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INSURANCE LAWYERS

Insurance Law Update

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BRITISH COLUMBIA NOW REQUIRES DISCLOSURE OF INSURANCE POLICIES

BACKGROUND

By way of amendment dated July 1, 2007, the Supreme Court of British Columbia *Rules of Court* require parties to disclose in their list of documents copies of *any* insurance policies under which an insurer may be liable to satisfy the whole or part of any judgment obtained in the action or to indemnify or reimburse any party for any money paid by that party in satisfaction of the whole or part of any judgment. In passing this legislation the government of British Columbia has followed the trend in Ontario and other provincial jurisdictions requiring parties involved in litigation to disclose the existence of any relevant insurance policies.

The *Rule* amendments also require a party being examined on discovery to answer any question related to the existence and contents of any insurance policy under which an insurer may be liable and the amount of the limits of liability of the policy. Additionally, a party must answer any question pertaining to the issue of the insurer's position on coverage under the policy. This will likely lead to inquiries by the examining counsel as to whether the matter is being defended by the insurer on the basis of a "non-waiver agreement" or reservation of rights. Depending on the party's answer, this may lead to a request that the party produce the "non-waiver agreement" or reservation of rights letter issued by the insurer.

The amendments also stipulate that despite the requirement to disclose any policies of insurance, any information concerning the policy must not be disclosed to the court at trial unless it is relevant to an issue in the action.

PRACTICAL IMPLICATIONS FOR INSURERS

The implications for the insurance industry are many and varied.

In the context of "leaky condo" litigation, parties often have discussions with respect to the existence or non-existence of insurance coverage so that the Plaintiff understands the extent of its potential recovery of damages. This amendment to the *Rules of Court* will now require parties early in any litigation to disclose the existence of insurance policies and the coverage position of the insurer. This

DOLDEN WALLACE FOLICK LLP
Tenth Floor - 888 Dunsmuir Street | Vancouver. British Columbia. Canada. V6C 3K4 | TELEPHONE 604-689-3222 FAX 604-689-3777

disclosure requirement will provide Plaintiffs with information as to whether any potential judgment may be satisfied by the defendant or its insurer. Depending on the strength of a Plaintiff's case, it may result in a Plaintiff abandoning a case if the defendant does not have any insurance and liability is difficult to establish. However, in cases where the defendant has an insurance policy with a high policy limit, it may result in a Plaintiff inflating its monetary demand for damages and/or becoming entrenched in a large demand position at mediation.

In cases where a Plaintiff has obtained a judgment against an insured, but the insurer has denied coverage under a policy, the amendment may result in an increase in applications brought pursuant to section 24 of the *Insurance Act* in cases where the Plaintiff is of the view coverage has wrongly been denied. Section 24 of the *Insurance Act* allows a judgment creditor to recover the amount of the judgment by action against the insurer.

Another potential result of the disclosure requirements is an increase in plaintiffs taking assignments of defendants' indemnity rights in cases where coverage has been denied.

Immediately, defence counsel will be required to produce relevant policies and correspondence between insurers and insureds in the litigation and allow for discovery of this production. Also, given the disclosure requirements, insurers are well advised to continue their vigilance as to the content of denial and reservation of rights letters and non-waiver agreements.

AUTHOR Barbara J. Murray
Direct Line: 604-891-0355 *E-mail:* bmurray@dolden.com

EDITOR Alex L. Eged
Direct Line: 604-891-0357 *E-mail:* aeged@dolden.com