

BULLETIN

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INSURANCE LAW**B.C. Supreme Court Rule Change Compelling Disclosure of Insurance**

Effective July 1, 2007, pursuant to Order in Council No. 414, the British Columbia *Supreme Court Rules* now require parties to disclose any insurance policies under which an insurer may be liable to pay or provide indemnity for a judgment (Rule 26(1.4)). Parties must also answer questions relating to the existence and contents of these insurance policies at Examinations for Discovery, including questions relating to the amount of money available under the policy and any communication from an insurer denying or limiting liability under the policy (Rule 27(22.1)). However, the existence of any insurance policy cannot be disclosed to the trial court unless it is relevant to an issue in the action (Rules 26(1.5) and 27(22.2)).

Practically, the amendments mean that each party will have to produce its insurance policies (primary and excess) and will have to disclose its policies in a List of Documents. If documents have already been exchanged, each party will be required to disclose its insurance policies in a Supplemental List of Documents. Further, before an Examination for Discovery, each party will have to review its insurance policies to ensure that the party is prepared to answer questions in that regard.

Various consequences will surely arise from these changes to the *Supreme Court Rules*. As a positive consequence, since information regarding insurance policies plays a critical role in settlement discussions and mediations, the amendments are likely to aid early settlement. Also, the amendments will aid plaintiffs in compelling insurers to attend mandatory mediation.

Ultimately, however, the amendments likely will result in settlement negotiations being driven more by insurance policy limits than by questions of liability. Under the new Rules, plaintiffs, having information on policy limits, may be able to force insurance companies to settle for a greater amount than is warranted, as many insurers simply do not want to risk not settling and later being pursued by the insured defendant with a bad faith claim if the judgment exceeds policy limits.



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