



Current Articles 1999 –November

Save Those Papers!!!

Insurance text books tell us that insurance is the world of "people, paper and money". In the last several years and with the assistance of computers much of the paper documents have now been "saved" to computers. Similarly, our clients are relying on their computers for record retrieval and may not keep policies and insurance papers beyond a certain period of time. If a broker was asked by a client as to how long they should keep old policies, a likely answer may be 7 to 10 years. This was based on a statute of limitations, mainly attributable to liability claims.

But times have changed. And the courts have established new rules. If liability coverage is applicable to a risk involving children or minors, such as day cares, schools, children's aid societies, children's clinics, etc. you may want to change your recommendations. The first court change came from a judge in North Bay when he established that the 7 year proscription period would commence when the claimant reached the age of majority. If the claimant is seeking recovery for damages in an abuse claim, this could commence an action up to the claimant's age of 25 and the claim may allege damages back to age 5 and later – over 20 years. In addition, abuse claims usually involve several allegations of abuse over several years to many policies could be involved. Can your client find them?

A later decision makes the period of discovery even worse A judge has ruled that the limitation period commences when the claimant realizes that he/she has suffered damages (usually mental) as a result of abuse. In a recent cast the claimant commenced an action at her age of 45 years which means that policies back some 40 years may be involved. When the client's liability coverage changes through several insurers, an eventual claim settlement must be apportioned between all insurers who were n risk over the period of the abuse. Can all these policies be located? Is there a responsibility on the broker or insurers to produce such old documents?

As examples, a school board receives a claim which dates back many years. Several terms of liability coverage were then placed with an insurer that no longer exists. This gap may be uninsured when the court pro rates the settlement between all parties. Or a children's aid society that could not find 20 year old policies. However, a letter from the broker indicated that coverage had been bound for a particular term and a separate letter indicated the insurer. However that insurer had been sold to a second and then to a third! And what about the duty to defend during this hunting exercise?

Brokers may also be exposed to not having a paper trail. Of late, I have been involved in 6 cases regarding the OEF 45, the Excess Economic Loss Endorsement. This endorsement was introduced January, 1994, and ended with Bill 59, November 1996. Its popularity was very minimal, in fact, approximately one insured vehicle in 100,000 carried this endorsement. But now, seriously injured claimants or estates of deceased claimants are advocating that they were not properly advised or counselled about the OEF 45. In each case the notice, either individual letters or mass mailing to all clients has become critical to defence of the broker. Can you find your notices of how you advised clients?

In summary, clients should be advised to keep policies, most particularly liability policies for a longer period of time. This is even more important for risks that involve minors. Brokers no doubt would have computer records of coverages effected including, for example, the OEF 45, but have you kept your mailing pieces or brochures?

James E. Bonnay,
C.I.P., C.C.I.B.
Insurance Consultant

Phone 905-333-1727
Fax 905-333-0683
E-mail - jamesbonnay@cogeco.ca