

Claims & Legal Definitions



CLAIMS & LEGAL DEFINITIONS:

Architect: A Certificate of Practice holder and insured by Pro-Demnity.

Insured: Policy holder ("holder")

Cause of Loss: The event or the action that brought about the alleged loss.

Type of Loss: A classification system that refers to the damage or loss caused by an error, omission, breach (of contract/warranty/duty of care), or negligence.

Claim: *CLAIM (Definition from Policy)*

- Written or an oral demand for money or services; or
- Written or an oral allegation of breach in the rendering or failure to render professional services; or

- Written or an oral allegation of an error, omission, or negligent act in the performance of professional services; or
- Circumstance, dispute, or controversy which a reasonable person might expect or should foresee could subsequently give rise to a CLAIM

ALL CLAIMS arising from a single error, omission or negligent act shall be considered a single CLAIM regardless of the number of INSUREDS, the number of persons or organizations making a CLAIM or the number of civil suits or arbitration proceedings in which the CLAIMS are made.

All allegations of breaches in the rendering or failure to render professional services or errors, omissions or negligent acts contained in a Statement of CLAIM, Notice of Action, Counterclaim, Crossclaim, Third or Subsequent Party CLAIM, Application or submission to arbitration shall be considered a single CLAIM regardless of the number of parties to a civil or arbitration proceeding.

Certificate of Practice: Issued by the OAA

Claimant: The person/business entity claiming a loss against the insured.

Deductible: Specified amount that the insured must pay before insurer pays a claim (per policy wording, insured deductible will never exceed the amount shown on the Certificate of Insurance or Endorsement...where the portion of the deductible payable falls below \$200, the insurer waives payment). *Deductible calculation: DAMAGES X DEDUCTIBLE (as shown on Certificate of Insurance of Endorsement) = amount payable.*

Coverage: Coverage available, subject to the terms and conditions in the policies in question, and includes policy term, type of coverage available including policy 1,2, and 4, policy limits and deductible.

Circumstances of the claim: What happened to cause the loss (what is claimed to have happened), who was involved, where it occurred, when it occurred. *we have been referring to it as "Context"*.

Coverage Assessment: This is a subjective assessment. It includes a comparison of "coverage" and the circumstances of the loss. The assessment is based on the allegations pleaded and considers whether coverage wholly or partially exists based on the circumstances of the loss, services provided, contractual liability of other consultants and/or whether there are any potential exclusions which may apply.

Liability Assessment: This is a subjective assessment. It considers the circumstances of the loss and the role of the "insured" in the circumstances.

Damages Claimed: The total \$ amount of the damage or loss sustained, as claimed by the "claimant."

Damage Reserves: An estimation of the money that may eventually be paid for the damages associated with that claim, as assessed by Pro-Demnity.

Endorsement: An amendment to an existing insurance contract/policy. Some endorsements broaden coverage and others limit coverage. Please refer to your Pro-Demnity policy to see your Endorsements.

Expenses: Payments made by the insurer that do not apply to the damages claimed.

Claim Expenses: All the expenses THE INSURER incurs to investigate, defend, settle, arbitrate or litigate a CLAIM covered by this POLICY. This includes costs and fees for the hiring of investigators, adjusters, experts, consultants, arbitrators, mediators and lawyers but only when expressly authorized or appointed by THE INSURER and also court and arbitration costs, including all costs assessed against YOU and costs for the attendance of witnesses other than YOU.

Expense Reserves: An estimate of the money that will eventually be paid for the expenses associated with that claim, as assessed by Pro-Demnity.

Costs in Addition: means the costs incurred by the insurer to defend you are in addition to the limits available to pay damages – a good thing – and part of every Pro-Demnity policy. The costs the insurer pays don't erode the limits available to protect you.

Costs Included: means the costs come out of the limits (this is not the case with Pro-Demnity policies).

Legal proceedings: Means any action, lawsuit, litigation, mediation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Body or any mediator or arbitrator.

Lawsuit: A lawsuit is a proceeding by a party or parties against another in the civil court of law. The conduct of a lawsuit is called litigation.

Plaintiff: The person or entity commencing a lawsuit, claiming a loss suffered.

Defendant: The person or entity being sued and accused (of negligence, misrepresentation, etc.) in a lawsuit.

Pleading: Formal written statement in a lawsuit. A legal document setting out either a claim or a defence to a claim, including the following (i.e. Notice of Action, Statement of Claim, Statement of Defence, Jury Notice, Third Party Claim, etc.)

Statement of Claim: A legal notice that a person (or party) is seeking a judgment against another person (party) in Court, with allegations stated. It is issued in a court and assigned a

specific court file number.

Statement of Defence: Response of the Defendant to the allegations in the Statement of Claim.

Notice of Intent to Defend: Puts the parties and the court on notice regarding representation of a party and provides the defendant with an additional 10 days to the original 20 days to submit a Statement of Defence. This is usually accompanied by correspondence requesting an indulgence for a time period beyond the 10 days.

Notice of Action: This document is issued in the court and gives the Plaintiff additional time to deliver a Statement of Claim.

Third Party Claim: Claim made by a defendant within existing legal proceedings (underlying Statement of Claim) seeking to enjoin a person/entity that was not a party to the original action, resulting in that new party being identified as a third party defendant.

Affidavit of Documents: A listing of all documents relevant to any matter in issue in a proceeding, which are or have been in a party's possession, control, or power. This listing is a statement made under oath.

Limitation Period: The period of time within which a civil action must be commenced – 2 years in Ontario from the date of loss.

Superior Court: The Superior Court of Justice has jurisdiction over civil court proceedings with damages in excess of \$35,000

- Simplified Procedure – applies to actions commenced in the Superior Court of Justice with damages between \$35,000 and \$200,000, and are subject to a more stringent timeline for the litigation process than other superior court actions (including time limits for discoveries,

etc.)

Small Claims Court: A branch of the Superior Court of Justice, and has civil jurisdiction over monetary claims up to \$35K.

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