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December 1999

British Damage Management Association (BDMA)

TECHNICAL INFORMATION FOR CIL A MEMBERS

TB4 December 1999

1. ABI DOMESTIC SUBSIDENCE AGREEMENT (DSA)

A new Domestic Subsidence Agreement comes into operation on 1 January 2000. Details are attached.

2. BRITISH DAMAGE MANAGEMENT ASSOCIATION (BDMA)

The BDMA was launched on 1 December 1999. An ABI circular together with details of the BDMA are attached.

Chartered Institute of Loss Adjusters, Manfield House, 1 Southampton Street, London WC2R 0LR

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Association of British Insurers

ACTION For your information

TOPIC Domestic Subsidence Agreement

ABSTRACT New Domestic Subsidence Agreement and accompanying guidelines



ENQUIRIES Jackie.Blewett@abi.org.uk (020 7216 7513)

To GIC Members transacting Household Business 2 December 1999
Household Insurance Committee (for information)
Ref G/229/100

Dear Member

New Domestic Subsidence Agreement

I enclose for your information a new Domestic Subsidence Agreement which will come into operation on 1 January 2000.

The Domestic Subsidence Agreement has been revised and updated in the light of experience of its operation. The main changes are that:

- (a) two new provisos have been added. Proviso (i) says that notification of the claim to the contributing insurer by the insurer to whom the claim is notified must be made as soon as possible and no later than six months after the date of notification. Provision (iii) says that the contributing insurer shall abide by the decision of the handling insurer as to the method of investigation and the settlement of the claim; and
- (b) the Agreement has been clarified as a buildings insurer to buildings insurer agreement.

In order to allow a transition period for proviso (i) to come into effect, subsidence claims already under investigation should be notified to the contributing insurer by no later than 30 September 2000. Any claim notified after 1 January 2000 should be notified to the contributing insurer no later than 6 months after the date of notification.

Accompanying guidelines in the form of questions and answers to assist signatories in the application of the Agreement are also enclosed.

A list of current signatories to the Agreement is enclosed. If you are a current signatory and your entry is incorrect, please let us know.

If you are not a signatory to the Agreement and would like to become one, please notify us in writing.

The Chartered Institute of Loss Adjusters 36 Monument Street London EC3R 8LJ *Whilst great care is taken to provide accurate and helpful information and advice in this technical bulletin, readers are expected to check all essential information and to seek advice from appropriate professionals and experts as required*



Yours faithfully

Mrs Jackie Blewett

Deputy Manager, Property and Household

Enclosures
Association of British Insurers

51 Gresham Street, London EC2V 7HA Tel: 020 - 7600 3333 Fax: 020 - 7696 8999 Web
site <http://www.abi.org.uk>

DOMESTIC SUBSIDENCE/HEAVE/LANDSLIP "CHANGE OF INSURER" CLAIMS AGREEMENT

This Agreement relates to claims arising under policies covering domestic properties owned by an Insured in a personal capacity and situated in Great Britain, Northern Ireland, Isle of Man and the Channel Islands, where there has been a Change of Insurer (but not a change of ownership of the insured property), where the insured event of Subsidence and/or Heave and/or Landslip has/have occurred causing damage to the insured property.

Every Insurer subscribing to this Agreement undertakes to deal with such claims in the following manner:

Option 1 Where the Date of Notification is eight weeks or less from the date of inception of the current Insurer's policy, any claim shall be accepted and dealt with by the previous Insurer and no contribution shall be requested from the current Insurer.

Option 2 Where the Date of Notification is one year or more from the date of inception of the current Insurer's policy, any claim shall be accepted and dealt with by the current Insurer and no contribution shall be requested from the previous Insurer.

Option 3 Where the Date of Notification is more than eight weeks but less than one year

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from the date of inception of the current Insurer's policy, any claim shall be accepted and dealt with by the Insurer to whom notification is given and the Cost of Settlement shared equally between the two Insurers. The handling Insurer shall keep the other Insurer advised of material developments, including the original reserve and any revision. Contributions shall be paid within 21 days subject to full details being supplied with supporting documentation (to include apportioned VAT invoices in respect of fees incurred on behalf of both Insurers). Interim contributions will not be collected for sums less than £5000.

Provided that:

- (i) Notice to the contributing insurer by the insurer to whom the claim is notified must be made as soon as possible and no later than six months after the Date of Notification.
- (ii) The contributing insurer shall be provided with copies of all relevant reports (including covering letters) from loss adjusters, engineers, surveyors and the like when available and kept fully advised of the progress of the claim.
- (iii) The contributing insurer shall abide by the decision of the handling insurer as to the method of investigation and the settlement of the claim. In circumstances where the handling insurer agrees to settle the claim on an ex gratia basis for commercial considerations no contribution should be sought from the previous insurer. In a case where the handling insurer is bound by the decision of the Insurance Ombudsman, the contributing insurer will also be bound by that decision.
- (iv) Nothing in this Agreement shall prevent any Insurer from voiding a policy for fraud, non-disclosure or misrepresentation, or from relying otherwise on any policy term or condition except that late notification of the initial claim by the insured alone shall not prevent the operation of this Agreement. Where one Insurer specifically excludes all or part of the damage, this Agreement will apply only to that part of the damage covered by both Policies.
- (v) In the event of any dispute arising under this Agreement the matter shall be referred to the ABI Disputes Committee whose decision shall be binding. The Committee will be a



body of last resort and disputes will only be referred to it after discussions between senior claims officials at Head Office level of the Insurers involved have failed to produce a solution.

(vi) This Agreement shall not apply to mortgage lenders' "block" policies where the Insurers concerned have made separate arrangements.

(vii) This Agreement shall not apply where expert evidence shows the damage to have been caused by a sudden subterranean event - eg swallow holes.

(viii) Nothing in this Agreement binds any Insurer to adopt a similar approach to claims involving Insurers who are not parties to this Agreement nor does it affect in any way the contractual entitlement of any Insurer to reject or require contribution in relation to uninsured pre-inception damage.

Definitions

Change of Insurer - A change of Insurer which maintains continuous cover to the Insured. For this purpose a gap in cover of less than 30 days shall be regarded as continuous cover.

Cost of Settlement - The net cost of settlement of the claim together with professional fees

(including loss adjusters and experts) incurred by the handling Insurer. This includes:

- alternative accommodation/loss of rent (net of any contributions available from Contents' Insurers)
- professional fees incurred by the Insured and the handling Insurer (but excluding internally incurred expenses of the handling Insurer)

but offset by:

- policy excess being the single excess applicable to the current Insurer's policy
- any recovery for the benefit of Insurers.

Date of Notification - The date on which the written or verbal communication notifying the damage and/or claim was first received by the current or previous Insurer or such Insurer's agent.



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NB Whilst this Agreement is written in terms applicable only as between two Insurers, it is expected that Parties to this Agreement will apply similar principles to those cases where three or more Insurers are potentially involved.

December 1999

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DOMESTIC SUBSIDENCE

AGREEMENT

GUIDELINES

TO

ASSIST IN THE APPLICATION

OF

THE AGREEMENT

Amended Guidelines: December 1999

ABI DOMESTIC SUBSIDENCE AGREEMENT OPERATIVE 1.1.2000

Questions and Answers to assist signatories in the application of the Agreement

Question 1 - Definition of Premises Covered by the Agreement

What premises are covered by the Agreement?

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Answer

The premises must be a domestic property owned by an insured in a personal capacity.

Question 2 - Cost of Settlement

Under option 3 the Cost of Settlement will be "shared equally between the two insurers". Is this irrespective of the sum insured?

Answer

The level of contribution by an insurer should be limited by the sum insured. In a situation where there is a shortfall, then that will be for the consideration of the insurers whose sum insured is not exhausted. By that time, the Agreement will have done its job and the dispute between the two insurers will be resolved. The attitude of the insurer with the adequate sum insured to the shortfall should be governed by the terms and conditions of the relevant policy and its own claims handling policy.

Question 3 - Block Policies

Under (vi) it is stated that the Agreement will not apply to mortgage lenders' "block" policies where the Insurers concerned have made separate arrangements.

Answer

The Agreement does apply where the insurers concerned have "block" policies unless they have already made separate arrangements when the block business changed hands. Where a block of business is changing hands then, if the insurers do not wish to be bound by the Agreement, it will be necessary for the two or more insurers to enter into separate binding arrangements.

Question 4 - Registering a Claim

Is it true that any delay on the part of the insured in notifying a claim will not affect the application of the Agreement?

Answer



This is a correct statement of the position in that the date of notification will determine strictly which of the three options apply.

Question 5 - Date of Notification

Within provision (iv) it is stated that late notice alone shall not prevent the operation of the Agreement. This then suggests that where a policyholder is slow to notify a claim this could impact upon the need for contribution. Is this correct?

Answer

Consideration was given as to what should be the "trigger" date for the Agreement. The date of discovery was considered but rejected as probably being unworkable. The date of discovery is frequently imprecise and could be many years prior to the date of notification of the claim ie a policyholder may have noticed damage 10 years previous but only notified the claim when the damage became worse. While this may oblige an insurer to contribute (or avoid a contribution) due to late notification, the only practical solution is for the Agreement to be driven by the date of notification.

Question 6 - Application of Excess

What is the position where a policyholder feels they are being unfairly penalised due to the different levels of excess applied by insurers? For example, the original policy may have had a £500 excess and the current policy a £2500 excess. If there is evidence to suggest that the damage occurred in the period of the original policy the policyholder may be justifiably upset should an insurer seek to apply the excess.

Answer

There is no easy answer to this question but it should be remembered that the policyholder is receiving the benefit of two policies of insurance for the one claim. There are different levels of excesses and it is always possible that it might be more advantageous to claim under one policy than the other. In general terms, it is the current insurer who is handling the claim and it is the current insurers excess which should apply. To fit in with the working of the Agreement, the line should always be maintained with a policyholder that his claim does lie against the current insurer rather than against any previous insurers but if he is to receive the benefit of both policies then it is the current insurers' excess which is applied to the loss.



It is recognised that an insured may insist on the insurer with the lowest excess dealing with their claim, and may well choose to do so if the available evidence indicates that substantial damage occurred in their period of cover.

Where this arises, insurers may have to agree only to deduct the lower excess and share the resulting net claim in accordance with the Agreement. Alternatively, the insurer with the lower excess should pay the difference between that and the other insurer's excess.

Question 7 - Application of Agreement to Retrospective Claims

Some insurers, while confirming they wish to subscribe to the Agreement have expressed concern about its application to retrospective claims without their being any limit as to how long a claim has been outstanding.

Answer

To avoid a potentially open-ended commitment, the Agreement will apply retrospectively to claims first notified to the insurer on or after 1.1.93, where:-

- (a) there is a current dispute between the insurers over their respective liabilities for the damage, or
- (b) the handling insurers claim has not been re-opened for the purposes of the agreement, or
- (c) there has not been a previous sharing agreement reached between the current and previous insurer for the loss or damage

The Agreement shall not apply to claims notified to the insurer prior to 1.1.93, but insurers should be encouraged to apply the spirit of the agreement to cases where it is considered equitable to do so, except in cases where:-

- (a) repairs to the policyholders property have been effected or
- (b) the claim has been re-opened for the purpose of the agreement or
- (c) there has been a previous sharing Agreement reached between the current and previous insurer or for the loss or damage.



Question 8 - Application of Agreement to Flats

What is the position in respect of a single flat owned and occupied in a personal capacity if it is insured in an individual's name?

Answer

The Agreement has always applied in respect of property owned and insured in a personal capacity where a single flat is insured in an individual's name.

The Agreement also includes:

- Individual flats insured on a block basis in respect of which each is owned and occupied by the insured in a personal capacity.
- Low-rise property such as a single flat above a shop owned and occupied by the insured in a personal capacity.
- Maisonettes or the part of any building owned, occupied and insured by a collection of private individuals.

The Agreement does not cover:-

- Flats over shops where they are insured as part of the commercial insurance arrangements.
- Flats occupied by an individual which are owned by another person or property company and from which an income is derived on a commercial rental basis.
- blocks of flats let to tenants who pay rent eg Local Authorities accommodation, holiday flats, student accommodation, Housing Association's tenants and any other commercial lettings such as flats occupied by an individual which are owned by another person or property companies and from which an income is derived on a commercial rental basis.

commercial relationship between the handling insurer and the policyholder or intermediary. In circumstances where an ex gratia method of settlement is used by the handling insurer, no contribution should be sought from the previous insurer.



In circumstances where a dispute arises and cannot be settled between the insurers involved, the matter can be referred to the ABI Disputes Committee for consideration.

Question 18 - Tied Housing

Do the terms of the Agreement apply to a claim arising from a domestic property occupied by a tied tenant?

Answer

Where the responsibility for arranging and buying insurance cover lies with the tied tenant, such an arrangement comes within the Agreement.

Where the provider of tied housing has the responsibility for arranging and paying for the insurance cover then such an arrangement would be outside the Agreement.

Question 19 - Operative Date of Agreement for New Signatories

What is the operative date from which new signatories should adhere to the Agreement?

Answer

Any new insurer wishing to join will automatically be recorded as adhering from 1 January 2000, the introductory date of the new Agreement.

Question 20 - Procedure for a Signatory who wishes to Cease Adherence to the Agreement

What is the procedure for an existing signatory to no longer be bound by the terms of the Agreement?

Answer

An existing signatory will be required to give a minimum of 3 months notice, in writing to ABI, that they wish to cease adherence to the terms of the Agreement. During the period of notice claims notified will continue to be dealt with under the Agreement.

Question 21 - Disputes Committee

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How will the Disputes Committee operate?

Answer

The Disputes Committee will operate as set out in Appendix 1.

APPENDIX 1

Domestic Subsidence Agreement

1. The function of the Disputes Committee is to resolve as expeditiously as possible disputes arising between insurers who are parties to this Agreement.

2. Notes for Guidance

(a) The arrangements detailed here are entirely voluntary; there is no compulsion on any Insurer to refer a dispute to the Committee.

(b) The Committee will be a body of last resort and disputes will only be referred to it after discussions between senior claims officials at Head Office level of the Insurers involved, have failed to produce a solution.

(c) It is not intended that the Committee should replace or restrict any other arrangements for the resolution of disputes, particularly any formal arrangements between Insurers which contain provisions for the resolution of disputes in matters of contribution. Where informal arrangements exist however, the Committee's jurisdiction can apply.

3. Structure

The Disputes Committee will be chaired by a member of the secretariat of the General Insurance Department of the Association of British Insurers (hereinafter referred to as the secretariat) who will provide independent chairmanship but will not vote. All necessary services will be provided by the secretariat at its offices. Membership of the Committee shall comprise one representative each from 3 subscribing Members, such representation to be chosen by the secretariat.

4. Procedure

When agreement has been reached between Insurers for reference to the Disputes Committee, it is the responsibility of the Insurers concerned to:

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(a) advise the secretariat that a stage of dispute has been reached and to request a meeting of the Disputes Committee;

(b) pass to the secretariat all pertinent evidence to place before the Committee in addition to a written submission.

It is not expected that disputes involving small amounts will be submitted unless a significant issue of principle is involved. Reference of disputes to the Committee will be on the alternative basis that the parties involved jointly agree

(a) to be bound by the Committee's decision

or

(b) that the Committee's decision will not be binding.

5. Decisions

The decisions of the Disputes Committee will, when appropriate, be advised to Insurers who are signatories to the Domestic Subsidence Agreement direct by the secretariat. The identity of parties involved in the dispute will not be disclosed.

LIST OF INSURERS SUBSCRIBING TO THE DOMESTIC SUBSIDENCE AGREEMENT

Aegon Insurance Company (UK) Limited
AGF Insurance Limited
Albion Insurance Company Limited
Ansvar Insurance Company Limited
Avon Insurance plc
Bankers Insurance Co Limited
Baptist Insurance Company plc
Bishopsgate Insurance Ltd Britannic Assurance plc
China Insurance Co (UK) Ltd
Chubb Insurance Co of Europe SA
Churchill Insurance Company Limited

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Commercial Union Assurance Company plc
Commercial Union Underwriting Ltd
Co-operative Insurance Society Ltd
Congregational & General Insurance plc
Cornhill Insurance
Cornish Mutual Assurance Co Ltd CNA International
Direct Line Insurance
Eagle Star Insurance Company Ltd
East West Insurance Company Ltd
Ecclesiastical Insurance Group plc
Folgate Insurance Company Ltd
GAN Minster Insurance Company Limited
General Accident Fire & Life Assurance Corporation plc GA Bonus
Gresham Insurance Company Limited Guardian Direct Limited
Guardian Insurance Limited Haven Insurance Policies Limited
* Hibernian Insurance Company Ltd
Hiscox Insurance Company Limited (formerly Economic Insurance Co Ltd)
IC Insurance Limited
Ideal Insurance Company Limited IGI Insurance Company Ltd
Independent Insurance Company Limited The Insurance Service Plc
Iron Trades Insurance Company Limited
ITT London and Edinburgh Insurance Company Limited
Landmark Insurance Company (UK) Limited
Legal and General Insurance Ltd
Lion Insurance Company Ltd
Liberty Mutual Insurance Company (UK) Limited
Liverpool Victoria Insurance Co Ltd

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Lombard General Insurance Company Ltd
Methodist Insurance plc
Municipal Mutual Insurance Ltd
Municipal General Insurance Ltd
National Farmers Union Mutual Insurance Society Ltd
National Insurance 8 Guarantee Corporation plc
New India Assurance Company Ltd
Norman Insurance Co Ltd

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Northern Star Insurance Company Ltd
Norwich Union Fire Insurance Society Ltd
Ocaso S.A. UK Branch
Orion Personal Insurances Ltd
Pearl Assurance plc
Pharmacy Mutual Insurance Company Ltd
Privilege Insurance Company Ltd
Prudential Assurance Company Ltd
Refuge Assurance plc
Royal Insurance plc
Royal London General Insurance Company Limited
Salvation Army General Insurance Corporation Ltd
Sun Alliance Insurance UK Ltd
Sun Alliance International
Teachers Assurance Co Ltd
Terra Nova Insurance Co Ltd
TSB General Insurance Ltd
UAP Provincial Insurance plc
UIA (Insurance) Ltd
United Friendly Insurance plc
Wesleyan Assurance Society [ceased writing general business as of 1997]
Western Australian Insurance Company Limited
Yasuda Fire & Marine Insurance
Zurich Insurance Company

Lloyd's

*Hibernian in respect of its United Kingdom operation only.

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ACTION For your information
TOPIC British Damage Management Association (BDMA)
ABSTRACT Information about the newly launched BDMA
ENQUIRIES Jackie.Blewett@abi.org.uk (020 7216 7513)

To GIC Members transacting Property and Household Business 10 December 1999
Property Insurance Committee (for information) Ref G/214/029
Household Insurance Committee (for information)

Dear Member

Launch of the British Damage Management Association (BDMA)

The British Damage Management Association (BDMA) was launched on 1 December.

The BDMA has been formed in response to requests from the insurance industry to identify qualified and competent technicians and companies engaged in damage control and restoration in situations such as post fire and flood. The BDMA are developing standards for individuals and companies which will offer identifiable benchmarks.

ABI have offered support to the initiative. Clearly, there is a need for recognised quality standards, coupled with proper auditing and complaint mechanisms in this sector. This is particularly so given the increasing variability and volatility of the weather and continuing problems with arson.

Founder members of the BDMA are Belfour (UK) Ltd, Bolton Carpets, Chemdry Ltd, Disaster Care UK Ltd, Disaster Master Ltd, Disaster Restoration Ltd (DRL), Document S.O.S., Harwell Drying and Restoration Services, Munters MCS, Rainbow International, Restorex Ltd, Richfords and Servicemaster Ltd. I enclose some literature provided by the BDMA. The BDMA can be contacted at - tel: 07000 843 2362, fax: 020 8856 1437, email: info@bdma.org.uk, web: www.bdma.org.uk.

BDMA will be keeping ABI informed of progress and developments and we will pass relevant information to members.

Yours faithfully

Jackie Blewett

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Deputy Manager, Property and Household
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51 Gresham Street, London EC2V 7HA Tel: 0171 - 600 3333 Fax: 0171 - 696 8999 Web
site <http://www.abi.org.uk>

BRITISH DAMAGE MANAGEMENT ASSOCIATION

QUESTIONS & ANSWERS

Why Form the BDMA?

Various legal requirements within the framework of Health & Safety at Work Act, Common Duties of Care, require the identification of qualified and competent contractors. The BDMA through its various committees have defined these areas and provide the identification necessary.

Who are the BOMA Members?

Leaders in the industry in terms of qualification, competence and coverage, representing large and small competent contractors and employees.

Who can Join

Anybody who wants to become involved in a professional evolving industry; various levels of entry permit: Associate up to Fellow.

Why use BDMA Members?

Because it will allow the easy identification of qualified and competent companies and personnel by insurers, loss adjusters, the insured and other interested parties. The BDMA Standards offer identifiable benchmarks of safety, quality and care.

When Can I Join?

You can apply for accreditation now; a "honeymoon" period will allow a timeframe to

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reach and comply with BDMA requirements.

BDMAINFO/011199-00/QBrA

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BRITISH DAMAGE MANAGEMENT ASSOCIATION

CODE OF ETHICS

Our members are committed to undertake all work with due regard to the appropriate Health and Safety legislation.

Our members are committed to providing the best possible service to our clients and customers.

Our members believe that their business practices should be fair and honest.

The Association pledges to avoid misleading or false representation of our members' capabilities or service.

The Association will actively encourage our instructing principals to use members of the British Damage Management Association (BDMA) wherever appropriate.

Our members are committed to industry regulation through peer review and seek to promote a professional and consistent approach to damage management.

When representing the BDMA, our members will not promote their individual companies.

The Association will not enter into agreements with any party, which could undermine its integrity, or be seen as detrimental to its credibility.

All relevant information to the Association acquired by its officers will be made available to the Association and automatically becomes the joint property of the Association and the members.

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BRITISH DAMAGE MANAGEMENT ASSOCIATION

MISSION STATEMENT

To promote and regulate professional standards in the Damage Management Industry for insurers, loss adjusters, the insured and interested parties. To outline structure the technical education level capable of providing the required level of response.

To promote excellence through education and training.

To instigate a professional appraisal of competence and compliance where required, offering adjudication and a structured, as well as workable, complaints procedure.