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## LAWYER'S WEEKLY MAGAZINE: BRITISH COLUMBIA INSURANCE ACT AMENDMENTS, EFFECTIVE JULY 1, 2012

### RBS Insurance Practice Group Newsletter

By: Alex Eged

On December 1, 2011, the Province of British Columbia approved Order in Council No. 589 that will bring amendments to the *Insurance Act*, R.S.B.C. 1996, c. 226 (the "Act") into force on July 1, 2012.

This memo will provide a brief overview of some key provisions from the *Insurance Amendment Act, 2009*, S.B.C. 2009, c.16 and the Regulations attached to the Order in Council that will affect the Act.

It is notable that the Alberta *Insurance Amendment Act, 2008* is largely uniform with the BC legislation and comes into force the same day.

#### **1. OVERVIEW OF THE AMENDMENTS**

The purpose of the *Insurance Amendment Act, 2009*, which is largely similar to Bill 40 *Insurance Amendment Act, 2008*, is to bring better consumer protection and clarity to contractual provisions, create a harmonization of British Columbia insurance provisions with that of other provinces and create a legislative scheme that will minimize government intervention in private contract situations.

The Amendments will continue the legislative regulation of the four major types of insurance contract; fire, life, accident and sickness and automobile but will do so in a manner consistent with modern insurance contracts.

The Amendments entail a re-structuring of the Act that merges the General Part with the Fire Part. In particular, the entirety of Part 5 (Fire) will be repealed and the majority of its provisions, including Statutory Conditions, merged into Part 2 (General).

#### **2. PRIMARY CHANGES FOR PROPERTY INSURANCE**

While the Amendments pertain to all kinds of insurance governed by the Act a significant number of the Amendments pertain to property insurance. Below we highlight the primary changes in respect of this type of insurance.



**(a) Limitation Period**

Statutory Condition 14 of the Fire Part, which required that actions be commenced within one year of the loss is repealed. Also repealed is section 22 of the General Part which required action commencement within one year of furnishing a reasonably sufficient proof of loss. In its place will be a new section 22 which governs all actions against insurers. It establishes a two year limitation in the case of loss or damage to property from the date the insured knew or ought to have known of the loss and in all other cases two years after the date the cause of action arose.

**(b) Mandatory Fire Coverage**

In 2003 the Supreme Court of Canada determined that multi-peril insurance was not governed by the Fire Part of the *Act*. Accordingly, consumers were effectively denied the protection of that Part which required fire policies to include coverage for fire following all events. In other words, if property was destroyed by fire subsequent to an earthquake or terrorist activity, and a consumer held a fire policy, the consumer would have coverage. However, if a consumer had multi-peril coverage that excluded earthquake or terrorism (which many do) he or she would not be entitled to indemnity for fire subsequent to earthquake or terrorism.

Section 28.4 of the Amendments makes any exclusion relating to the cause of a fire invalid. There is however potential for such exclusions. Regulations may be passed that allow for such exclusions to be valid. These regulatory exclusions are not part of the Amendments as of yet, however, the Ministry of Finance has submitted that earthquake not be added to the list of permitted exclusions but that terrorism be added to the list in recognition of underwriters concerns. In addition, fire from vandalism in the context of vacant property will be excluded but there will be an exception to this exclusion: namely, that the fire must have occurred thirty or more days after vacancy.

**(c) Innocent Co-Insureds**

When persons are jointly insured the acts of one may serve to result in a denial of coverage to the other. An example is found where one resident of a household intentionally causes a fire that damages the property, solely or jointly owned by another resident of the household.

Section 28.6 creates a statutory paradigm for protection of innocent co-insureds while allowing for the exclusion of claims for the party exhibiting wrongful conduct.

This section came into force in British Columbia June 16, 2011.



#### **(d) Dispute Resolution**

Section 9 covering Appraisals under the Act is repealed and replaced by a new section 9 with the heading “Dispute Resolution”. This section pertains to disagreements on the value of insured property as referenced in Statutory Condition 11. It is notable that the new Statutory Condition 11 provides for administering disputes about “*the nature and extent of the repairs or replacements require or, if made their adequacy*”. There are no such provisions in the Fire Part of the Act.

The Dispute Resolution process is similar to Appraisal but notice of this section to the insured in the event of dispute is no longer the responsibility of the insurer. Either party to the contract can give written demand of the process to the other side after a proof of loss has been delivered and the timing for appointment of appraisers and umpires is respectively seven and fifteen days.

It is notable that Statutory Condition 13 – Repair or Replacement precludes an insurer from giving written notice of intent to repair, rebuild or replace the property if the Dispute Resolution process has been initiated.

#### **(e) Concurrent Insurers and Subrogation**

It occurs that a loss is covered by more than one insurer. In such instances the Courts have held that depending on the language of the subject policies’ “other insurance” clauses the two insurers will share in the loss rateably in respect of their policy limits. This has now been codified in section 28.1. This rateable proportion of loss legislation is subject to change only by the express written agreement between covering insurers.

Given Part 2 of the Act applies to almost all contracts of insurance and the lack of use of the word “to property” in s. 28.1 we expect the courts will be asked to determine if the jurisprudence developed in respect of “other insurance” clauses contained in liability policies is still applicable.

In subrogated matters section 28.6 requires that the net amount recovered, if less than complete indemnity, must be shared between insurer and insured in proportion to the amount of loss suffered by each. This codifies the requirement to return a portion of the insured’s deductible upon subrogated recovery.

### **3. SOME PRACTICAL TIPS FOR INSURERS**

Even where technical grounds for a denial may appear to exist, a new “unjust contract provision” has been enacted that can prevent coverage denials considered to be either unjust or unreasonable in the circumstances of the case. This section extends to every contract with certain exceptions for the property and casualty industry.



The new relief from forfeiture provision specifically permits an insured to also rely on the relief from forfeiture provisions in the *Law and Equity Act*, R.S.B.C. 1996, c.253. These provisions give broad jurisdiction to relieve from forfeiture against all penalties. Insurers must now consider these broader provisions rather than imperfect compliance with Statutory Conditions when relief from forfeiture is claimed.

Insurers should exercise caution when assessing whether the Amendments apply as certain provisions will not apply to contracts already in effect on July 1, 2012 and will only apply once the contract is renewed or replaced. In addition, certain Amendments will not apply to losses which occurred prior to July 1, 2012, such as the new limitation period and the provision for recovery by innocent co-insureds.

The Amendments incorporate into the Act provisions from the *Electronic Transactions Act*, S.B.C. 2001, c.10. Accordingly, e-mail can now be used for delivery of many documents including insurance contracts, declarations, endorsements and policy wordings. The Regulations however preclude the electronic delivery of policy termination notices for non-payment of premiums or termination pursuant to Statutory Conditions.

The Regulations also provide for the following notice requirements:

- Insurers are now required to provide written notification to an insured of the statutory limitation period applicable to any coverage enforcement action within five days of the denial of any part of a claim. Failure to comply will suspend the commencement of the limitation period.
- Notice of dispute resolution process must be given in writing within 10 days of the the insurer determines there is a dispute or within 70 days after proof of loss if at that time the insurer has not yet made a decision in respect of the matter.
- Insurers authorized to conduct business in BC, with only a few specific exceptions, must be a member of the General Insurance OmbudService for the purpose of addressing “insurer complaints”.

If you have any questions regarding amendments to British Columbia’s *Insurance Act* or any other insurance matters please contact Alex L. Eged, Practice Leader for the Richards Buell Sutton LLP Insurance Law Practice Group, or any other Insurance Law Practice Group member.

Insurance Regulation Schedules A and B