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The Chartered Institute of Loss Adjusters

Associateship Examination 2015 (April)

Paper C3

Subsidence

3½ 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.

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PART 1
ANSWER ALL QUESTIONS

QUESTION 1

- a) Explain the difference between Contribution calculated on the Independent Liability basis and Contribution calculated on the Sums Insured basis. (8 Marks)
- b) The agreed loss is £15,000. The Sum Insured against Policy A is £20,000 and against Policy B the Sum Insured is £60,000. Calculate the Contribution payable by each Policy on the basis of each Insurer's Independent Liability. (8 Marks)
- c) The agreed loss is £15,000. The Sum Insured against Policy A is £12,000 and against Policy B the Sum Insured is £35,000. Calculate the Contribution payable by each Policy on the basis of each Insurer's Independent liability. (8 Marks)
- d) Using the same figures as in b) and c) above, calculate the Contribution payable in each case when using the Sums Insured basis. (8 Marks)

NB: IN THE ABOVE EXAMPLES, ALL WORKINGS USED TO CALCULATE THE APPROPRIATE CONTRIBUTIONS MUST BE SHOWN.

- e) You are dealing with a claim for fire damage to commercial premises where the Policy is subject to a 10% Co-Insurance Clause. Explain how this clause would operate when adjusting the claim and why a clause of this type would normally be applied to the Policy. (8 Marks)

(40 MARKS)



QUESTION 2

a) When dealing with a claim under a typical Business Interruption Policy, what do you understand by the following terms:

- i) Additional Increased Cost of Working
- ii) Denial of Access Extension
- iii) Declaration Linked Policy
- iv) All Other Circumstances Clause.

(4 Marks each)

b) Malicious Damage has occurred to a number of lock-up commercial units in an arcade of similar units in a busy suburban area. The damage includes smashed glazing and daubing of graffiti. You are instructed by your Principals to deal with claims for both Material Damage and Business Interruption for three of the units. These are:

- i) A takeaway sandwich shop
- ii) A ladies nail bar
- iii) An antiquarian bookseller.

Pending renewal of the glazing and removal of debris etc, each of the units is closed for three days following the incident, which occurred after trading hours on a Monday night.

In dealing with the Business Interruption claims, explain what considerations will apply to calculating and validating turnover lost by each of these separate businesses as a result of their premises being closed during this three day period.

(18 Marks)

c) Following fire damage, explain briefly how you would deal with any salvage from:

- i) A retail furniture store
- ii) A ladies clothing retailer.

(6 Marks)

(40 MARKS)



QUESTION 3

a) Explain the following terms:

1. Day One Reinstatement Memorandum
2. Contract Price Clause
3. Professional Fees Clause
4. Appreciation in Value Clause (Escalator)

(4 Marks each)

b) Outline the main provisions of the following in the context of an insurance claim:

1. Party Wall etc Act 1996
2. Consumer Insurance (Disclosure and Representations) Act 2012
3. The Construction (Design and Management) Regulations 2007.

(18 Marks)

c) You are handling a claim for an escape of water in a bathroom. The ceiling has a textured covering and you suspect it may have an asbestos content. Explain what steps you should take to protect Insurer's interest and that of the Policyholder.

(6 Marks)

(40 MARKS)



PART 2
ANSWER TWO QUESTIONS ONLY

QUESTION S1

You are appointed on a retained authority basis to investigate a subsidence claim. The matter under investigation involves a detached house built in 2006 with a single storey extension to the rear. You are instructed to investigate cracking to the extension. You are advised that the customer had a previous claim in 2009. Unfortunately, the details of the claim are not available as the policy is arranged through a building society and they transferred their insurance to another carrier on 1 January 2015. The only information you have is that the expenditure on the previous claim amounted to £15,500.

Following the visit, you establish that the extension was originally built in 2007 by the current owner and to the rear the site slopes downwards away from the house.

There is no indication of cracking or damage to the main dwelling. Upon further examination, you discover that there is evidence of previously repaired cracks at the junction of the extension and the main dwelling. The owner recalls that there was some form of grouting undertaken to the floor slab.

There is a small tree owned by the insured which is 5 m high and 4 m from the rear wall of the extension. In the back garden, there is a row of conifers on the boundary but in the neighbour's garden. These are 5 m high and the nearest is 2 m away.

You measure the original house and the extension and discover the sum insured is only 75% of the value at risk.

The policy is a typical domestic policy with the exclusions relating to the peril of subsidence as detailed below.

*The first £1,000 (unless a different subsidence **excess** is shown in your **schedule**).*

- *Damage caused by coastal or river erosion.*
- *Damage to garden walls, gates, fences, paths, drives, patios, swimming pools, tennis courts, lamp posts, septic tanks and central heating tanks unless the foundations beneath the external walls of **your home** are damaged at the same time, by the same cause.*
- *Damage to, or resulting from, the movement of solid floor slabs unless the foundations beneath the external walls of **your home** are damaged at the same time, by the same cause.*
- *Damage caused by demolition, structural alteration or structural repair, excavation, faulty design or faulty workmanship or the use of defective materials.*



- *Damage resulting from the bedding down of new buildings or settlement, shrinkage or expansion.*
- *Damage that is covered under an NHBC Certificate or other similar guarantee.*

Home - *The private dwelling shown in your **schedule**, together with its garages, outbuildings, sheds and greenhouses, all owned or used by **you** for private and domestic purposes.*

- a) Outline the main headings you would include on an ABI preliminary report format including, in bullet point form, the main points you would raise under each section.
(20 Marks)
- b) Detail the investigations you would expect an engineer or surveyor to make to establish the cause of the problem and explain the importance/reason for each type of investigation.
(10 Marks)
- c) You subsequently discover following your further investigations that the cause related to abandoned chalk mines. What other investigations would you consider, what type of options for repair would you expect to see and how would this affect any possible subrogation. Include case law if appropriate.
(10 Marks)

(40 MARKS)



QUESTION S2

Under a standard delegated authority scheme for subsidence handling, you are instructed to investigate cracking to the two storey side extension of a semi-detached dwelling. The house was built in the 1970s and the extension in the mid-1980s.

There is no indication of damage to the main dwelling. Upon examination, you discover that the cracks appear recent. The insured has owned the property since 29 November 2008 and confirms that he has not carried out any repairs nor is there any sign of earlier repair.

There is a main sewer located adjacent to the house and it is noted that the extension has been built over the sewer. A 10 m high oak tree is located on the verge/pavement of a neighbouring property, approximately 15 m away from the side extension.

The policy is written on an all risks basis.

The relevant Exclusions are:

Erosion. We do not cover any loss or damage from coastal or river erosion.

Structural movement. We do not cover any loss or damage caused by the movement of your buildings, including bulging, expansion, shrinking or settling and any consequential cracking unless caused by subsidence, heave or landslip.

Subsidence, heave or landslip. We do not cover any loss or damage caused by subsidence, heave or landslip of the site on which the buildings stand, or to patios, terraces, hard tennis courts, swimming pools, ornamental ponds, fountains, cesspits, septic tanks, central heating fuel tanks, footpaths, drives, walls, gates, fences and railings unless the home is damaged at the same time by the same cause.

We do not cover any loss or damage to, or resulting from, the movement of solid floor slabs unless the foundations beneath the external walls of the home are damaged at the same time by the same cause.

Defective design, workmanship, maintenance or materials. We do not cover any loss or damage caused by, or resulting from defective design, workmanship, maintenance or materials. However, we do cover any resultant damage unless another exclusion applies.

We do not cover any loss or damage caused by a mechanical or electrical fault, breakdown or failure. However, we do cover any resultant damage unless another exclusion applies.

Frost. We do not cover any loss or damage caused by frost.

Gradual loss. We do not cover any loss or damage caused by a gradually operating cause including normal deterioration, warping, action of light, frost, damp, corrosion, rust and any kind of rot, mould or fungus.



Consequential loss. We do not cover consequential loss of any kind incurred by you or your family.

- a) What investigations and enquiries should you undertake given the circumstances and the scale of the problem? Explain the benefits/reasons for each step. (10 Marks)
- b) You are advised that the Customer has been with AN Other Insurance through their building society since they purchased the property on 11 August 2009. However, it becomes clear that your Principals have only been underwriting the building society policy since renewal on 11 August 2014. The claim was made on 2 October 2014. There are 8 Provisos of the ABI Change of Insurer Agreement. Outline the basis of these and comment on their relevance to the situation described above. (4 Marks)
- c) The tree expert identifies that the roots discovered beneath the extension originate from the oak tree on the verge. Draft a simple letter to be sent to the third party, assuming it is the Local Authority who owns the tree. (8 Marks)
- d) What form of monitoring would you undertake? Outline options, timescales and how this might assist any recovery action. (5 Marks)
- e) It is discovered during the course of the investigations that the drain has collapsed. It is 2 m below ground level, was 150 mm diameter and carried all of the sewage from the local village.
- The Water Authority indicate that you will need to demolish the extension so that they can repair their drain. Prepare a brief report, in bullet point form, to the Insurance Company outlining what course of action you would recommend together with the rationale for your actions. (8 Marks)
- f) Additional facts come to light which result in the customer not being happy with the proposed solution. The customer will not accept the decision that you have made under delegated authority and wants to refer the matter to the FOS. Outline what steps are necessary before this will occur. (5 Marks)

(40 MARKS)

QUESTION S3

A claim is made in January 2015. You are called to inspect commercial property which consists of a steel-framed portal building with a car park. The premises were built in 2009. The contract to build the unit was carried out by ABC Builders. The building control was undertaken by J&S who acted as approved inspector with M&M Architects carrying out the design. The identity of any of the other parties is unknown

The Insured is the owner occupier of the building and they manufacture small plastic trays and packaging for the catering industry. You notice that some of the machinery has packing under the legs to accommodate the movement in the slab.

There is damage in two areas:

1. Damage relates to a 1.5 m high retaining wall forming the edge of the car park. It is constructed from concrete blocks and the wall is approximately 40 m long.

To the side of part of the wall for approximately 5 m in length is a small stream.

The claim states that damage occurred as a result of ground movement following a period of excessively heavy rainfall. The damage takes the form of cracking, partial collapse and some lateral movement.

2. On inspection, you notice damage to the floor slab and associated car park areas. In some instances, the slab has moved downwards by up to 250 mm.

Key Policy information:

Deductible of £10,000 for subsidence.

Policy Coverage

Subsidence or ground heave of any part of the site on which the property stands or landslip excluding:

- a)
 - i) *DAMAGE to land insured hereby unless also affecting a Building insured hereby*
 - ii) *CONSEQUENTIAL LOSS in respect of land insured hereby unless a building at the same Premises used by the Insured for the purpose of the Business is also damaged thereby*
- b) *DAMAGE or CONSEQUENTIAL LOSS caused by or consisting of:*
 - i) *the normal settlement or bedding down of new structures*
 - ii) *the settlement or movement of made-up ground*
 - iii) *coastal or river erosion*
 - iv) *defective design or workmanship or the use of defective materials*
 - v) *fire, subterranean fire, explosion, earthquake or the escape of water from any tank, apparatus or pipe*



- c) **DAMAGE**
 - i) *loss resulting from destruction or damage which originated prior to the inception of this cover*
- d) **DAMAGE or CONSEQUENTIAL LOSS** resulting from:
 - i) *demolition, construction, structural alteration or repair of any property*
 - ii) *groundworks or excavation at the same Premises.*

Buildings are defined as follows:

Buildings of the Premises specified in the Schedule including:

- a) *landlords' fixtures and fittings*
- b) *outbuildings, extensions, annexes, gangways, canopies, fixed signs, temporary buildings, conveniences, lamp posts and street furniture*
- c) *walls, gates and fences*
- d) *drains, sewers, piping, ducting, cables, wires, aerials, satellite dishes and associated control gear and accessories on the Premises and extending to the public mains but only to the extent of the Insured's responsibility*
- e) *yards, car parks, roads, pavements, forecourts and similar surfaces all constructed of solid materials*
- f) *tenants' improvements if the Insured are responsible and property comprising fixtures and fittings (but excluding movable contents) formerly the property of tenants but relinquished to the Insured at the time of the surrender of the lease*
- g) *Landlords' Contents as defined below up to a limit of £25,000 unless they are insured by item 2 on the Schedule.*

- a) Detail the initial key enquiries and outline the reason for undertaking such actions.
(10 Marks)
- b) A structural engineer's report is obtained in respect of the wall which indicates that the damage has arisen as a combination of a build-up of water behind the wall and some localised subsidence. There is no provision for drainage through the wall and the wall is found to be constructed with 215 mm concrete blocks.

Based on this report, are you likely to consider a valid claim under the subsidence, heave or landslip sections of the policy based on the exclusion applicable to the subsidence section? Explain your decision. Is there any basis for considering the claim under any other section of the policy? Include case law if appropriate.

(10 Marks)

- c) If there was a valid claim for damage to the slabs, what steps would be necessary to undertake an appropriate design and what types of solutions might be considered?
(5 Marks)
- d) If liability is accepted, explain the various options on how the claim might proceed, detailing various settlement options. Also discuss whether there are any options for subrogation, outlining the strengths and weaknesses of each case. Include case law if appropriate.

(15 Marks)

(40 MARKS)