

## INDEX

### B

**boiler and machinery insurance,**  
345

- coverage, 347
- • definition of the accident, 350
- exclusions, 357
- insureds, 347
- obtaining, 347
- overlapping coverage, property coverage, 358

**bonds as a non-insurance risk transfer mechanism,** 397

- bid bonds, 402
- bond wordings, 399
- electronic commerce legislation, 402
- error on the face of bid, 405
- labour and material payment bonds, 416
  - • CCDC Form, 418
  - • labour and material payment bond claim
    - • • form of notice, 419
    - • • other defences, 428
    - • • “pay-when-paid” clause, 424
    - • • potential grounds of denial, 420
    - • • subrogation, 428
    - • • timing of notice, 421
- types, 417

- non-conforming tender, 405
- performance bond
  - • default by the obligee, 409
  - • failure to notify, 409
  - • material variation of the bonded contract, 410
  - • misrepresentation, 412
  - • no default by principal, 409
  - • other defences, 413
- performance bonds, 406
- potential grounds of denial, 409
  - • performance bond claim, 409
- subrogation, 401
- surety bonds, 399

**builder’s risk policies,** 121

- “all risk”, 137
- cause of loss, 141
- coverage provided, 129
- covered property, 130
- exclusions, 147
- faulty or improper design and workmanship, 147
  - • exclusion
    - • • damages, 182
    - • • earth movement, 181
    - • • inherent vice, 172
    - • • latent defect, 177
    - • • leakage of water, 181
    - • • mechanical breakdown, 181

## Index

- builder's risk policies (*cont'd*)
  - • • resultant damage exception, 183
  - • • sue and labour clause, 211
  - • • terrorism and other governmental action, 181
  - • exclusion in the United States, 158
  - • foreseeability standard, 154
  - • negligence standard, 148
  - • "prima facie" standard, 151
  - • state-of-the-art standard, 155
  - insureds, 128
  - physical loss or damage, 143
  - responsibility for obtaining coverage, 125
- C**
- construction contract, 25**
  - *Canadian Construction Documents Committee*, 26
  - changes in the work, 43
  - *Committee of Canadian Architectural Councils*, 26
  - default, 47
  - designer, 27
  - dispute resolution, 47
  - engineers, 29
    - • *Association of Consulting*, 26
  - indemnification, 48
  - limitation of liability, 48
  - liquidated damages, 47
  - *Ontario Architects Association*, 26
  - payment procedures, 42
    - • cash allowances, 42
    - • contingency allowance, 43
    - • holdbacks, 44
  - professional liability insurance, 28
  - professional services agreements, 26, 48
  - project delivery method, 27
    - • administration of the contract, 39
    - • construction manager at risk, 30
    - • construction manager not at risk, 31
    - • contract price, 35
    - • definition of contract documents, 34
    - • description of the parties and the work, 34
    - • design-bid-build, 27
    - • design-build, 28
    - • design-build-operate-maintain, 29
    - • engineer procure and construct, 29
    - • execution of the work, 40
    - • general structure of a construction contract, 34
    - • insurance, 35
    - • project financing methods, 31
  - *Royal Architectural Institute of Canada*, 26
  - standard form construction, 26
  - waiver of claims, 48
  - warranty, 48
- construction insurance, 111**
  - types

## Index

- construction insurance (*cont'd*)
  - • aircraft, 117
  - • automobile, 117
  - • builder's risk policies, 111
  - • Commercial General Liability (CGL) Policy, 112
  - • *Controlled Insurance Programs*, 118
  - • default insurance, 116
  - • delayed completion, 117
  - • equipment policies, 115
  - • *force majeure*, 117
  - • insurance
    - • • equipment, 118
    - • • liquidated damages, 117
    - • • political risk, 118
  - • marine transit and other transit policies, 116
  - • pollution insurance, 115
  - • professional liability policies, 113
  - • riggers liability insurance, 116
  - • watercraft, 117
- construction project**
  - construction pyramid, 3-4
  - contract, 3
  - • warranty, 8
  - customized insurance policy, 6
  - insurance, 1
  - • insurance companies, 8
  - • legislation, 8
  - *Insurance Bureau of Canada*, 5
  - insurance claim, 1
  - liability policies, 1
  - loss or damage, 4
  - • multiple participants, 2
  - • standard-form policies, 5
  - • surety bond, loss, 7
  - • surety bonds, 7
  - types of insurable loss, 4
- construction risk**, 11
  - *Building Information Modelling*, 11-12
  - *Computer Assisted Design and Drafting*, 11-12
  - construction contracts
    - • types of risk, 15-22
      - • • accuracy, 20
      - • • availability of permits, 21
      - • • changes in law, 21
      - • • claims for changes in the work, 16
      - • • collateral representations, 20
      - • • consequential damages, 17
      - • • cost overruns, 14
      - • • damage to the work and injury, 21
      - • • delayed events, 18
      - • • insolvency and cash-flow, 19
      - • • insurable risk, 21
      - • • late completion, 15
      - • • latent defects, 17
      - • • liens, 19
      - • • long tail claims, 17
      - • • performance guarantees, 21
      - • • third party claims, 19
      - • • unanticipated conditions, 20
      - • • uninsurable risk, 21
  - damage, physical, 13

## Index

- construction risk (*cont'd*)
  - design errors, 11, 13
  - due diligence, preliminary, 11
  - insolvency, 12-13
  - transferring risk, 13

### **contractor's equipment insurance, 362**

- coverage, 362
- exclusions, 368
- insureds, 362
- obtaining, 362

## **D**

### **default insurance, 431**

- coverage, 431
- difference between CGL Policy and default insurance, 441
- difference between default insurance and surety bonds, 436
  - • case law, lack of, 440
  - • completing the work, 438
  - • deductibles, 441
  - • enrollment, 439
  - • indemnity obligations and subrogation rights, 437
  - • policy limits, 441
  - • premiums, 441
  - • protection of contractor vs. protection of owner, 437
  - • renewal and cancellation, 439
  - • timing of payment, 437
  - • two-party vs. three-party relationship, 437
  - • underwriting process, 438
- exclusions, 436
- insureds, 434

- • contractor default insurance, 434
- • subcontractor default insurance, 434
- obtaining, 433
- response, 435
- • contractor default insurance, 435
- • subcontractor default insurance, 435

## **I**

### **insurance policy, 51**

- burden of proof, 83
- case law, American, 51
- claims-made policies, 77
- conditions and warranties, 56
- coverage, third party, 71
- coverage triggers, 81
- declarations, 53
- definitions, 54
- endorsements, 59
- exclusions, 55
- first party coverage, 71
- fortuity, 62
- foundational principles, 60
- insureds
  - • additional, 72
  - • named, 72
- insuring agreement, 54
- joint and several insured, 72
- occurrence-based policies, 76
- principle of indemnity, 60
- principle of subrogation, 83
- • obligations of the insured, 85

## Index

- insurance policy (*cont'd*)
    - • overview, 84
    - • rights of the insurer, 85
    - • subrogation against insured(s), 86
      - • • covenants to insure and tort immunity, 95
    - • waiver of subrogation, 97
    - principles of policy interpretation, 99
    - • *contra proferentem*, 101
    - • coverage provisions, 103
    - • exclusion clauses, 103
    - • reasonable expectations of the parties, 103
    - schedules, 60
    - structure, 52
    - subrogation, 83
    - third-party coverage, 71
    - unnamed insureds, 72
    - utmost good faith, 61
- L**
- liability policies**, 217
    - Commercial General Liability insurance, 179
      - • bodily injury, 232
        - • • mental injury, 233
      - • construction defects, 241
      - • coverage, 223
      - • coverage issues, 254
      - • damages caused by an occurrence, 248
      - • defective workmanship, 249
      - • exclusions, 255
        - • • aircraft, 261
      - • • automobiles, 261
      - • • contractual liability, 256
      - • • damage to impaired property, 278
      - • • damage to product, 268
      - • • damage to property, 261
      - • • damage to work, 269
      - • • duty to defend, 286
      - • • employment-related liability, 259
      - • • expected or intended injury, 256
      - • • incorrectly performed work on real property, 265
      - • • other relevant exclusions, 282
      - • • personal property, 263
      - • • professional services, 282
      - • • property
        - • • • occupy, 263
        - • • • own, 263
        - • • • rent, 263
      - • • real property, 265
      - • • subcontractors, 265
      - • • watercraft, 261
      - • • worker's compensation, 259
    - legal obligation to pay, 227
    - obtaining insurance liability, 221
    - "occurrence", 248
    - • defective workmanship, 249
    - • policy period, 253
    - • *Progressive Homes*, 254
    - • property damage, 235
    - • property of third party, 236

## Index

- liability policies (*cont'd*)
  - • who is insured, 221
  - • • additional insured, 222
  - history of liability insurance, 218

### M

#### **making claims under a policy of insurance**, 499

- alternative dispute resolution, 517
  - • arbitration, 519
  - • certainty and finality of result, 518
  - • mediation, 518
  - • procedural fairness, 518
  - dispute resolution, 516
  - duty to defend, 516
  - identifying claim, 499
  - insurer
    - • handling a claim, 515
    - • investigation, 515
    - • responding to a notice letter, 515
  - limitation periods, 504
  - methodology for making a claim, 500
  - notice, 501
    - • form, 502
    - • limitation periods, 504
    - • proof of loss, 503
    - • timing, 501
  - statutory provisions, relief from forfeiture, 504
    - • insurance legislation, 505
    - • justice statute, 508
    - • • contractual forfeiture, 508

- • • statutory forfeiture, 510
- when claim arises, 499

#### **material misrepresentation and fraud**, 483

- application for insurance, 485
- changes material to the risk, 490
- claims, 493
- fraud, 495

### P

#### **pollution insurance**, 371

- bodily injury, 373
- exclusions in Commercial General Liability policies, 372
- express pollution coverage, 391
- injury, personal and advertising, 374
- liability for pollution in construction industry, 387
  - • toxic and hazardous substances and materials, 388
- property damage, 373
- types of pollution policies available, 391
  - • clean-up cost cap policy, 394
  - • contractors pollution liability, 393
  - • environmental consultant's liability, 394
  - • pollution legal liability, 393
  - • remediation stop loss policies, 394

#### **professional liability insurance**, 301

- agreement, 315
- damages, 316

## Index

professional liability  
insurance (*cont'd*)

- amounts recoverable, 322
- errors, 301, 323
- exclusions, 337
  - • advice
    - • • bonds, 342
    - • • insurance, 342
    - • • suretyship, 342
  - • aggravated damages, 339
  - • cost estimates, 339
  - • crime, 338
  - • exemplary damages, 339
  - • express guarantees, 339
  - • express warranties, 339
  - • failure to provide prompt services, 341
  - • faulty workmanship, 341
  - • fraud, 338
  - • government agency, fines and penalties, 343
  - • infringement of trademarks, patents or copyrights, 342
  - • insolvency, 342
  - • insured v. insured, 340
  - • intentional or dishonest conduct, 338
  - • liability assumed under contract, 340
  - • liquidated damages, 339
  - • malicious conduct, 338
  - • performance of services outside of professional's expertise, 341
  - • pollution liability, 340
  - • punitive damages, 339

- insureds, 311
- legal obligation to pay, 337
- limitation of liability clauses, 303
- notice, 334
- obtaining, 302
- omissions, 301, 323
- policy limits, 323
- professional negligence, 323
- professional services, 318
- standard of care, 324

## R

### **role of insurance agents and brokers, 461**

- application process, 466
- cancellation of policy, 466
- certificates of insurance, 467
- claims process, 467
- construction project, 463
- damages payable by agent, 480
- failing to obtain coverage, 480
- notification of loss, 467
- quantification of loss, 467
- renewal of policy, 466
- standard of care, 468
  - • advising insured in making a claim, 479
  - • placing adequate coverage, 468
  - • transmitting information, 474

