A problem which is becoming more and more prevalent is the fact that so many of us are time poor. Unfortunately, there is no short cut when it comes to interpreting an insurance contract or managing a claim effectively. Yet many practitioners rush to the section of the policy they believe addresses the point they are questioning, make a decision based on the one clause and move on. This can mean that a claim that should not be paid, is, or vice versa. Neither is good for the insurance industry. Where the claim is paid when it should not be, it is genuine claims leakage disadvantages the shareholders of the insurer and sets a dangerous precedent. Where it is the other way around, the client often seeks advice, and while an incorrect decision is ultimately overturned, however, the industry and the person who made the decision both lose credibility. The client often then seeks to change the Insurer. No one really wins.

One issue that often comes up because it is so often mistreated is just what cover is afforded by the Removal of Debris benefit under an Industrial Special Risks (“ISR”) Policy. Many try and limit the cost of demolition forming part of the permanent repair of a building to the Sub-Limit for Removal of Debris. As this is clearly incorrect, I have prepared this paper setting out the true position in the hope that the frequency of errors on this every day issue is reduced.

So where does the problem start? Under the Mark IV Industrial Special Risk (“ISR”) policy there is an additional benefit for;

(f) costs and expenses necessary reasonably incurred in respect of:

(i) the removal, storage an/or disposal of debris or the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon damage to property insured by this Policy occasioned by a peril insured against”.

This is an additional benefit under both the Mark IV advisory and modified versions. The Mark V versions also use similar words. The issue arises where a Sub-Limit has been set against: “Removal of Debris”. Some have interpreted the words of sub-clause (f)(i) to mean that the cover for demolition of damaged property as part of a permanent repair is limited to the amount of the Sub-Limit.

This interpretation overlooks the fact that sub-clause (f)(i) is, as I have stated twice above, an additional benefit provided under “The Indemnity” clause of the Policy. To appreciate this, it is necessary to read the second paragraph of “The Indemnity” clause, which states:

“Subject to the liability of the Insurers not being increased beyond the Limit(s) of Liability already stated herein, the Insurers will also indemnify the Insured for.”

[Emphasis mine]

Clearly by using the words “will also indemnify the Insured for:” means that all the benefits listed below that particular point in the Policy until the end of the Clause are indeed additional benefits. The wording of the paragraph, reproduced above, makes it clear that the additional benefits are only available to the Insured if the
Limit(s) of Liability are not already exhausted. This is one of the three reasons why the Declared Value for Material Damage should never equal the Limit of Liability under an ISR policy.1

We now turn to what is provided under the base cover afforded by “The Indemnity” clause. The wording here states:

“In the event of any physical loss, destruction or damage (hereinafter in Section 1 referred to as ‘damage’ with ‘damaged’ having a corresponding meaning) not otherwise excluded happening at the Situation to the Property Insured described in Section 1 the Insurer(s) will, subject to the provisions of this Policy including the limitation on the Insurer(s) liability, indemnify the Insured in accordance with the applicable Basis of Settlement.”

Before turning to the basis of settlement for buildings to complete the discussion on whether any Sub-Limit of Liability applies to the cost of demolition as part of a permanent repair, I remind the reader that only additional benefit (a) which deals with architect, surveyors, consulting engineers fees and the like, needs to be included in the Declared Value. The additional benefits (b) to (g), which includes (f) Removal of Debris, are not required to be included in the Declared Values2. This is confirmed in the policy at the very end of “The Indemnity” clause with the paragraph reproduced below:

“Provided that the insurance under Clauses (b) to (g) inclusive shall not be subject to any Co-insurance clause or memorandum contained in this Policy”.

Turning now to the “Basis of Settlement” clause: the Mark IV ISR policy states:

(a) On buildings, machinery, plant and all other property and contents (other than those specified below) the cost of reinstatement, replacement or repair in accordance with the provisions of the reinstatement and Replacement and Extra Cost of Reinstatement Memoranda as set out herein.”

Logically, with any permanent reinstatement or repair of a building it is necessary first to remove and/or dismantle the damaged section. In practice, reinforced by modern workplace safety rules, this entails removing the damaged materials to a designated part of the worksite where it is typically thrown into a pile or, more likely to avoid double handling, placed into a 6 metre industrial waste skip. This is clearly all part of the reinstatement/repair process.

At the point the damaged material is in the skip or on the rubbish pile, the cover afforded by the Basis of Settlement clause is at an end. To be technically correct, the rubbish pile or skip would have to be outside the building proper as a building is hardly reinstated to its condition “when new”3 if there is a pile of rubbish left sitting inside.

To cover the cost of removing the debris to an appropriate tip, subject to the overall Limit of Liability not being exhausted, the additional benefit of Removal of Debris kicks in, with a second proviso that the costs of removing the debris do not exhaust any Sub-Limit of Liability shown against the additional benefit of Removal of Debris in the Schedule.

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2 It is important to note that this is only the case in the Mark IV Advisory and Modified wordings as well as the Mark V Modified wording. Removal of Debris does have to be included as part of the Declared Values under the Mark V Advisory wording.
3 Refer the Reinstatement and Replacement Memorandum, paragraph (a).
So why does additional benefit (f) (i) Removal of Debris\(^4\) contain the words “or the demolition, dismantling, shoring up, propping, underpinning”?

The reason is quite clear when you read the remainder of the paragraph which goes on to say “or other temporary repairs consequent upon damage to property insured.” [Emphasis mine]

This means that subject to all the Limits and Sub-Limits stated in the Schedule, any demolition, dismantling, shoring up etc., associated with temporary repairs are covered by additional benefit (f) (i) but not the permanent repairs which as explained above are already covered by the policy under the “Basis of Settlement” clause. Some may argue that the demolition done for temporary repairs are for the benefit of the permanent repairs and that there is no need to mention demolition etc in sub-clause (f) (i). However, with a temporary repair, the full extent of demolition to do a permanent repair may not take place. It is often just be a make safe where only dangerous building materials such as lose iron, dangling bricks, or the like are removed.

In an ideal world it would be cheaper to do the entire demolition ready for reinstatement in one go rather than the make safe and then the demolition as part of the repair. Insurers are often prepared to allow for the make safe to be done on a “cost plus” basis but they more often than not require the repair to be put to tender. The inclusion of the cost of demolition associated with a temporary repair under sub-clause (f) (i) ensures full protection to the insured, subject always to the Limits and Sub-Limits of Liability being adequate.

For the sake of completeness I would mention that the cost of removing the shuttering or other materials used as part of the temporary repair would form part of the permanent repair.

Being drafted more than 20 years ago, it is often overlooked by those that do not know the individuals concerned that the ISR policy was developed by a talented group of experienced policy drafters drawn from both the insurers and insurance brokers. It was designed to provide a high level of protection to an Insured with larger risks. This should always be borne in mind when interpreting the ISR policy\(^5\).

Further, any policy of insurance needs to be read as a whole, not just one paragraph in isolation, to fully understand the cover afforded by it.

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\(^4\) Under a Mark IV Advisory or Modified Industrial Special Risks Policy. The Mark V wordings are nonetheless similar but different sub-clause numbering is used.

\(^5\) Most good quality Business Pack policies follow the lead of the Industrial Special Risks Policy but in line with the theme of this paper, one should never assume as many lesser quality wordings require demolition to be included in the Sub-Limit. The moral of the story is to always read the policy carefully before you offer it to your client.