwards movement of the concrete floor is as a result of leakage from water services beneath the concrete floor affecting the fill material. The building is insured as part of a wider portfolio of assets owned by an institutional landlord.

A delegated authority scheme is not in operation. Major international brokers also have an interest for the tenant.

In your initial report to the insurers of the tenant, what do you consider to be the main points you would wish to include, and explain why.

(10 Marks)

In view of potential costs and uncertainty under the lease, you agree that further investigation is deemed necessary. The investigation indicates that potentially there may be other factors involved in the cause of damage and, therefore, there may be scope for disagreement. What actions do you suggest should be followed at this stage?

(10 Marks)

The discussion hinges strongly on the timing of the agreed cause, as opposed to the timing of the damage.

Before the ABI Domestic Subsidence Agreement, the leading case was *Kelly vs Norwich Union (1990)*. Explain the background to that case, how this applies to continuing damage and the insurance implications which arose.

(10 Marks)

Insurance issues being resolved, it is agreed that works will proceed resulting in major disruption to the tenants business. However, the period of disruption might be lessened by the contractor working weekends and using more expensive materials. In your responsibility as 'coordinator' of events relative to the claim, suggest at least 2 actions you might want to undertake to best progress matters, and with whom.

(10 Marks)

40 MARKS