

Attachment: IBC Policy Wordings (CGL and All-Risk Property Policy) – 29 Pages

THIS EXAMINATION CONSISTS OF 8 PAGES (PLUS THE ATTACHMENT)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 440
Insurance Law

Section 1
Adjunct Professors James A. Doyle and Jordan A. Bank

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS
plus 15 minutes of reading time

- NOTE:**
1. This is an open book examination.
 2. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 9 QUESTIONS

PART 1 – GENERAL INSURANCE (65 Marks – 2 hours)

Question 1

MARKS

27 1. Silver Valley Land Co. (“**Silver Valley**”) is a property developer. In the summer of 2021, it advertised and sold a series of lots to 25 people. Those lots were advertised in the sales materials as being “perfect for building a dream swimming pool”.

After closing and taking possession, however, the purchasers discovered that Silver Valley’s sales materials were inaccurate. The lots were not wide enough to fit a pool. They were also on a significant grade, making it impossible to build a pool.

By way of a notice of civil claim, dated October 20, 2022, the purchasers sued Silver Valley for damages flowing from their inability to use the lots as intended. In particular, they pleaded that the “lots were smaller than represented and were improperly graded, thereby rendering them useless for their intended purposes”.

Before reporting the matter to its insurer, Silver Valley retained its corporate lawyer to prepare and serve a response to civil claim and a list of documents. Silver Valley’s COO then reported the claim to Silver Valley’s insurance broker.

Silver Valley was insured under a CGL policy issued by Mutual Flame, with a policy period of March 4, 2021 to March 4, 2022. This policy used IBC Policy wordings.

- (a) Does Mutual Flame owe a duty to defend if the notice of civil claim alleges:
- i. negligent misrepresentation only;
 - ii. fraudulent misrepresentation only;
 - iii. fraudulent misrepresentation, and in the alternative, negligent misrepresentation? **(15 marks for (a)i.-iii.)**
- (b) Mutual Flame denies a duty to defend because fraudulent misrepresentation is alleged. Silver Valley then successfully applies for a declaration that Mutual Flame owes it a duty to defend. What remedies can Silver Valley seek and why? Are there any remedies it cannot seek and why? **(6 marks)**
- (c) Alternatively, assume Mutual Flame agrees to defend Silver Valley, where both fraudulent misrepresentation and negligent misrepresentation are alleged. What advice would you give the insurance company? **(6 marks)**

Please: (i) identify all assumptions you need to make to answer the question (if any); (ii) refer to any relevant policy wording; and (iii) cite and apply any applicable authorities.

Question 2

MARKS

12 2. In March 2020, a young lawyer named Misty was invited to the WIGG Sparkling Gala, a charity fundraiser for the insurance industry. It promised to be a wonderful evening, except for one issue: a global pandemic had just broken out. The news reported that even brief periods of contact with an infected individual caused serious illness. Those who had immunity deficiencies were most severely affected.

Misty's brother, Ash, was an ER physician. Ash told Misty not to attend the Gala – especially since Misty's family had a history of severe combined immunodeficiency.

Misty ignored that advice. Ten minutes at the Gala couldn't hurt. And so, dressed in her ball gown, she boarded the skytrain and set off downtown. About ten minutes into the ride, however, the train came to a halt. It sat on the tracks for three hours. Unfortunately, one of the other passengers was infected. Misty became ill and sadly died a week later.

Misty's family now claims under Misty's accidental death benefits policy, which covers death "resulting directly and independently of all other causes from bodily injuries caused solely by accidental means".

- (a) The insurance company has retained you to oppose the family's claim. What arguments can you make in support of the insurer's position? **(6 marks)**
- (b) The family has retained you. What arguments can you make on their behalf to obtain coverage? **(6 marks)**

Question 3

MARKS

10 3. Blends Coffee Roasters, a coffee importer and roaster, owns a warehouse in Richmond, BC. That warehouse is covered under an all-risk property policy written using IBC policy wordings. The policy period runs from June 20, 2021 to June 20, 2022.

The warehouse burned down on May 18, 2022, following an earthquake. Blends Coffee Roasters is seeking coverage for its warehouse, the contents of a safe (including \$100,000 in cash), and several machines.

- (a) The insurance company has approached you for a coverage opinion. Please provide your advice as to whether there is coverage for the loss. **(5 marks)**

(Question 3, continued)

- (b) Subsequently, the insurance company learned that Blends Coffee Roasters had discontinued all coffee-related operations in March 2022 and had turned to manufacturing laser-guided missile systems. The insurance company has asked you for an updated coverage opinion. If you require further information, please advise what information that is and why. **(5 marks)**

Question 4

MARKS

16 4. The Lerner's owned two properties in B.C. – one in East Vancouver and another in Bella Coola. The Lerner's had bad luck in the past three years. They had one theft at each property and a fire at the Bella Coola location. They made claims for each loss under their home insurance policies with Impact Insurance, who paid the claims. After the third claim, their broker (Brad) told them that it was unlikely Impact Insurance would renew the policies on their properties when they came up for renewal.

When the Lerner's went to renew their policy, Brad, their usual broker, was off work sick. His replacement, Shirley, knew nothing about their past claims. She provided the Lerner's with applications for insurance to Travelling Insurance Company. On those applications, the Lerner's were asked how many fires they had at their properties over the previous five years. They answered "zero". They were also asked how many previous thefts they had at their properties over the previous five years. They answered "one". Based on those applications, Travelling Insurance Company, issued home insurance policies to the Lerner's for their two properties.

Unfortunately, two months later, the Lerner's had another theft at their East Vancouver property while they were in Bella Coola. For some unexplained reason, the Lerner's did not report the theft for two months following the loss.

The Lerner's provided a notarized proof of loss with 625 stolen items. Many of those items appeared to relate to the Lerner's' fishing guide business, however, thus falling under the "business property" exclusion, which excluded coverage for anything used in a business enterprise. Further, on a subsequent examination under oath, Ms. Lerner admitted that 45 of those items had been replaced free of charge by a sponsor to their fishing guide business. The Lerner's have provided an updated proof of loss, removing: (i) those items which were replaced; and (ii) another 60 items which the Lerner's have identified as "business property", because they claimed those items as business expenses on their business' taxes.

- (a) You have been retained by Travelling Insurance Company. It has asked you for a coverage opinion. Please advise what issues may arise and your opinion on each. **(8 marks)**

(Question 4, continued)

- (b) The adjuster at Travelling Insurance Company never read your coverage opinion. She now says that she suspects the Lerner's staged the theft. The adjuster has no concrete evidence of this. Instead, she says she found Ms. Lerner "super sketchy" when she attended Ms. Lerner's examination under oath. The adjuster wants to deny coverage based on fraud. Setting aside any prior advice you gave, what advice would you give the adjuster regarding her desire to deny for fraud alone? **(4 marks)**
- (c) After you gave your second opinion, the police are able to locate and arrest the individuals who committed the theft. The adjuster asks you if there is anything Travelling Insurance Company should consider further. Please provide your opinion. **(4 marks)**

PART 2 – MOTOR VEHICLE INSURANCE (35 Marks – 1 hour)

UNLESS OTHERWISE INDICATED IN THE SPECIFIC QUESTION, ASSUME THAT ALL ACCIDENTS AND CLAIMS OCCUR AFTER APRIL 1, 2019 AND BEFORE MAY 1, 2021

Question 5

MARKS

6 5. You act for a plaintiff injured in a motor vehicle accident that occurred in Kelowna, BC on April 5, 2018. At the time, your client lived in Kelowna. Her vehicle was stopped at a light when it was struck from the rear by a vehicle being driven by another Kelowna resident, insured by ICBC. ICBC admitted liability but attempts to settle were unsuccessful. The matter went to trial for 5 days in January 2022. Reasons for Judgment were handed down on April 30, 2022, awarding your client a total of \$210,000. The time to bring an appeal was 30 days after judgment and no appeal was taken. Despite numerous requests made to ICBC, the judgment has not been paid and it is now the end of November 2022.

With reference to the legislation, outline any steps to be taken to have the judgment paid, including how and when the steps must be taken.

Question 6

MARKS

6 6. On August 1, 2019, Bob is driving his vehicle on Highway 99 on his way back from Whistler, BC. Anne is his front seat passenger. They are on a steep downhill. Bob tries to apply the brakes, but the brakes fail and his vehicle is picking up speed. He yells to Anne that they have no brakes and then becomes hysterical as the speed increases. Anne sees the emergency brake between the two front seats and raises it up. This applies the emergency brake, but causes the vehicle to spin and cross into the oncoming lane where they have a collision with a northbound vehicle being driven by Dan. Bob and Anne are uninjured but Dan suffers injuries and sues Bob and Anne.

- a) With reference to the applicable legislation, what coverage, if any, is available to Bob?
- b) With reference to the applicable legislation, what coverage, if any, is available to Anne?
- c) With reference to the applicable legislation, is there vehicle coverage for Anne's laptop and designer sunglasses that were destroyed in the accident?

Question 7

MARKS

8 7. Bonnie and Benny are long-time teammates of a recreational soccer team. Bonnie lives in a townhouse with her spouse and her retired father. Benny lives in a nearby home with his spouse and adult daughter. When they go to their games, Benny always drives because Bonnie does not own a vehicle. She has a driver's license but since her spouse and father each have vehicles, she has never seen the need to have a third vehicle. Benny, his spouse and daughter each have vehicles because they like their independence.

On April 15, 2021, Bonnie and Benny go to their weekend soccer game. While playing, Benny hurts his right ankle. It is sore so he asks Bonnie to drive them both home. As they are approaching an intersection, Bonnie fails to see Jan, a pedestrian, halfway across the street in a crosswalk. Jan is struck by Benny's vehicle and suffers serious injuries that are likely to be worth more than \$3 million.

Between the households of Bonnie and Benny there are the following vehicles, with the following policies and third party limits:

- Benny's vehicle: \$500,000
- Benny's spouse's vehicle: \$2 million

(Question 7, continued)

- Benny's daughter's vehicle: \$200,000
- Bonnie's spouse's vehicle: \$1 million
- Bonnie's father's vehicle: \$2 million

(a) Identify which of the policies do or do not apply to indemnify Jan.

(b) What is the order of priority of any policies that do apply?

(c) What is the total insurance money available under the policies to pay Jan's claim?

Question 8

MARKS

10 8. When she was in high school, Allison struggled academically but was very physically gifted. She was drawn to dance and ballet in particular. She had poor marks but managed to complete grade 12. While she was in high school, she trained and danced with local groups but also with the National Ballet School of Canada and the Royal Winnipeg Ballet School. Upon completing high school, Allison became a professional dancer. This work did not generate a lot of income, so she began teaching dance classes at the White Swan Dance School in Nelson BC ("**White Swan**"). She eventually became the head dance instructor and was earning \$70,000 per year. The work was rewarding but physically demanding, as she often had to demonstrate techniques to her students.

On December 1, 2020, Allison was in a bad car accident that was entirely her own fault. She suffered numerous neck, back and hip injuries. Her doctor prescribed physiotherapy, massage therapy and pain medication. Her doctor also suggested she take some time off work. She followed her doctor's advice, except she tried to continue with her dance instruction. After one week, Allison found it was too difficult. She saw her doctor who again said she needed to take time off work. She was off work completely for six months because her symptoms were not improving. White Swan offered her a position as office manager, where she would look after the accounting records and payroll for the school. She started the position after her six months off. She was physically able to do the job but made a lot of mistakes because this was the type of work with which she had always struggled. After two months, White Swan ended her employment and replaced her with someone more suitable.

Unfortunately, her back and hip issues became worse and she underwent one back surgery and may require a further surgery.

With focus only on her loss of income, with reference to the applicable legislation:

(Question 8, continued)

- a) Please explain the reason why she would or would not qualify for benefits, and if any, the type of benefits Allison would be able to claim.
- b) What period or periods of time would she be able to claim benefits? Include when the period or periods commence.
- c) What weekly amount would she be able to claim?
- d) When would her entitlement to benefits end?
- e) What if anything, would limit her entitlement to full benefits?

Question 9

MARKS

5 9. With reference to the applicable sections, explain which of the following would, or would not be, considered breaches under the Insurance (Vehicle) Regulation.

- (a) Tim is a UBC student. He owns a vehicle that is insured for pleasure use only. He normally walks and takes the bus, but with the onset of winter weather, he begins using his vehicle to drive to and from school each day. This continues for a couple of months. He is then in an accident just as he is arriving at UBC.
- (b) Greta and Eve drive to a local pub in Greta's vehicle where Greta gets involved in a game of beer pong. She becomes quite inebriated. Eve is only consuming non-alcoholic drinks. As they are leaving the pub, Greta asks Eve to drive and Eve agrees. Eve does not have a driver's license. She is having trouble getting the vehicle into gear and ends up hitting the vehicle behind.

In the two scenarios above, who has the onus of proof to establish a breach, if any?

END OF EXAMINATION

IBC 2100

03-2000(r)

Commercial General Liability Policy
INSURANCE CO.

Head Office - Canada

POLICY NO.

Agent/Broker

In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy.

DECLARATIONS

1. Named Insured

Address

2. Policy Period

From	To
Day Month	Day Month
12:01 a.m. Standard Time, at the address of the Named Insured shown above.	

3. Optional Pollution Liability Extension

<input type="checkbox"/> OPTION 1 Premium	<input type="checkbox"/> OPTION 2 Premium	<input type="checkbox"/> NOT INSURED
\$	\$	

4. Limits of Insurance

AGGREGATE LIMIT	Each Occurrence Limit	Personal Injury Limit	Tenants' Legal Liability Limit	Medical Expense Limit	Optional Pollution Liability Extension
\$	\$	\$	\$ Any One Premises	\$ Any One Person	\$ Occurrence Limit \$ Aggregate Limit

5. Form of Business

INDIVIDUAL; JOINT VENTURE; PARTNERSHIP; ORGANIZATION (other than Partnership or Joint Venture)

6. Business

Description:

7. Location of All Premises

You Own, Rent or Occupy

8. Classification	Code No.	Premium Basis	Rate	Advance Premium

9. Minimum Premium \$
\$

TOTAL PREMIUM _____

10. Endorsements Attached To This Policy:

Countersigned on

by

Insurer's Signature

COMMERCIAL GENERAL LIABILITY POLICY

Read Your Policy Carefully

DECLARATIONS PAGE

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Commercial General Liability Policy

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under SECTION II - WHO IS AN INSURED, Other words and phrases that appear in quotation marks have special meaning.

SECTION I - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of "bodily injury" or "property damage" to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A, B AND D. This insurance applies only to "bodily injury" and "property damage" which occurs during the policy period. The "bodily injury" or "property damage" must be caused by an "occurrence". The "occurrence" must take place in the "coverage territory". We will have the right and duty to defend any "action" seeking those compensatory damages but:
 - 1) The amount we will pay for compensatory damages is limited as described in SECTION III - LIMITS OF INSURANCE;
 - 2) We may investigate and settle any claim or "action" at our discretion; and
 - 3) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B or D or medical expenses under Coverage C.
- b. Compensatory damages because of "bodily injury" include compensatory damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- c. "Property damage" that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the "occurrence" that caused it.

2. Exclusions.

This insurance does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. "Bodily injury" or "property damage" for which the insured is obligated to pay compensatory damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for compensatory damages:
 - 1) Assumed in a contract or agreement that is an "insured contract"; or
 - 2) That the insured would have in the absence of the contract or agreement.
- c. Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.
- d. "Bodily injury" to an employee of the insured arising out of and in the course of employment by the insured.

This exclusion applies:

- a) Whether the insured may be liable as an employer or in any other capacity; and

- b) To any obligation to share compensatory damages with or repay someone else who must pay compensatory damages because of the injury.

This exclusion does not apply :

- i) To liability assumed by the insured under an "insured contract"; or
 - ii) To employees on whose behalf contributions are made by or required to be made by the insured under the provisions of any workers compensation law.
- e. 1) "Bodily injury" or "property damage" arising out of the ownership, use or operation by or on behalf of any insured of:
- a) Any "automobile";
 - b) Any motorized snow vehicle or its trailers;
 - c) Any vehicle while being used in any speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity; or
 - d) Any vehicle which if it were to be insured would be required by law to be insured under a contract evidenced by a motor vehicle liability policy, or any vehicle insured under such a contract, but this exclusion does not apply to the ownership, use or operation of machinery, apparatus or equipment mounted on or attached to any vehicle while at the site of the use or operation of such equipment.
- 2) "Bodily injury" or "property damage" with respect to which any motor vehicle liability policy is in effect or would be in effect but for its termination upon exhaustion of its limit of liability or is required by law to be in effect.

This Exclusion e. does not apply to "bodily injury" to an employee of the insured on whose behalf contributions are made by or required to be made by the insured under the provisions of any workers compensation law.

- f. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use, operation, loading or unloading, or entrustment to others, by or on behalf of any insured of any watercraft.

This exclusion does not apply to:

- 1) A watercraft while ashore on premises you own or rent;
 - 2) A watercraft you do not own that is:
 - a) Less than 8 metres long; and
 - b) Not being used to carry persons or property for a charge.
 - 3) "Bodily injury" to an employee of the insured on whose behalf contributions are made by or required to be made by the insured under the provisions of any workers compensation law.
- g. 1) "Bodily injury" or "property damage" arising out of the ownership, maintenance, use, operation, loading or unloading, or the entrustment to others, by or on behalf of any insured of:
- a) Any aircraft; or
 - b) Any air cushion vehicle.
- 2) "Bodily injury" or "property damage" arising out of the ownership, existence, use or operation by or on behalf of any insured of any premises for the purpose of an airport or aircraft landing area and all operations necessary or incidental thereto.

h. "Property damage" to:

- 1) Property you own, rent, or occupy;
- 2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- 3) Property loaned to you;

- 4) Personal property in your care, custody or control;
- 5) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the "property damage" arises out of those operations; or
- 6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph 2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs 3), 4), 5) and 6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph 6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

- i. "Property damage" to "your product" arising out of it or any part of it.
- j. "Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

- k. "Property damage" to "impaired property" or property that has not been physically injured, arising out of:
 - 1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
 - 2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

- l. Any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
 - 1) "Your product";
 - 2) "Your work"; or
 - 3) "Impaired property";
 if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.
- m. "Bodily injury" or "property damage" arising out of a "pollution condition".
- n. Nuclear Energy Liability - see Common Exclusions.
- o. War Risks - see Common Exclusions.

COVERAGE B. PERSONAL INJURY LIABILITY

1. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of "personal injury" to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A, B AND D. We will have the right and duty to defend any "action" seeking those compensatory damages but:
 - 1) The amount we will pay for compensatory damages is limited as described in SECTION III - LIMITS OF INSURANCE;

- 2) We may investigate and settle any claim or "action" at our discretion; and
- 3) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B or D or medical expenses under Coverage C.

b. This insurance applies to "personal injury" only if caused by an offence:

- 1) Committed in the "coverage territory" during the policy period; and
- 2) Arising out of the conduct of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you.

2. Exclusions.

This insurance does not apply to "personal injury":

- 1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- 2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- 3) Arising out of the wilful violation of a penal statute or ordinance committed by or with the consent of the insured;
- 4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for compensatory damages that the insured would have in the absence of the contract or agreement; or
- 5) Arising out of a "pollution condition".

COVERAGES C. MEDICAL PAYMENTS

1. Insuring Agreement.

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- 1) On premises you own or rent;
- 2) On ways next to premises you own or rent; or
- 3) Because of your operations;

provided that:

- a) The accident takes place in the "coverage territory" and during the policy period;
- b) The expenses are incurred and reported to us within one year of the date of the accident; and
- c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- 1) First aid at the time of an accident;
- 2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- 3) Necessary ambulance, hospital, professional nursing and funeral services,

2. Exclusions.

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.

- d. To a person, whether or not an employee of any insured, who at the time of injury is entitled to benefits under any workers compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. The payment of which is prohibited by law.
- g. Included within the "products-completed operations hazard".
- h. Arising out of a "pollution condition".
- i. Nuclear Energy Liability - see Common Exclusions.
- j. War Risks - see Common Exclusions.

COVERAGE D. TENANTS' LEGAL LIABILITY

1. Insuring Agreement.

We will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of "property damage" to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A, B AND D. This insurance applies only to "property damage" caused by fire, explosion, smoke or leakage from fire protective equipment to premises rented to you or occupied by you. This insurance applies only to "property damage" which occurs during the policy period. The "property damage" must be caused by an "occurrence". The "occurrence" must take place in the "coverage territory". We will have the right and duty to defend any "action" seeking those compensatory damages but:

- a. The amount we will pay for compensatory damages is limited as described in SECTION III - LIMITS OF INSURANCE;
- b. We may investigate and settle any claim or "action" at our discretion; and
- c. Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B or D or medical expenses under Coverage C.

2. Exclusions.

This insurance does not apply to:

- a. "Property damage" expected or intended from the standpoint of the insured.
- b. "Property damage" for which the insured is obligated to pay by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for compensatory damages that the insured would have in the absence of the contract or agreement.
- c. "Property damage" arising out of a "pollution condition". For the purpose of Coverage D only, the definition of "pollutants" shall not include smoke.
- d. Nuclear Energy Liability - see Common Exclusions.
- e. War Risks - see Common Exclusions.

COMMON EXCLUSIONS - COVERAGES A, C AND D

This insurance does not apply to:

1. Nuclear Energy Liability

- a. Liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;
- b. "Bodily injury" or "property damage" with respect to which an insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the insured is unnamed in such contract and whether or not it is legally enforceable by the insured) issued by the Nuclear Insurance

Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;

- c. "Bodily injury" or "property damage" resulting directly or indirectly from the nuclear energy hazard arising from:
- 1) The ownership, maintenance, operation or use of a nuclear facility by or on behalf of an insured;
 - 2) the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility;
 - 3) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

As used in this policy:

- 1) The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- 2) The term "radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof, as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
- 3) The term "nuclear facility" means:
 - a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
 - b) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or packaging waste;
 - c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
- 4) The term "fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.

2. War Risks

"Bodily injury" or "property damage" due to war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.

SUPPLEMENTARY PAYMENTS - COVERAGES A, B AND D

We will pay, with respect to any claim or "action" we defend:

- a. All expenses we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defence of the claim or "action", including actual loss of earnings up to \$100 a day because of time off from work.

- d. All costs taxed against The insured in the "action" and any interest accruing after entry of judgment upon that part of the judgment which is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
 - a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, none of these employees is an insured for:
 - 1) "Bodily injury" or "personal injury" to you or to a co-employee while in the course of his or her employment; or
 - 2) "Bodily injury" or "personal injury" to any person who at the time of injury is entitled to benefits under any workers compensation or disability benefits law or a similar law; or
 - 3) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or
 - 4) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).
 - b. Any person (other than your employee), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - 1) With respect to liability arising out of the maintenance or use of that property; and
 - 2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
3. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverages A and D do not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance stated in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;

- b. Claims made or "actions" brought; or
 - c. Persons or organizations making claims or bringing "actions".
2. The Aggregate Limit is the most we will pay for the sum of:
 - a. Compensatory damages under Coverage A, Coverage B and Coverage D; and
 - b. Medical expenses under Coverage C.
 3. Subject to the Aggregate Limit, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Compensatory damages under Coverage A and Coverage D; and
 - b. Medical expenses under Coverage C;
 because of all "bodily injury" and "property damage" arising out of any one "occurrence".
 4. Subject to the Aggregate Limit, the Personal Injury Limit is the most we will pay under Coverage B for the sum of all compensatory damages because of all "personal injury" sustained by any one person or organization.
 5. Subject to the Aggregate Limit and the Each Occurrence Limit, the Tenants' Legal Liability Limit is the most we will pay under Coverage D for compensatory damages because of "property damage" to any one premises.
 6. Subject to the Aggregate Limit and the Each Occurrence Limit, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The limits of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy.

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

2. Canadian Currency Clause.

All limits of insurance, premiums and other amounts as expressed in this policy are in Canadian currency.

3. Cancellation.

a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- 1) 15 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- 2) 30 days before the effective date of cancellation if we cancel for any other reason.

Except in Quebec, if notice is mailed, cancellation takes effect 15 or 30 days after receipt of the letter by the post office to which it is addressed, depending upon the reason for cancellation. Proof of mailing will be sufficient proof of notice.

In Quebec, cancellation takes effect either 15 or 30 days after receipt of the notice at the last known address of the first Named Insured, depending upon the reason for cancellation.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. The policy period will end on the date cancellation takes effect.

- e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

4. Changes.

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

5. Duties in the Event of Occurrence, Claim or Action.

- a. You must see to it that we are notified promptly of an "occurrence" which may result in a claim. Notice should include:
 - 1) How, when and where the "occurrence" took place; and
 - 2) The names and addresses of any injured persons and of witnesses.
- b. If a claim is made or "action" is brought against any insured, you must see to it that we receive prompt written notice of the claim or "action".
- c. You and any other involved insured must:
 - 1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "action";
 - 2) Authorize us to obtain records and other information;
 - 3) Cooperate with us in the investigation, settlement or defence of the claim or "action"; and
 - 4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

6. Examination of Your Books and Records.

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

7. Inspections and Surveys.

We have the right but are not obligated to:

- a. Make inspections and surveys at any time;
- b. Give you reports on the conditions we find; and
- c. Recommend any changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:

- a) Are safe or healthful; or
- b) Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

8. Legal Action Against Us.

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into an "action" asking for compensatory damages from an insured; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for compensatory damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative. Every "action" or proceeding against us shall be commenced within one year next after the date of such judgment or agreed settlement and not afterwards. If this policy is governed by the law of Quebec every "action" or proceeding against us shall be commenced within three years from the time the right of action arises.

9. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A, B or D of this policy, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- 1) That is Property Insurance such as, but not limited to, Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work" or for premises rented to you; or
- 2) If the loss arises out of the maintenance or use of watercraft to the extent not subject to Exclusion f. of Coverage A (Section I),

When this insurance is excess, we will have no duty under Coverage A, B or D to defend any claim or "action" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to all the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- 1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- 2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this policy.

c. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

10. Premium Audit.

- a. We will compute all premiums for this policy in accordance with our rules and rates.

- b. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured subject to the retention of the minimum premium shown in the Declarations of this policy.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

11. Premiums.

The first Named Insured shown in the Declarations:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

12. Representations.

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

13. Separation of Insureds, Cross Liability.

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "action" is brought.

14. Transfer of Rights of Recovery Against Others to Us.

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "action" or transfer those rights to us and help us enforce them.

15. Transfer of your Rights and Duties Under this Policy.

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

SECTION V - DEFINITIONS

"Action" means a civil proceeding in which compensatory damages because of "bodily injury", "property damage" or "personal injury" to which this insurance applies are alleged. "Action" includes an arbitration proceeding alleging such damages to which you must submit or submit with our consent.

"Automobile" means any self-propelled land motor vehicle, trailer or semi-trailer (including machinery, apparatus, or equipment attached thereto) which is principally designed and is being used for transportation of persons or property on public roads.

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

"Cleanup" means to test for, monitor, clean-up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate or neutralize or in any way respond to or assess the effect of "pollutants".

"Coverage territory" means:

- a. Canada and the United States of America (including its territories and possessions);
- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
- c. All parts of the world if:
 - 1) The injury or damage arises out of:
 - a) Goods or products made or sold by you in the territory described in a. above; or
 - b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
 - 2) The insured's responsibility to pay compensatory damages is determined in an "action" on the merits, in the territory described in a. above or in a settlement we agree to in writing.

"Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfil the terms of a contract or agreement;
- if such property can be restored to use by:
- 1) The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - 2) Your fulfilling the terms of the contract or agreement.

"Insured contract" means:

- a. A lease of premises;
- b. A sidetrack agreement;
- c. An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
- d. Any other easement agreement;
- e. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
- f. An elevator maintenance agreement; or
- g. That part of any other contract or agreement pertaining to your business under which you assume the tort liability of another to pay compensatory damages because of "bodily injury" or "property damage" to a third person or organization, if the contract or agreement is made prior to the "bodily injury" or "property damage". Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement that indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- 1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
- 2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

"Occurrence" means an accident, including continuous or repeated exposure to substantially the general harmful conditions.

"Personal injury" means injury, other than "bodily injury", arising out of one or more of the following offences:

- a. False arrest, detention or imprisonment;

- b. Malicious prosecution;
- c. Wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

"Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, odour, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

"Pollution condition" means

- a. the actual, alleged, or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants", or
- b. the actual or alleged existence of "pollutants",
regardless of premises, site or location, whether or not owned by any insured.

"Products-completed operations hazard" includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- a) Products that are still in your physical possession; or
- b) Work that has not yet been completed or abandoned.

"Your work" will be deemed completed at the earliest of the following times:

- 1) When all of the work called for in your contract has been completed.
- 2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- 3) When that part of work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

This hazard does not include "bodily injury" or "property damage" arising out of the existence of tools, uninstalled equipment or abandoned or unused materials.

"Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property; or
- b. Loss of use of tangible property that is not physically injured.

"Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - 1) You;
 - 2) Others trading under your name; or
 - 3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in a. and b. above.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

"Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in a. or b. above.

COMMERCIAL BUILDING, EQUIPMENT AND STOCK

BROAD FORM

WORDS AND PHRASES IN QUOTATIONS HAVE SPECIAL MEANING AS DEFINED
IN CLAUSE 19

INDEMNITY AGREEMENT

1. In the event that any of the property insured be lost or damaged by the perils insured against, the Insurer will indemnify the Insured against the direct loss so caused to an amount not exceeding whichever is the least of:

(a) the actual cash value of the property at the time of loss or damage;

(b) the interest of the Insured in the property;

(c) the amount of insurance specified on the "Declarations Page" in respect of the property lost or damaged.

Provided, however, that where the insurance applies to the property of more than one person or interest, the Insurer's total liability for loss sustained by all such persons and interests shall be limited in the aggregate to the amount or amounts of insurance specified on the "Declarations Page".

PROPERTY INSURED

2.A. This form insures the following property but only those items for which an amount of insurance is specified on the "Declarations Page":

"BUILDING"

"EQUIPMENT"

"STOCK"

The insurance in this Clause 2.A. applies only while at the location(s) specified on the "Declarations Page".

2.B. This form also insures "Equipment" and "Stock" but only those items for which an amount of insurance is specified on the "Declarations Page":

TEMPORARY LOCATIONS: "Equipment" and "stock" other than at a specified location except while in transit, but there shall be no liability under this item at any location owned, rented or controlled in whole or in part by the Insured.

NEWLY ACQUIRED LOCATION: "Equipment" and "Stock" at any acquired location that is owned, rented or controlled by the Insured in whole or in part or in or on vehicles within 100 metres of such location. This limit of insurance attaches at the time of the acquisition and extends for a period of 30 days or to the date of endorsement of this form adding such location whichever first occurs.

PARCEL POST: "Equipment" and "stock" in any one package in course of transit by parcel post.

OTHER TRANSIT: "Equipment" and "stock", in transit other than by parcel post.

SALES REPRESENTATIVE: "Equipment" and "stock", whether in transit or otherwise, in the custody of a sales representative of the Insured.

The insurance in this Clause 2.B. applies only while the described property is within Canada and the continental United States of America (excluding Alaska).

DEDUCTIBLE

3. The Insurer is liable for the amount by which the loss or damage caused by any of the perils insured against exceeds the amount of the deductible specified on the "Declarations Page" in any one occurrence.

CO-INSURANCE

4. This clause applies separately to each item for which a co-insurance percentage is specified on the "Declarations Page" and only where the total loss exceeds the lesser of 2% of the applicable amount of insurance or \$5,000.

The Insured shall maintain insurance concurrent with this form on the property insured to the extent of at least the amount produced by multiplying the actual cash value of the property by the co-insurance percentage specified on the "Declarations Page", and failing so to do, shall only be entitled to recover that portion of any loss that the amount of insurance in force at the time of loss bears to the amount of insurance required to be maintained by this clause.

PERILS INSURED

5. This form, except as herein provided, insures against all risks of direct physical loss of or damage to the property insured.

EXCLUSIONS

6.A. PROPERTY EXCLUDED

This form does not insure loss of or damage to:

- (a) sewers, drains or watermains located beyond the outside bearing walls or foundations of the property insured, outside communication towers, antennae (including satellite receivers) and equipment attached thereto, streetclocks, exterior signs, exterior glass or vitrolite and lettering or ornamentation thereon, but this exclusion does not apply to loss or damage caused directly by "Named Perils";
- (b) property at locations which to the knowledge of the Insured, are vacant, unoccupied or shut down for more than thirty (30) consecutive days;
- (c) electrical devices, appliances or wiring caused by artificially generated electrical currents, including arcing, unless fire or explosion as described in Clause 19 (i) ensues and then only for such ensuing loss or damage;
- (d) growing plants, trees, shrubs or flowers, all while in the open except as provided in the Extensions of Coverage Clause 7(e);
- (e) animals, fish or birds, but this exclusion does not apply to loss or damage caused directly by "Named Perils" or from theft or attempt thereat;
- (f) money, bullion, platinum and other precious metals and alloys, securities, stamps, tickets and tokens, evidence of debt or title;
- (g) automobiles, watercraft, amphibious or air cushion vehicles, aircraft, spacecraft, trailers, motors or other accessories attached to or mounted on such property, but this exclusion shall not apply to watercraft, amphibious or air cushion vehicles held for sale, unlicensed automobiles or unlicensed trailers used in the business of the Insured when on the "premises" of the Insured;
- (h) furs, fur garments, jewels, jewellery, costume jewellery, watches, pearls, precious and semi-precious stones, and pre-recorded video tapes but this exclusion does not apply to:
 - (i) the first one thousand dollars (\$1,000.) of any loss insured herein;

- (ii) any loss or damage caused directly by "Named Perils";
- (i) property insured under the terms of any Marine Insurance, and property while waterborne, except while on a regular ferry or railway car transfer in connection with land transportation;
- (o) property on loan or on rental or sold by the Insured under conditional sale, instalment payment or other deferred payment plan, from the time of leaving the Insured's custody, but this exclusion does not apply while such property is in the custody of a carrier for hire for the purpose of delivery at the risk of the Insured;
- (k) property in the custody of a sales representative outside the "premises" of the Insured, unless an amount of insurance is shown on the "Declarations Page" pertaining to "Sales Representative";
- (l) property illegally acquired, kept, stored or transported; property seized or confiscated for breach of any law or by order of any public authority;
- (m) (i) any pressure vessel having normal internal working pressure greater than 103 kilopascals (15 pounds per square inch) above atmospheric pressure;
 - any boiler, including the piping and equipment connected thereto, which contains steam or water under steam pressure (except tanks having an internal diameter of 610 millimetres (24 inches) or less used for the storage of hot water for domestic use);
 caused directly or indirectly by explosion, rupture, bursting, cracking, burning out or bulging of such property while connected ready for use, but this exclusion does not apply to:
 - (1) manually portable gas cylinders;
 - (2) explosion of natural, coal or manufactured gas;
 - (3) explosion of gas or unconsumed fuel within a furnace or within the gas passages therefrom to the atmosphere.

6.B. PERILS EXCLUDED

This form does not insure against loss or damage caused directly or indirectly:

- (a) by earthquake, except for ensuing loss or damage which results directly from fire, explosion, smoke or leakage from fire protective equipment, all as described in Clause 19 (i);
 - (b) by flood, including waves, tides, tidal waves, tsunamis, or the rising of, the breaking out or the overflow of, any body of water, whether natural or man-made, but this exclusion does not apply to ensuing loss or damage which results directly from fire, explosion, smoke, leakage from fire protective equipment, all as described in Clause 19(i) or leakage from a watermain;
- exclusions (a) and (b) do not apply to property in transit;
- (c) (i) by seepage, - leakage or influx of Water derived from natural sources through basement walls, doors, windows or other openings therein, foundations, basement floors, sidewalks, sidewalk lights, or by the backing up of sewers, sumps, septic tanks or drains, unless concurrently and directly caused by a peril not otherwise excluded in Clause 6.B. hereof;
 - (ii) by the entrance of rain, sleet or snow through doors, windows, skylights or other similar wall or roof openings unless through an aperture concurrently and directly caused by a peril not otherwise excluded in Clause 6.B. hereof;

- (d) by centrifugal force, mechanical or electrical breakdown or derangement in or on the "premises", unless fire ensues and then only for the loss or damage caused directly by such ensuing fire;
- (e) by dampness or dryness of atmosphere, changes of temperature, contamination, freezing, heating, shrinkage, evaporation, loss of weight, leakage of contents, exposure to light, change in colour or texture or finish, rust or corrosion, marring, scratching or crushing, but this exclusion does not apply to loss or damage caused directly by "Named Perils", rupture of pipes or breakage of apparatus not excluded under paragraph (m) of Clause 6.A. hereof, theft or attempt thereat or accident to transporting conveyance. Damage to pipes caused by freezing is insured provided such pipes are not excluded in paragraph (m) of Clause 6.A. hereof,
- (f) by smoke from agricultural smudging or industrial operations;
- (g) by rodents, insects or vermin, but this exclusion does not apply to loss or damage caused directly by a peril not otherwise excluded in Clause 6.B. hereof;
- (h) by delay, loss of market, or loss of use or occupancy;
- (i) by war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;
- (j) (i) by any nuclear incident as defined in the Nuclear Liability Act or any other nuclear liability act, law or statute, or any law amendatory thereof or nuclear explosion, except for ensuing loss or damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas;
(ii) by contamination by radioactive material;
- (k) by any dishonest or criminal act on the part of the Insured or any other party of interest, employees or agents of the Insured, or any person to whom the property may be entrusted (bailees for hire excepted), but this exclusion does not apply to physical damage, caused directly by employees of the Insured, which results from a peril otherwise insured and not otherwise excluded under this form;
- (l) to "buildings" by:
 - (i) snowslide, landslide, subsidence or other earth movement, except for ensuing loss or damage which, results directly from fire, explosion, smoke or leakage from fire protective equipment, all as described in Clause 19 (i);
 - (ii) explosion (except with respect to explosion of natural, coal, or manufactured gas), collapse, rupture, bursting, cracking, burning out or bulging of the following property owned, operated or controlled by the Insured, unless fire ensues and then only for the loss or damage caused directly by such ensuing fire:
 - a) the portions containing steam or water under steam pressure of all boilers generating steam, and piping or other equipment connected to said boilers and containing steam or water under steam pressure;
 - b) piping and apparatus or parts thereof normally containing steam or water under steam pressure from an external source and while under such pressure;
 - c) other vessels and apparatus and pipes connected therewith while under pressure, or while in use or in operation provided their maximum normal internal working pressure exceeds 103 kilopascals (15 pounds per square inch) above atmospheric pressure but this exclusion does not apply to loss or damage resulting from the explosion of manually portable gas cylinders or of tanks having an internal diameter of 610 millimetres (24 inches) or less used for the heating and storage of hot water for domestic use;

- d) moving or rotating machinery or parts thereof;
- e) any vessels and apparatus and pipes connected therewith while undergoing pressure tests but this exclusion does not apply to other property insured hereunder that has been damaged by such explosion;
- I) gas turbines;
- (iii) settling, expansion, contraction, moving, shifting or cracking unless concurrently and directly caused by a peril not otherwise excluded in Clause 6.B. hereof;
- (m) proximately or remotely, arising in consequence of or contributed to by the enforcement of any by-law, regulation, ordinance or law regulating zoning or the demolition, repair or construction of buildings or structures, which by-law, regulation, ordinance or law makes it impossible to repair or reinstate the property as it was immediately prior to the loss.

NOR DOES THIS FORM INSURE:

- (n) wear and tear, gradual deterioration, latent defect, inherent vice, or the cost of making good faulty or improper material, faulty or improper workmanship, faulty or improper design, provided, however, to the extent otherwise insured and not otherwise excluded under this form, resultant damage to the property is insured;
- (o) mysterious disappearance or shortage of "equipment" or "stock" disclosed on taking inventory;
- (p) loss or damage sustained to "equipment" or "stock" while actually being worked upon and directly resulting therefrom or caused by any repairing, adjusting or servicing of "equipment" or "stock", unless fire or explosion as described in Clause 19(i) ensues and then only for such ensuing loss or damage;
- (q) disturbance or erasure of electronic recordings by electric or magnetic injury except by lightning.

6.C. POLLUTION EXCLUDED

This form does not insure against:

- (a) loss or damage caused directly or indirectly by any actual or alleged spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants", nor the cost or expense of any resulting "clean up", but this exclusion does not apply:
 - (i) if the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is the direct result of a peril not otherwise excluded under this form;
 - (ii) to loss or damage caused directly by a peril not otherwise excluded under this form;
- (b) cost or expense for any testing, monitoring, evaluating or assessing of an actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants".

EXTENSIONS OF COVERAGE

- 7. The following extensions of coverage shall not increase the amounts of insurance applying under this form and are subject to all conditions of this form.
 - (a) Removal: If any of the insured property is necessarily removed from the location(s) specified herein to prevent loss or damage or further loss or damage thereto, that part of the insurance under this form that exceeds the amount of the Insurer's liability for any loss already incurred shall, for 7 days only, or for the unexpired term of the policy if less than 7 days, insure the property removed and any property remaining in the

location(s) specified herein in the proportions which the value of the property in each of the respective location(s) bears to the value of the property in them all.

- (b)(i) **Debris Removal:** The Insurer will indemnify the Insured for expenses incurred in the removal from the "premises" of debris of the property insured, occasioned by loss or damage to such property, for which loss or damage insurance is afforded under this form.

The amount payable under this extension shall not exceed 25% of the total amount payable for the direct physical loss to property insured plus the amount of the applicable deductible.

- (ii) **Removal of Windstorm Debris:** The Insurer will indemnify the Insured for expenses incurred in the removal of debris or other property which is not insured by this form but which has been blown by windstorm upon a location specified on the "Declaration Page".

Extensions of coverage b(i) and b(ii) do not apply to costs or expenses:

- (a) to "clean up" "pollutants" from land or water; or
 (b) for testing, monitoring, evaluating or assessing of an actual, alleged, potential, or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants".

Debris removal expense shall not be considered in the determination of actual cash value for the purpose of applying the Co-insurance Clause.

- (c) **Personal Property of Officers and Employees:** At the option of the Insured, "equipment" also includes personal property of officers and employees of the Insured. The insurance on such property:

- (i) shall not attach if it is insured by the owner unless the Insured is obliged to insure it or is liable for its loss or damage;
 (ii) is, in any event, limited to a maximum recovery of \$250 in respect of any one officer or employee;
 (iii) shall apply only to loss or damage occurring at a location specifically described on the "Declarations Page" or included in "Newly Acquired Location".

- (d) **"Building" Damage by Theft:** This form is extended to insure damage (except by fire) to that part of a "building" occupied by the Insured directly resulting from theft or any attempt thereat and from vandalism or malicious acts committed on the same occasion, provided the Insured is the owner of such "building" or is liable for such damage and the "building" is not otherwise insured hereunder. This extension of cover shall be limited to a maximum recovery of twenty-five hundred dollars (\$2,500.) in respect of any one loss. Glass and lettering or ornamentation thereon is excluded from this extension.

- (e) **Growing Plants, Trees, Shrubs or Flowers in the Open:** This form is extended to insure loss or damage to growing plants, trees, shrubs or flowers in the open caused directly by "Named Perils" (with the exception of windstorm or hail as described in clause 19 (g)) or from theft or attempt thereat. This extension of coverage shall be limited to a maximum recovery of five hundred dollars (\$500.) for each growing plant, tree, shrub or flower in the open including debris removal expense.

PERMISSION

8. Permission is hereby granted:

- (a) for other insurance concurrent with this form;

monthly declared values being in excess of the amount of insurance, the amount of the excess shall not be included in the premium adjustment calculations.

VERIFICATION OF VALUES

14. The Insurer or its duly appointed representative shall be permitted at all reasonable times during the term of this policy, or within a year after termination or expiration, to inspect the property insured and to examine the Insured's books, records and such policies as relate to any property insured hereunder. Such inspection or examination shall not waive nor in any manner affect any of the terms or conditions of this form.

VALUATIONS

15. For the purpose of calculating the total value of the property for the application of Co-Insurance, value reporting and for loss adjustment, the following valuation basis applies:
- (a) on unsold "stock" - the actual cash value of the property at the time any loss occurs, but in no event to exceed what it would cost to repair or replace with material of like kind and quality;
 - (b) on sold "stock" - the selling price after allowance for discounts;
 - (c) on property of others in the custody or control of the Insured for the purpose of performing work thereon - the amount for which the Insured is liable but in no event to exceed the actual cash value at the time and place of loss plus allowance for labour and materials expended to such time;
 - (d) on tenant's improvements and records - as defined in paragraphs (a) and (b) of Clause 16;
 - (e) on all other property insured under this form and for which no more specific conditions have been set out - the actual cash value at the time the loss or damage occurs but in no event to exceed what it would then cost to repair or replace with material of like kind and quality.

SPECIAL BASIS OF SETTLEMENT

16. (a) Tenant's Improvements: The liability of the Insurer shall be determined as follows:

- (i) if repaired or replaced with due diligence and dispatch, the amount actually and necessarily expended but in no event exceeding the actual cash value of the tenant's improvements immediately prior to the time of destruction or damage;

if not repaired or replaced with due diligence and dispatch after such loss, that portion of the original cost of the damaged or destroyed tenant's improvements which the unexpired term of the lease at the time of loss bears to the period(s) from the date(s) such tenant's improvements were made to the expiration date of the lease.

- (b) Records: The liability of the Insurer for loss or damage to:

- (i) books of accounts, drawings, card index systems and other records, other than as described in (ii) below, shall not exceed the cost of blank books, blank pages or other materials, plus the cost of labour for actually transcribing or copying said records;
- (ii) media, data storage devices, and programme devices for electronic and electro-mechanical data processing or for electronically controlled equipment, shall not exceed the cost of reproducing such media, data storage devices, and programme devices from duplicates or from originals of the previous generation of the media, but no liability is assumed hereunder for the cost of gathering or assembling information or data for such reproduction.

Whichever of the above is applicable shall be the basis to be adopted for the purpose of applying Co-Insurance.

PROPERTY OF OTHERS

17. At the option of Insurer, any loss may be paid to the Insured or adjusted with and paid to the customer or the owner of the property.

LOCKED VEHICLE WARRANTY

18. This clause does not apply to property which is under the control of a common carrier.

Warranted by the Insured that any vehicle in which the property insured is carried is equipped with a fully enclosed metal body or compartment, and the Insurer shall be liable in case of loss by theft from an unattended vehicle only as a direct result of forcible entry (of which there shall be visible evidence) into such body or compartment the doors and windows of which shall have been securely locked.

DEFINITIONS

19. Wherever used in this form:

(a) "Declarations Page" means the Declarations Page applicable to this form.

(b) "Building" means:

the building(s) described on the "Declarations Page" and includes:

- (i) fixed structures pertaining to the building(s) and located on the "premises";
- (ii) additions and extensions communicating and in contact with the building(s);
- (iii) permanent fittings and fixtures attached to and forming part of the building(s);
- (iv) materials, equipment and supplies on the "premises" for maintenance of, and normal repairs and minor alterations to the "building" or for building services;
- (v) growing plants, trees, shrubs or flowers inside the "building" used for decorative purposes when the Insured is the owner of the "building".

(c) "Equipment" means:

- (i) generally all contents usual to the Insured's business including furniture, furnishings, fittings, fixtures, machinery, tools, utensils and appliances other than "building" or "stock" as herein defined;
- (ii) similar property belonging to others which the Insured is under obligation to keep insured or for which he is legally liable;
- (iii) tenant's improvements which are defined as building improvements, alterations and betterments made at the expense of the Insured to a "building" occupied by the Insured and which are not otherwise insured, provided the Insured is not the owner of such "building". If the Insured purchased the use interest in tenant's improvements made by a predecessor tenant, this form applies as though such tenant's improvements had been made at the expense of the Insured;

(d) "Stock" means:

- (i) merchandise of every description usual to the Insured's business;
- (ii) packing, wrapping and advertising materials; and
- (iii) similar property belonging to others which the Insured is under obligation to keep insured or for which he is legally liable;

- (e) "Premises" means the entire area within the property lines and areas under adjoining sidewalks and driveways at the locations described on the "Declarations Page" and in or on vehicles within 100 metres (328 feet) of such locations. •
- (f) "Fire Protective Equipment" includes tanks, watermains, hydrants, valves and any other equipment whether used solely for fire protection or jointly for fire protection and for other purposes, but does not include:
- (i) branch piping from a joint system where such branches are used entirely for purposes other than fire protection;
 - (ii) any watermains or appurtenances located outside of the described "premises" and forming a part of the public water distribution system;
 - (iii) any pond or reservoir in which the water is impounded by a dam.
- (g) "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including odour, vapour, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- (h) "Clean Up" means the removal, containment, treatment, decontamination, detoxification, stabilization, neutralization or re-remediation of "pollutants", including testing which is integral to the aforementioned processes.
- (i) "Named Perils" means:
- (A) **FIRE OR LIGHTNING**
 - (B) **EXPLOSION:** Except with respect to explosion of natural, coal or manufactured gas, there shall in no event be any liability hereunder for loss or damage caused by explosion, rupture or bursting in or of the following property owned, operated or controlled by the Insured:
 - (i) (a) the portions containing steam or water under steam pressure of all boilers generating steam, and piping or other equipment connected to said boilers and containing steam or water under steam pressure;
 - (b) piping and apparatus or parts thereof normally containing steam or water under steam pressure from an external source and while under such pressure; (c) the combustion chambers or fire boxes of steam generating boilers of the chemical recovery type and the flues or passages which conduct the gases of combustion therefrom;
 - (d) smelt dissolving tanks;
 - (ii) other vessels and apparatus, and pipes connected therewith, while under pressure, or while in use or in operation, provided their maximum normal internal working pressure exceeds 103 kilopascals (15 pounds per square inch) above atmospheric pressure except that liability is specifically assumed for loss or damage resulting from the explosion of manually portable gas cylinders;
 - (iii) moving or rotating machinery or parts of same when such loss or damage is caused by centrifugal force or mechanical breakdown;
 - (iv) any vessels and apparatus and pipes connected therewith while undergoing pressure tests, but this exclusion shall not apply to other property insured hereunder that has been damaged by such explosion;
 - (v) gas turbines;
- The following are not explosions within the intent or meaning of this section:
- (a) electric arcing or any coincident rupture of electrical equipment due to such arcing;

- (b) bursting or rupture caused by hydrostatic pressure or freezing;
 - (c) bursting or rupture of any safety disc, rupture diaphragm or fusible plug.
- (C) **IMPACT BY AIRCRAFT, SPACECRAFT OR LAND VEHICLE:** The terms "Aircraft" and "Spacecraft" include articles dropped therefrom.
- There shall in no event be any liability hereunder due to cumulative damage or for loss or damage:
- (i) caused by land vehicles belonging to or under the control of the Insured or any of his employees;
 - (ii) to aircraft, spacecraft or land vehicles causing the loss;
 - (iii) caused by any aircraft or spacecraft when being taxied or moved inside or outside of "buildings".
- (D) **RIOT, VANDALISM OR MALICIOUS ACTS:** The term Riot includes open assemblies of strikers inside or outside the "premises" who have quitted work and of locked-out employees.
- There shall in no event be any liability hereunder for loss or damage:
- (i) due to cessation of work or by interruption to process or business operations or by change(s) in temperature;
 - (ii) due to flood or release of water impounded by a dam, or due to any explosion other than an explosion in respect of which there is insurance under Clause 19(g)(13);
 - (iii) due to theft or attempt thereat.
- (E) **SMOKE:** The term "Smoke" means smoke due to a sudden, unusual and faulty operation of any stationary furnace. There shall in no event be any liability hereunder for any cumulative damage.
- (F) **LEAKAGE FROM FIRE PROTECTIVE EQUIPMENT:** The term Leakage From Fire Protective Equipment means the leakage or discharge of water or other substance from within the equipment used for fire protection purposes for the "premises" described on the "Declarations Page" or for adjoining premises and loss or damage caused by the fall or breakage or freezing of such equipment.
- (G) **WINDSTORM OR HAIL:** There shall in no event be any liability hereunder for loss or damage:
- (i) to the interior of the "buildings" insured or their contents unless damage occurs concurrently with and results from an aperture caused by windstorm or hail;
 - (ii) directly or indirectly caused by any of the following, whether driven by wind or due to windstorm or not: snow-load, ice-load, tidal wave, high water, overflow, flood, waterborne objects, waves, ice, land subsidence,

APPENDIX "C" NON-WAIVER AGREEMENT I.B.C. CLAIM FORM NO. 6 4-73

IN THE MATTER OF

.....
(Describe Nature of Claim)

which is reported to have occurred on or about the day of20
at or near

.....
(Place of Occurrence)

involving the undersigned

.....
and claim made by

.....
AND IN THE MATTER OF a Policy of Insurance No. alleged to have been issued by
..... hereinafter called the
Insurer.

The undersigned hereby covenants and agrees with the Insurer, as follows:

1. The Insurer may make such investigations of the occurrence and claims arising therefrom as it deems necessary.
2. The Insurer may appear and defend all actions arising from the occurrence in the name of the undersigned.
3. The Insurer may carry on negotiations toward possible settlement in respect of claims or actions arising from the said occurrence without judgment against the undersigned or without the further consent of the undersigned.
4. The Insurer may settle and pay any claims arising from the occurrence without a judgment having been obtained against the undersigned, the undersigned realizes that this means that he has made himself liable to the Insurer to the extent of the payment made by the Insurer under the policy should the undersigned be found in breach of the policy.
5. Any action taken by the Insurer shall be without prejudice to the respective rights of the Insurer and the undersigned under the designated policy of insurance.
6. In the event of any proceedings between the Insurer and the undersigned to recover the amount of any settlement paid by the Insurer, the undersigned will not plead nor contend (a) that the Insurer has waived any of its rights under the policy by investigation of the occurrence, by defending any action or by negotiating any settlement in respect of the occurrence nor (b) that the settlement was made without a judgment having been obtained against the undersigned.

WITNESS hand and seal at this day of 20.....

In the presence of:

.....
Witness

Seal

Witness

Seal

FIRE PROOF OF LOSS

I.D.C. CLAIM FORM NO. 7

This form is provided to Comply with the Insurance Act and Without prejudice to the liability of the Insurer,

CLAIM NO,

INSURER

INSURED
Name Address

under Policy No. in force until

against loss or damage by to the amount of Dollars according to the terms and conditions printed therein, including all forms and/or endorsements attached thereto and forming part thereof.

TIME AND ORIGIN: A loss occurred on the day of 19 .. , at M, caused by

LOCATION: The said loss occurred at

OCCUPANCY: The building insured or containing the property insured was occupied for no other purpose than the following

TITLE AND INTEREST: At the time of the loss the Interest of the Insured in the property described was sole and unconditional ownership and no other person or persons had any interest therein, lien or encumbrance thereon, except

CHANGES: Since the above policy was issued there has been no change in use, possession, location or exposure of the property described, except

INSURANCE AND LOSS: A particular account of the loss is attached hereto and forms part of this proof. The actual cash value of the property insured, the actual amount of loss or damage, the total insurance thereon at the time of the said loss and the amount claimed under this policy are as follows.

Item Involved	Replacement Cost	Cash Value	Total Loss or damage	Total Insurance	Amount named in this policy	Claimed under this policy
.....
.....
.....

--TOTALS

- OTHER INSURANCE: There is no other contract of insurance written or oral, valid or invalid, except (insurers and amounts) -

I, The said Insured, do hereby declare that the foregoing claim and statements are to the best of my knowledge and belief true in every particular, and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Payment of this claim to

Is hereby authorized and in consideration of such payment the Insurer is discharged forever from all further claim by reason of the said loss or damage. All rights to recovery from any other person are hereby transferred to the Insurer which is authorized to bring action in the Insured's name to enforce such rights. All right, title and interest in any salvage is hereby assigned to the Insurer.

do solemnly declare that the foregoing claim and statements are to the best of my knowledge and belief true in every particular, and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED severally before me at

this day of 19 ..,

Commissioner for Oaths or Affidavits

Insured

Insured

Over