

Questions d'examens de l'American Institute for Property and Liability Underwriters

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[Aller au sommaire du numéro](#)

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Questions d'examens de l'American Institute for Property and Liability Underwriters

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Nous avons déjà signalé *The Casualty and Surety Journal*, édité aux frais d'un certain nombre de compagnies d'assurances américaines. Chaque numéro contient des articles simples, sans prétention, sur des sujets relevant de l'assurance-accidents, responsabilité civile, vol, automobile; bref, sur ces sujets que la pratique américaine englobe sous le titre de *Casualty et Fidelity*. A signaler, dans le numéro d'avril 1946, les questions posées à la session d'examens de juin 1945 de l'*American Institute for Property and Liability Underwriters, Inc.*, qui décerne le titre de *Chartered Property Casualty Underwriters*.

Nous les reproduisons ici pour ceux de nos lecteurs qui voudront s'essayer à les résoudre :

"Q. Due to an unrepaired furnace door, hot coals fell on the basement floor of a retail store building owned and operated by "E". The hot coals ignited some trash that was carelessly thrown on the floor and the fire spread, causing \$20,000 damage to "E's" building. In extinguishing the fire, water and chemicals caused \$10,000 damage to merchandise belonging to "F", a tenant on the second floor. "E" carried \$50,000 fire insurance and "F" \$5,000. "F" sued "E" for his carelessness and was awarded \$10,000 (the full amount of his loss).

“(a) Is there a commonly used insurance coverage that would provide protection to “E” against such a court award? If so, explain the specific features that cover this case. If there is no such contract, describe the features of a special contract that would afford protection to “E.”

(b) Could “F’s” insurer be affected by the court award mentioned above? If so, why and how? If not, why not?

“A. (a) *An O.L. & T. Liability policy with P.D. Liability Endorsement would protect “E” in such an instance provided he carried adequate limits to meet the \$10,000 award. Even though readily available, few insureds carry Property Damage coverage under an O.L. & T. policy and fewer still are insured for an amount in excess of the \$1,000 Standard Limit named in the policy.*

129

“The specific features of the O.L. & T. Liability policy that cover this case are (1) the promise to pay to the extent of the policy limits, the liability imposed by law upon the insured for loss, destruction or damage caused by accident to property of others arising out of the ownership, maintenance or use of the premises described, and (2) the promise to defend a suit for alleged liability arising out of ownership, maintenance, or use of the described premises.

“(b) “F’s” insurer could be affected by the court award in this case because the loss to “F’s” property in the first place would be considered to be “direct loss or damage by fire,” even though the actual loss sustained was by water and chemical (court decisions). “F’s” insurer could be asked to pay and then become, subrogated to “F’s” rights to the extent of its payment and proceed against “E.”

“To the extent of the insurer’s payment (\$5,000 in this case) the insurer has both a common law right and a contractual right to compel the insured to transfer to the insurer his rights of collection against a third party. In order fully to protect its subrogation rights at the time of making a loss payment, no doubt “E” would insist on being joined with “F” in a suit against “E”.



“Q. When Use & Occupancy insurance is written at standard rates it is now required that the following clause be included in the contract: “In consideration of the rate and premium at which this policy is written it is a condition of this insurance that this company

ASSURANCES

shall not be liable for any loss resulting from additional time required to rebuild, replace, or repair any property herein described as a consequence of any law, governmental order, provision or directive, regulating, prohibiting or restricting, directly or indirectly, construction, the acquisition of machinery, equipment, material, labor, or other means required for the replacement or repair of any property damaged or destroyed."

"(a) Explain the nature and purpose of the coverage provided by Use & Occupancy insurance on a manufacturing plant.

130

"(b) Wherein does the clause quoted above modify the coverage normally provided by Use & Occupancy insurance? Be specific.

"(c) Under a Standard Fire Policy insuring against direct loss by fire, is a special endorsement necessary if the insurer wishes to avoid responsibility for aggravation of a fire loss by the conditions mentioned in the clause quoted above? Explain fully why or why not.

"A. (a) *The purpose of Use & Occupancy insurance is to indemnify the assured for loss in the event that fire, or other insured peril, interrupts earnings, but only to the extent they would have been earned had no fire or other insured casualty occurred. The U. & O. form (co-insurance form) attached to a standard fire policy agrees to indemnify the insured for:*

1. *Loss of net profit on operations prevented.*
2. *Necessarily continuing expenses such as taxes, interest, key personnel salaries, and other necessarily continuing expenses to the extent they would have been earned had no loss occurred.*
3. *Ordinary payroll for not exceeding 90 days.*

"(b) *U. & O. insurance contemplates payments for loss during the time needed under normal conditions to repair property so that it is possible to resume operations. Since December 7, 1941, priorities, and various government edicts, have in many instances slowed up or entirely stopped the use of certain materials in private construction. Therefore, the U. & O. claims, which are determined by the length of time required to rebuild, soared because of these government imposed delays. Through the wording "additional time required to rebuild, replace or repair," the quoted clause eliminates responsibility of the insurer for losses aggravated as a result of government orders.*

"(c) *Under a standard policy (1918 or 1943) insurance against direct loss by fire no special endorsement is needed to avoid liability for aggravation of loss resulting from additional time required to replace,*

rebuild, etc. Regardless of the reason for the additional time the policy states specifically that the company is liable for "the actual cash value of the property at the time of loss." (To the extent that government restrictions have been a factor influencing actual cash value at the time of loss by fire, the fire insurance carrier is responsible.)

"Q. (a) Describe the two principal sets of circumstances under which Automobile Public Liability protection may be needed by others than the owner of a private passenger automobile.

"(b) Describe the various ways in which the coverage needed under the circumstances mentioned in your answer to (a) is provided.

"(c) In your answer to (b) which coverage is (1) excess insurance? (2) contributing?

"A. (a) *The two principal sets of circumstances under which others than the owner of a private passenger automobile need automobile public liability protection are:*

1. *Liability for cars used in one's interest, but owned and operated by others (employee driving his own car for benefit of employer).*
2. *Liability when driving in one's own interest cars belonging to others.*

"(b) *If the owner has a National Standard Automobile Liability policy both of the circumstances mentioned above are under the "omnibus clause" which includes the liability of "any person, or organization legally responsible for the use of the car provided the use is with the permission of the named insured." This is subject to some specific exceptions such as: common employees in course of employment, garages, service stations, parking lots, etc.*

"*If the owner lacks "omnibus" protection or has inadequate "limits":*

1. *The liability of non-owners for cars owned and operated by others may be assumed under an "Employers' Non-ownership" policy, and*
2. *the liability of those using cars of others in their own interest may be assumed:*
 - (aa) *by "named operator coverage" which protects the specifically named person when he is operating or riding in a non-owned car.*

(bb) under "drive other car coverage" (as provided in the National Standard Automobile policy) which protects the insured and spouse by reason of the operation of other non-owned cars by them or in their interest.

"(c) The "non-ownership" policy is excess, the "drive other cars" coverage in the standard policy is excess, the "named operator" coverage is contributing.

~

132

"Q. "The Insurance coverage under a 'Commercial Accident Policy' and that of the 'Standard Workmen's Compensation and Employers' Liability Policy' overlap in many respects and therefore frequently enable an insured person to collect twice for the same accident."

"Contrast the protection of these two contracts with reference to:

- (a) definition of accidents covered,
- (b) definition of disability resulting from accident.

"In your answer show whether or not the above quotation is correct.

"A. (a) *The Commercial Accident Policy covers all kinds of accidents (excepting those specifically excluded) that meet the "accidental means" test, whereas the protection of a Workmen's Compensation Policy is restricted to occupational accidents as provided in a Workmen's Compensation Law.*

"(b) *Disability may be Total or Partial under the Commercial Accident Policy. Total disability is frequently defined as the inability to perform each and every duty of one's own occupation during a period of 52 weeks immediately following commencement of disability; after 52 weeks it is defined as the inability to perform any and every duty of any occupation. Partial disability under the contract is frequently defined as inability to perform one or more important daily duties of one's occupation for a limited period, such as 26 weeks. The 26 weeks of partial disability may follow total disability. (An absolutely rigid definition is impossible because of the variety of commercial accident policies.)*

"*Under the Workmen's Compensation Policy total and partial disability are: Total or partial inability to earn wages as interpreted*

by an administrative body or other device provided in a Workmen's Compensation Law.

"Irrespective of other definitions of disability, scheduled dismemberment and loss of sight are common to both Accident and Workmen's Compensation policies. (Workmen's Compensation sometimes includes scheduled, permanent loss of use.)

"Accident and Workmen's Compensation Policies are separate and independent of each other and both policies may pay benefits for the same injury.

133

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qui vous secondera rapidement . . .
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