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The Revised CGL and "Concurrent Causation!"

In March of this year, the IBC introduced a revised Commercial General Liability wording- IBC 2100. This replaces the previous 1987 edition. Not all insurers have adopted this new wording and some insurers have only adopted some of the revisions.

The revised wording has added several additional exclusions, other clarifying clauses and explanations, all in an attempt to meet the intent of the policy and to dispel the liberal interpretations of the wording by "generous judges!"

One of the major cases that went beyond the intent of the CGL was the liberal interpretation of the policy wording, in the Derksen case. The precedent established by the interpretation by a "generous Judge" had a profound impact on insurers. The Supreme Court of **Canada's concurrent causation** has led to an increased expenditure by Canadian Insurers for both claims and defense costs.

A contractor laying cable for a utility company was forced to shut down because of inclement weather. One of the workers removed a sign and a supporting faceplate of 1-inch steel. The worker placed the faceplate on the tongue of the compressor's frame as part of the job site clean up process. He left the plate there and in effect forgot to load it properly. The base plate was not secured. While driving the truck, the base plate flew off the truck and struck the windshield of an oncoming school bus. One child was killed and three others seriously injured.

The contractor had a CGL, Umbrella and Auto policy. As the loss occurred during the realm of Bill 164, action could not be brought under the auto policy for loss of economic loss (future income, reduction in life style, etc.), but only for pain and suffering and which was subject to the trilogy cap.

The CGL policy excluded coverage for an automobile claim for *"bodily injury… arising out of the ownership, use or operation of an automobile"* and *"for bodily injury …with respect to which any motor vehicle liability was in effect"*.

Concurrent Cause arises where more than one event or peril contributes to or causes a loss. The Court found that there were **two concurrent causes** that contributed to the loss; one being the operation of the motor vehicle (excluded peril) and the other being the negligent clean up at the work site (covered peril – operations liability). The Court concluded that **any** cause, which actually contributes to the accident, would be treated as concurrent cause.

The Court held that where concurrent cause of loss exists, **in the absence of a suitable worded exclusion**, the policyholder has coverage entitlement. The Court allowed both the CGL and the Auto policy to apply, including defense costs, hence more than one policy contributing to the loss.

The revised CGL wording with respect to automobiles excludes BI and PD arising **“directly or indirectly, in whole or in part**, out of the ownership or use of an automobile **“regardless of any other contributing cause or aggravating cause or event that contributes concurrently or in any sequence”**.

Although there are no guarantees, it is hoped that the revisions to the CGL and the applicable new definitions and exclusions will prevent future claims for concurrent causation. Time will tell !!!

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