

Dire Consequences

In the Spring 93 Issue, we discussed the reporting of actual and potential claims and warned that failure to give timely notice "could jeopardize your right to coverage". This article points out the possible consequences of failing to comply with the notice requirements of the policy, specifically when you have knowledge of a claim during one policy period - which runs from July 1 to July 1 - but do not report it until the next policy period.

In the General Insuring Agreement of the policy, the insurance company "agrees to pay, on behalf of the Insured, all sums which the Insured is legally obligated to pay as damages for any claim first presented during the Insured's policy period...". If the General Agreement applies, the Insurer further agrees to (1) "assume the defence of the Insured", (2) "pay all the expenses incurred in the investigation, defence, negotiation and settlement" of the claim, (3) "pay all costs taxed against the Insured" and (4) all reasonable expenses ... incurred by the Insured at the request of the Insurer".

Policy Definition 5 provides in part that the "policy applies only to claims made...:

(b) during the Insured's policy period arising out of professional services rendered prior to the inception date of the Insured's policy period, provided no Insured had knowledge of such claim at the inception date of the Insured's policy".

You are entitled to indemnity and defence under the policy, if and only if a claim is first made or presented during the policy period. The policy defines a presented claim and/or claim as "any notice to the Insured of any facts or circumstances which may give rise to one or more claims...".

"You are entitled ... if and only if a claim is first made or presented during the policy period."

To understand the effect of the above provisions, consider the following scenario. On 30 April, 1993, you lay out a house and days later are informed that there has been an error with respect to the side yard setback. An application for a minor variance is made and you are hopeful that approval will be granted at a committee of adjustment hearing schedule for July 5, 1993. Meanwhile, you do not give notice of a potential claim and the policy that was effective for the period July 1, 1992 to July 1, 1993 expires. On July 5, 1993, the application fails and the builder instructs its lawyer to sue you for \$100,000.00 for the cost to remove and relocate the basement and for expenses relating to the delay in closing plus interest and legal costs. You immediately report the claim. The insurer, however, takes the position that you are not entitled to coverage because you have not brought yourself within the Insuring Agreement.

Although you rendered the professional service before the inception date of the current policy (i.e. July 1, 1993), you had knowledge of a circumstance which may give rise to a claim before that date, but you did not report the matter or mention it on your application submitted before issuance of the new policy on July 1, 1993. Since the claim was not first presented during the current policy period, there is no coverage. (Remember that the policy that was in force from July 1, 1992 to July 1, 1993 has expired and will no longer respond to any claims). The possible consequences of not taking a few moments to report a claim is that you could deprive yourself of the supplementary benefits enumerated above and also be found personally liable to pay damages and the claimant's legal costs. We cannot emphasize too much the importance of prompt reporting; a failure to do so could affect your financial well-being.



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Book Review

They Left Their Mark

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An excellent piece of scholarship commemorating the centenary of the Association of Ontario Land Surveyors.

The text is well written, comprehensive, and copiously illustrated. The introduction is concise, but it places the work of Canadian surveying in a global historical context.

The reader is titillated with boxes, set into the text, which offer short bibliographical sketches, commentary on historic events, synopses of various surveying terminology or instrumentation, and other bits and pieces of information. This is a very effective device that is more pleasing than informational footnotes, although footnotes are used as well.

The text is expansive, but not shallow. Each chapter covers a specific historic period, and the whole carries the history from initial discovery straight through to the satellite age. An excellent regional coverage for a profession profoundly affecting human use of the earth.

Extensive maps, plans, plats, and lithographs. Endnotes, appendixes, bibliography, and indexed by general subject, personalities, and townships. Highly recommended for all reader-levels.

"Choice May '94"

Copies of *"They Left Their Mark - Surveyors and Their Role in the Settlement of Ontario"* are available through the AOLS office: \$48.15 (\$45/copy + GST). If you would like the book mailed to you, add \$5.00 for shipping and handling.