

A-413

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Each insurer’s contribution is established as follows:

$$\frac{\text{Insurance amount}}{\text{Total insurance amount}} \times \text{Amount of the loss} = \text{Contribution of an insurer}$$

## EXAMPLE

Nadjet has inadvertently insured his sheet metal business with two different insurers. The insurance amount with insurer A is \$150,000 and \$200,000 with insurer B. A fire causes \$60,000 worth of damage to his business. Each insurer’s contribution will be established as follows.

$$\text{Contribution of insurer A} : \frac{\$150,000}{\$350,000} \times \$60,000 = \$25,714.28$$

$$\text{Contribution of insurer B} : \frac{\$200,000}{\$350,000} \times \$60,000 = \$34,285.72$$

In this situation, Nadjet could have chosen to deal with insurer A only, insurer B only, or with both at the same time. Regardless of his choice, the amount paid by each insurer will be the same. The insurer from which Nadjet will have claimed the full amount of his indemnity will have to pay him fully, according to the conditions of his contract, but will be able to recover the extra amount paid out from the other insurer.

### 2.5.2 Liability insurance

As opposed to property insurance, in liability insurance, the insured does not have the option of dealing with the insurer of his choice when there is multiple insurance. The *Civil Code of Québec* does not govern the question of other insurance in liability insurance.

The terms of the insurance contracts, which generally contain “other insurance” clauses, must therefore be examined.<sup>10</sup>

When any of these insurance contracts do not provide for equal sharing of the indemnity and they are incompatible, each insurance is considered based on the proportion that its insurance limit represents out of the total coverage granted by the insurers covering the risk. A mathematical formula similar to that used in property insurance determines the contribution of each insurer towards the indemnity to be paid.

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Note: Equal sharing is covered in detail in Chapter 44, which examines the general conditions specific to IBC Form 2100 as regards liability.

10. See the decision *Family Insurance Corp. v. Lombard Canada Ltd.*, [2002] 2 S.C.R. 695 (Supreme Court).

## ANSWER SHEET FOR THE SELF-EVALUATION EXERCISE

### Answer 1

Boris owns a small shopping centre. Although he knows it would cost \$800,000 to rebuild in the event of total loss, he takes out \$500,000 worth of insurance with co-insurance of 80% and a \$1,000 deductible, in order to decrease his premium. One night, vandals set fire to the contents of a garbage container behind the shopping centre. The blaze spreads to the building, causing damage assessed at \$40,000. If Boris observes all the other conditions of his insurance contract, how much indemnity will his insurer pay?

- a) \$0, since the insurance amount is insufficient with respect to the value of the building.
- b) \$30,250.
- c) \$30,468.75.**
- d) \$39,000.

### Justification

The insurance amount taken out by Boris is insufficient, and therefore does not meet co-insurance requirements. He must therefore live with the consequences and pay for part of the damage. The minimum insurance amount required is \$640,000, or 80% × \$800,000. The deductible must be subtracted from the amount of damage of \$40,000 before calculating the indemnity using the formula  $IA/MIAR \times L$ . Hence, Boris will be paid an indemnity of \$30,468.75, as per the following formula:

$$\frac{\text{Insurance amount}}{\text{Insurance amount required}} \times \text{Loss} = \text{Indemnity}$$

$$\frac{\$500,000}{\$640,000} \times (\$40,000 - \$1,000 \text{ (deductible)}) = \$30,468.75$$

See section on co-insurance.

## Answer 2

Aurélié owns the Fun in the Sun travel agency. The business rents space in a building on a commercial street. To protect the contents of her office against property damage, she takes out a \$60,000 insurance contract, subject to co-insurance of 90% and a \$500 deductible. One morning, an employee notices water leaking from the ceiling, and discovers that the tap of the sink in the above premises has not been turned off properly. Luckily, the damage was contained, although two computers suffered water damage. After the loss was reported to the insurer, the claims adjuster, with the help of a contents specialist, sets the amount of damage at \$3,500. However, the inventory value of the office contents at the time of loss was \$100,000. That's when Aurélié notices the following clause of her insurance contract:

*This clause applies separately to each item for which a co-insurance percentage is specified on the "Declarations Page" and only where the amount of loss or damage exceeds the lesser of 2% of the applicable amount of insurance or \$5,000.*

*The Insured shall maintain insurance concurrent with this form on the insured property to the extent of at least the amount produced by multiplying the value of the property as determined in Clause 15 by the co-insurance percentage specified on the "Declarations Page". If the Insured fails to do so, the Insured shall be entitled to recover only that portion of any loss that the amount of insurance in force at the time of loss bears to the amount of insurance required to be maintained by this clause.*

How much indemnity will be paid by the insurer?

- a) \$1,833.
- b) \$2,000.**
- c) \$2,700.
- d) \$3,000.

## Justification

In this situation, it is important to note that the waiver of co-insurance clause does not apply. Although the amount of the loss (\$3,500) is less than \$5,000, it is nevertheless higher than 2% of the insurance amount (2% × \$60,000), or \$1,200. Accordingly, since Aurélié has not taken out sufficient insurance to observe co-insurance requirements, she will have to live with the consequences. Since the value of the office contents is 100,000 and the co-insurance percentage is 90%, the minimum insurance amount to purchase should have been \$90,000 (\$100,000 × 90%). The indemnity payable will be calculated as follows:

$$\frac{\text{Insurance amount}}{\text{Insurance amount required}} \times \text{Loss} = \text{Indemnity}$$

$$\frac{\$60,000}{\$90,000} \times (\$3,500 - \$500 \text{ (deductible)}) = \$2,000$$

See section on the application of the deductible where there is under-insurance.

pipes, mainly due to freezing, increases considerably. This exclusion therefore has the same purpose as article 2468 CCQ and applies to a building and its contents. ~~Unlike what is provided for in personal property insurance forms, this exclusion applies whether or not the insured is aware that the insured premises are vacant, unoccupied or shut down.~~

## EXAMPLE

A nursery farmer usually halts his activities at the end of November, and starts up again in March of the following year. If a fire in January damages the building and the contents of his business, the exclusion will apply and the insurer will not pay any indemnity. As is covered further in this chapter, this insured should ask his insurer for an unoccupancy permit in order to invalidate this exclusion if he wants his property to be covered during the period of inactivity.

### 4.1.6.2 Electrical devices, appliances or wiring

The exclusion pertains to loss of or damage caused to:

- (b) electrical devices, appliances or wiring caused by artificially generated electrical currents, including arcing. This exclusion does not apply to loss or damage caused directly by resultant fire or explosion;

It is important to specify that lightning is not a form of artificial current. Insured property that is damaged by lightning is covered under clause 5 (A) of the form. This exclusion therefore has nothing to do with lightning. The best example of artificial current is that provided by Hydro-Québec. If electricity produces a voltage that is too high for a business's electrical devices or equipment, the damage caused is not covered and is subject to this exclusion. There is an exception to the exclusion, however: damage is covered when caused by a fire or the resulting explosion.

## EXAMPLE

Following an accidental power surge, many of the computer circuits and telephone and alarm systems of Prolecto, an insured firm, are damaged because of the overheating of certain components. This damage is not covered and is subject to the exclusion. If one of the power system's protection devices fails, however, and a fire is set off, the damage resulting from the fire will be covered.

Boiler and machinery insurance, covered in Chapter 8 of this manual, insures what is excluded here.

### 4.1.6.3 Growing plants, trees, shrubs or flowers

The exclusion pertains to loss of or damage caused to:

not) that contribute concurrently or in any sequence to the occasioning of the loss or damage.

This exclusion is consistent with article 2486 CCQ (this article is examined in Chapter 2 with respect to the general condition on fire insurance) as regards the damage caused by a fire triggered by one of these events. The scope of the exclusion is extended by the addition, in its last sentence, of an anti-concurrent cause provision (under concurrent causation, losses are ~~covered~~ if they are jointly caused by a peril that is excluded and one that is not). This text is intended to prevent the insurer from granting coverage, confirming its intention.

excluded

## EXAMPLE

War is declared. During a mission, a fighter aircraft downs an enemy plane over Canadian territory. The downed plane hits a commercial building, which sustains heavy damage. Although impact by aircraft is a peril insured under IBC 4036, the main cause of the loss is from the risk of war, which is not covered. The anti-concurrent cause provision cancels the insurer's liability for damage to the building, even if one of these two causes of loss is covered under the contract.

### 4.1.7.2 Nuclear incident

The exclusion pertains to loss or damage caused directly or indirectly:

- (b) (i) by any nuclear incident (as defined in the Nuclear Liability Act or any other nuclear liability act, law or statute, or any amending law) or nuclear explosion, except for ensuing loss or damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas;
- (ii) by contamination by radioactive material;

It is important to read a clause right to the end; in this case, you see that there is an exception to the exclusion. It concerns the damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas.

### 4.1.7.3 Enforcement of by-laws

The exclusion pertains to loss or damage caused directly or indirectly:

- (c) proximately or remotely, arising in consequence of or contributed to by the enforcement of any by-law, regulation, ordinance or law regulating zoning or the demolition, repair or construction of buildings or structures, which by-law, regulation, ordinance or law makes it impossible to repair or reinstate the property as it was immediately prior to the loss.

The by-laws covered by this clause are laws or regulations amending the requirements or standards for zoning or the demolition, repair or construction of buildings or structures, which makes it impossible to repair or reinstate the



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## Question 8

The insured company, DecoStone, is a small manufacturer of decorative stones which sells its entire production to its only customer, a renovation centre in the region. To protect against loss of business income, the manufacturer has taken out IBC Form 4107B Extended Business Income – Broad Form Perils as well as IBC 4116 Contingent Business Income Extension Endorsement. The premises used by the renovation centre are indicated on the Declarations Page of the manufacturer's insurance policy. Recently, a landslide ~~occurred~~ within close proximity to the renovation centre, causing heavy damage to the business and forcing it to close temporarily. Inevitably, DecoStone suffered financial losses as a result. Under the coverage held by the manufacturer, will it be compensated by its insurer for business interruption? , as a result of an earthquake, a landslide recently occurred

- a) Absolutely, since the insured company has taken out the IBC 4116 endorsement.
- b) No, because the occurrence did not take place at DecoStone's premises.
- c) No, the coverage does not apply in this situation.
- d) No, since the claims adjuster discovered that the insurance held by the renovation centre does not cover the loss.

## Question 9

Florent owns the Kidgames toy store. While having supper with friends, he learns that one of the guests is a claims adjuster. He takes this opportunity to discuss insurance matters with him and ask a few questions. He asks about indirect damage insurance, which he would like to add at some point to his insurance contract. The guest tells him that there are two types of forms available: an American-inspired form and a British-inspired form. Interested in pursuing the conversation, Florent asks the guest to briefly explain the difference between both forms. Which of the following statements is true?

- a) Forms ending with the letter "A" are American-inspired forms, while those ending with the letter "B" are British-inspired forms.
- b) The indemnity period of an American-inspired form is limited to 12 months, whereas the indemnity period of a British-inspired form may go beyond 12 months, if specified on the Declarations Page.
- c) Extended insurance forms are American-inspired forms, whereas limited insurance forms are British-inspired forms.
- d) Extended insurance forms are subject to 80% co-insurance, whereas limited insurance forms are subject to 100% co-insurance, with the exception of extra expense insurance, which does not contain any co-insurance terms.

## Answer 8

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- a) Absolutely, since the insured company has taken out the IBC 4116 endorsement.
- b) No, because the occurrence did not take place at DecoStone's premises.
- c) No, the coverage does not apply in this situation.**
- d) No, since the claims adjuster discovered that the insurance held by the renovation centre does not cover the loss.

## Justification

The insured may have taken out the Contingent Business Income Extension Endorsement (IBC 4116) and indicated the name of his customer on the Declarations Page, but the fact is that this endorsement does not cover anything more in this situation. Since the cause of the damage is a landslide, which is not an insured peril under IBC Form 4107B (see clause 6B (I)), the IBC 4116 endorsement does not apply in covering loss of income. However, if DecoStone had also taken out the Earthquake Shock Endorsement (IBC 4139), the insurer could have paid compensation for business interruption. The definition of "earthquake" under clause 4 (a) in the latter endorsement includes landslides.

See sections on IBC Form 4107B and the IBC 4116 and IBC 4139 endorsements.

rights. All rights of subrogation are waived against any corporation, firm, individual or other interest with respect to which insurance is provided by this Form. However, the Insurer does not waive its right of subrogation against any architect, engineer or other consultant with respect to coverage provided for loss of damage caused directly by a peril not otherwise excluded that results from faulty or improper design.

Where the net amount recovered, after deducting the costs of recovery, is not sufficient to provide a complete indemnity for the loss of damage suffered, that amount shall be divided between the Insurer and the Insured in the proportion in which the loss or damage has been borne by them respectively.

Any release from liability entered into by the Insured prior to loss shall not affect the right of the Insured to recover.

The wording of this clause is very similar to that in IBC Form 4036 and IBC Form 4037 in direct damage insurance. However, one item is specific to builders risk insurance: the insurer stipulates that it maintains its right of subrogation against any architect, engineer or other consultant, but only if the ~~cause of the occurrence results from faulty or improper design~~

## EXAMPLE

Brian, a consultant engineer, planned the work for a major residential project by the general contractor Bois Béton. Builders risk insurance was acquired to insure the project. If ever the building collapses because the main beam installed on the engineer's recommendation is not the right size, the insurer will indemnify the general contractor and will be able to bring an action against the engineer because the occurrence is the result of faulty or improper design.

~~Brian, a consultant engineer, has been mandated by WAC Construction and General Contractor to supervise a major residential project site. A builders risk insurance has been written to cover the project. During a walk-around inspection, the engineer drops a cigarette butt on the ground, unaware that there are combustible materials nearby. These catch fire and cause damage to part of a building under construction. Since the occurrence is not the result of faulty or improper design, the insurer will indemnify the general contractor without taking subrogatory action against the engineer in question.~~

~~However, if a building collapses because the engineer neglects to recommend that the right sized girder be installed, the insurer may take action against the latter, since the occurrence is the result of a faulty or improper design.~~

### Premium adjustment (clause 14)

A provisional premium is established upon the issuance of an insurance contract. So that the insurance premium may be adjusted to the actual cost of the project, the insured must report within 30 days after the termination or expiration of the contract:

- the actual completed contract price and the value of any property not included in such completed contract price and insured by this Form;
- the total completed value of the project in the absence of such price.