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November 2003  
Revised May 2006

# Claims

## Process for Insureds

### What to Expect When You Report a Claim to ENCON

*This document provides an overview of the claims and litigation process.*

#### **ENCON's Claims Commitment:**

The value of your professional liability insurance policy can be measured by the ability of the ENCON claims team to respond promptly and effectively to claims. In order that you obtain the full benefit of our claims service, it is important that you understand the claims process and what is expected of you throughout the life of a claim.

While this publication provides you with a basic understanding of the claims process, it is not an exhaustive review. All members of the ENCON claims team are available to answer your questions and guide you through the claims process.

Buying insurance is easy. The difficulty is having a claim made against you. That's when you need the assistance and experience that the ENCON claims team can provide.

It is important to appreciate that on average, it can take four to five years for a lawsuit to be resolved. Often the life of the claim is prolonged because the parties are unable to look at the claim objectively. We believe that it is essential to gain a strong understanding of the facts and the exposure our insureds face.

We have written this document to help you, our insureds, understand the claims and litigation process – *what happens when you report a claim to us and what to expect as our team works with you in your defence.*

#### **A. The ENCON Claims Team Members and Their Roles**

##### **The ENCON Claims Analyst:**

The claims analyst is a trained insurance specialist with experience in professional liability and course of construction, property and liability claims management. The role of the claims analyst is to advise you of the coverage that your insurance policy provides for a particular claim and to answer any questions you may have about coverage or your role in the defence of a claim. The claims analyst will also evaluate the claim and determine the best method of bringing it to a final resolution.

The claims analyst will direct any investigation or litigation necessary for the defence of the claim. As part of that process the claims analyst will appoint adjusters, experts and/or lawyers, as necessary, for the defence team.

##### **Your Role:**

We ask you to participate in the investigation and defence of any claim made against you. This means you must advise the ENCON claims analyst and any adjuster and/or lawyer of any information you have about the claim. Once you are made aware that a claim *will be or has been made against you*, please gather all documents related to that claim in order to be able to provide such documentation to an adjuster or lawyer. You will be asked to meet with these members of the defence team in order that they can prepare your defence. If the claim is made in the form of a legal action, you must attend at examinations for discovery, any mediation, pre-trial settlement conference or trial as requested.

Most of our professional liability policies provide that we cannot settle a claim without first obtaining your consent to settle. However, that consent cannot be unreasonably withheld if we have been presented with a reasonable offer to settle.

If your policy reflects that you have purchased coverage subject to a deductible, you must pay that amount to ENCON when payment is requested.

# Claims Process for Insureds

## What to Expect When You Report a Claim to ENCON

### A tip about deductibles:

Depending on the size of the deductible, some insureds treat it as a contingent liability and set aside funds well before the payment may be required. In some cases, you may have purchased a policy where the deductible is applicable to defence costs and in other cases it applies only to any settlement made or judgment awarded against you. Either way, it forms part of your contractual commitment to ENCON's insureds.

### Your Service Providers:

We use the term "service providers" to refer to our panel of adjusters and lawyers who specialize in the defence of professional liability and course of construction claims. These professionals work with you and the claims analyst as part of the defence team. You will be required to interact with your service providers at various times throughout the life of your claim. It is important to remember that these service providers are only involved in the defence of your claim. They are not involved in any aspects of coverage. If you have any questions about the coverage provided by your policy, please contact a claims analyst.

### B. What is a Claim?

Read your insurance policy wording. In most policies, "CLAIM" is a defined term which includes verbal or written allegations whether in the form of a discussion with a claimant, a demand letter or in the form of a legal proceeding such as a Statement of Claim. If you are uncertain whether the communication you received constitutes a claim or perhaps a circumstance that could result in a claim, please consult your insurance broker or call one of our claims analysts for assistance.

### C. Reporting a Claim to ENCON

Your insurance policy requires that you report a claim to ENCON as soon as possible after you first become aware of the claim. The claim must be reported in writing and may be submitted to ENCON by mail, courier, fax or by completing the online claims reporting form on our website ([www.encon.ca/english/claims](http://www.encon.ca/english/claims)).

Timeliness of reporting is critical and, in some cases, could make the difference between coverage for a claim being accepted or denied. The ENCON professional liability policies are claims-made and reported policies. That means that the claim must not only be made against you, but must also be reported to ENCON during the policy period. Even with occurrence-based policies such as general liability, Wrap-Up and Builders Risk, it is essential that ENCON receive notice of a loss as soon as possible after the loss occurs. Such prompt notice allows the ENCON claims team to take steps to limit the extent of the loss, wherever possible.

### D. The Claims Process

Once the claims analyst has confirmed that your insurance policy provides coverage for the claim that you have reported, the claims analyst will appoint the defence team to act on your behalf.

If the claim is not presented in the form of a lawsuit, the claims analyst may appoint one of our adjusters to investigate and work with you to bring the claim to final resolution. If the claim is made in the form of a legal proceeding, counsel will be appointed as a member of the defence team.

You will play a role in mapping the strategy for the resolution of your claim. The strategy will be committed to writing in a document called the Resolution Plan. You will be contacted by either the ENCON claims analyst, the lawyer or adjuster assigned to your file for the purpose of reviewing the proposed Resolution Plan.

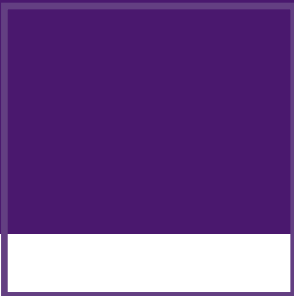
### Stages in the Litigation Process\*

Demand Letter	Writ or Notice of Action	Statement of Claim	Appearance or Notice of Intent to Defend
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*\*This is an outline of the major stages of a legal proceeding that are required. In some provinces, mediation is mandatory, whereas in others, it is voluntary.*

Once consensus is reached, you will be asked to sign the Resolution Plan along with the claims analyst and lawyer or adjuster to confirm that everyone has agreed to the plan. As the claim develops, it may be necessary to make changes to the Resolution Plan, in which case you will once again be included in the process.

The following is an overview of the major stages of a legal proceeding. If you have any questions about this process during your defence, the lawyer appointed to defend you will be pleased to be of assistance. You can also contact your designated claims analyst.



**Examinations for Discovery/Interrogatories:** Each party to a lawsuit is generally entitled to ask each other questions under oath. Lawyers will be asking the questions. Anything you say is recorded and can later be introduced as evidence of the content.

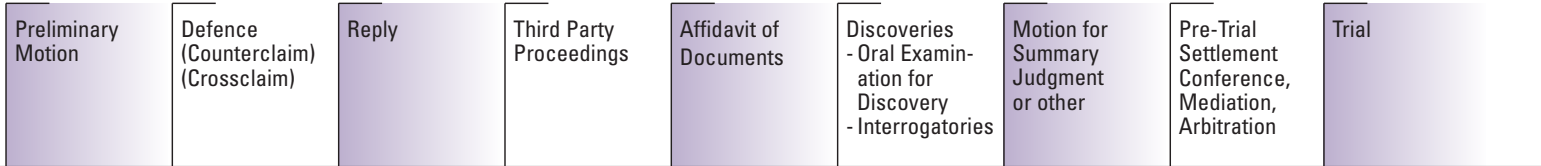
Sometimes, the examinations are conducted in writing rather than orally. These are generally known as Interrogatories.

**Interlocutory Motions:** In some cases it may be necessary for your defence counsel to file a motion during the course of the litigation for the purpose of narrowing the legal issues or possibly in an attempt to have the claim dismissed without proceeding to trial. This proceeding takes place in a courtroom in the presence of a judge. Evidence is usually submitted through sworn affidavits. In most cases, you will not be required to attend the hearing of the motion but it may be necessary for you to swear an affidavit in support of the motion. Counsel will discuss this process with you well in advance of the motion.

will attend mediation on your behalf with defence counsel. The claims analyst may also suggest that you attend mediation.

**Trial:** A trial is a formal proceeding that takes place in a courtroom in the presence of a judge. The lawyers for each party present documentary and oral evidence through the sworn testimony of witnesses. You will, in most cases, be required to give oral evidence and be subjected to cross-examination on that evidence by opposing counsel if your claim proceeds to trial. There is a right of appeal from the decision of a judge.

**Arbitration:** Arbitration provides an alternative to trial. It is not part of the judicial process, rather it is a process that the parties choose to have their dispute decided for them outside of the traditional legal process. Generally, the parties choose the arbitrators. Arbitration is less formal than a trial. There may be a single arbitrator or a panel of arbitrators hearing and deciding the case. Usually the arbitrators have some



*required by provincial legislation. Voluntary.*

*Mediation and arbitration are considered as options to trial as methods of dispute resolution.*

**Pre-Trial Settlement Conference:** This is a forum mandated by the legal system that requires the parties to attend before a judge in an attempt to see if the claim can be settled. Your claims analyst will attend this proceeding with defence counsel; you may be asked to attend.

**Mediation:** This can be either court-ordered, legislated (and, therefore, mandatory) or voluntary. It is a very common and extremely effective method of dispute resolution where a neutral third party facilitates settlement of a claim. Generally, your claims analyst

experience with the subject matter of the dispute and that is why the parties choose them. The lawyers for the parties present documentary and oral evidence to the arbitrator(s) through the sworn testimony of witnesses. The parties must agree to be bound by the decision and there is usually no right of appeal from an arbitrator's decision.

# Reporting Claims and Circumstances

## What Should You Report and What Should the Report Contain?

### What Should You Report?

ENCON's liability policies generally require that you give written notice to the ENCON claims department of all claims and all circumstances that could reasonably give rise to a claim.

### What Should the Report Contain?

As much information as possible, including the following:

- If suit is brought, a copy of the Statement of Claim or other legal process. If possible, note the date on which you were served.
- If no suit is brought but you have received a demand letter, include a copy of the letter and details surrounding the receipt of the letter.
- If you become aware of circumstances that could reasonably give rise to a claim or have received oral threats of a lawsuit, then notice to ENCON should contain the following details:
  - the specific reasons for anticipating a claim to result from the circumstances or threats.
  - the specific nature and date of the alleged act or omission which gave rise to the circumstances.
  - the alleged injury or damages.
  - full names of the potential claimants and insureds involved.
  - full details of the manner in which you first became aware of the circumstances.

If you are aware that a loss has occurred as contemplated by an ENCON professional liability or course of construction policy, please report the details of such loss including the type of loss, location and date and time of loss.

### How to report

As previously mentioned, claims or circumstances that could give rise to a claim, must be reported to ENCON in writing. The notice may be forwarded to ENCON by mail, courier or fax at the following address and fax number:

ENCON Group Inc.  
500 – 1400 Blair Place  
Ottawa, Ontario K1J 9B8  
Attention: Claims Department  
Fax: 613-238-7180

If you wish to forward your notice of claim or circumstances that could give rise to a claim electronically, please visit the Claims Service section of our website ([www.encon.ca/english/claims](http://www.encon.ca/english/claims)), complete the E-notice of Claim form and click "Submit." You will receive a confirmation email that the notice has been received, and a member of our Claims department will contact you within two business days to discuss the details of your claim.

### When should you report?

ENCON's policies generally require that you report claims as soon as practicable after being made aware of a claim.

Prompt notification is required by the policy and is essential to enable the claims department to provide early advice to the insureds and to ensure that the insureds' rights and interests are properly protected by taking any necessary action at the earliest opportunity. Furthermore, we encourage you to report in a timely fashion as delay in the notification of claims could prejudice the insurer's position and thereby result in a denial of coverage.

### Guidelines for insureds – "What should I do when a claim is made against me?"

- Inform your broker and the ENCON claims department as soon as possible.
- Do not discuss the claim with anyone, especially the claimant or claimant's lawyer. Any statement you make at the time could be used against you and your fellow insureds as an admission of liability, which in turn could result in a denial of coverage under the policy.
- Gather any minutes of meetings, correspondence, memoranda, etc. which may be useful in your defence.

Finally, if you are unsure as to whether a matter should be reported to ENCON, please call the claims department for advice, or to discuss a claims situation on a confidential basis. We are here to help you.



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To view some typical claims examples, please visit our website – [www.encon.ca/english/claims](http://www.encon.ca/english/claims)