

AON



Children's Mental Health Ontario
Santé Mentale pour Enfants Ontario

Children's Mental Health Workshop

27 November 2008

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Introduction

It has been almost 20 years since Aon Reed Stenhouse (Aon) has had the privilege of serving the participating centers of Children's Mental Health Ontario.

Our role as your insurance broker is to focus our efforts in identifying the inherent risks facing your participating centers and to recommend appropriate strategies for transferring those risks to qualified insurance companies.

All policies – Effective dates: 1 May 2007 – 1 May 2008



Part 1: Commercial General Liability (CGL)

- Insurer
 - Zurich
- Limit
 - \$5,000,000
- Defence costs (example)
 - Excess of the \$5,000,000



Who is Covered?

Any

- official
- employee
- volunteer
- member while acting on behalf of the insured in that capacity
- persons, committees or Boards who manage, operate, or control or supervise recreational activities for the benefit of the employees of the insured





When Does Coverage Apply?

- Commercial General Liability policies are based on the fact that claims are considered for payment on the basis of when they **occurred**
- **Occurrence:** shall mean any one loss, casualty or disaster or series of losses, casualties or disasters arising out of **one** event
- For example in this current term of 1 May 2007 to 1 May 2008 claims will be paid out for Liability based on the occurrence date
- If a claim occurred two years ago but are only brought forward now the CMHO member will have to seek coverage under the policy that was in place two years ago



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Why?

- Coverage is contingent on the fact that there was negligence on the part of the insured. Negligence can also be associated with carelessness





What is Covered?

- Coverage is **for the CMHO Centre** as an Entity and is protection from third parties, for Bodily Injury or Property Damage. For example coverage under the CGL policy will be for the following:
 - Examples of **compensatory damage** for BI: (not punitive)
 - › *Pain and suffering*
 - › *Humiliation*
 - › *Embarrassment*
 - › *Loss of service or consortium*
 - › *Disfigurement*
 - › *Inconvenience*
 - › *Permanency*
 - › *Future earnings*
 - › *Future care*
 - Examples of special damages (sometimes called out of pocket expenses):
 - › *Doctor dentist or specialist coverage*
 - › *Hospital, home care or clinic, or nursing home charges*
 - › *Nursing fees*
 - › *Ambulance, medication*
 - › *Travel expenses to and from hospital or doctor*
 - › *Loss of earnings*
 - Legal fees are above and beyond the CGL limit chosen and are unlimited (Note: the insurance company will monitor this closely since it is their cost)



How Much Coverage Should I Have?

- How much coverage is a frequent question from clients. It is up to the individual Centre but for the most part the Minimum coverage is \$5,000,000 for the CGL



Two young children, a girl and a boy, are smiling and looking towards the camera. The girl is in the foreground, wearing a striped shirt, and the boy is behind her, wearing a purple shirt.

Abuse is Covered

- Abuse coverage is covered under the CGL. During our renewal negotiations with Zurich, Aon successfully negotiated an increase for Abuse from \$1,000,000 to \$2,000,000 for the 1 May 2007 term
- In the past Abuse was silent on most CGL policies but now the Insurers specifically note the following: *The insurer will pay compensatory damage because of Bodily Injury as a result of actual or alleged "Abuse"*
- All Abuse coverage must submit to Zurich a written copy of their Abuse Protocols before they can qualify for the Insurance
- An application is also required before coverage will be accepted and bound
- The current limit of \$2,000,000 includes Legal Defense costs. In other words the legal defence costs is not outside of the \$2,000,000 limit unlike the rest of the CGL policy
- Legal defence cost is covered



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Statute of Limitations for Liability Policies

- Statute of Limitations for Claims reporting for Liability (e.g. slip and fall or issues of bodily injury)
 - If an incident occurs before 2005 the claimant has six (6) years to file a statement of claim
 - If an incident occurs after 2005 the claimant has only two (2) years to file suit



What is a Named Insured?

- A named insured has all the legal rights to the policy
- A named insured has the insurable interest in the policy
- Pays the premiums for the policy
- Claims paid out, in other words the cheque will be made out to the Named Insured



What is an Additional Named Insured?

- Are seeking coverage under the named insured's policy, but do not pay any premiums on the policy and are not owners of the policy as noted above
- Do not have the legal rights under the policy only if they get dragged into a lawsuit that involves the insured
- For example: often the city gets named in a suit



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The Purpose of Certificates of Insurance

- A certificate of insurance is only evidence of Insurance. A named insured or a CMHO Centre will often contact us for a certificate of insurance. This is a one page document that shows the Named Insured name on it along with policy effective dates, name of insurer, coverage limits and possibly an Additional Named Insured. An additional named insured might be the City of Toronto, or a leasing company. These Additional Insured's are only added to the policy and covered for liability that may be connected to it by way of something that the named insured has done.



CGL Coverage Details

- Bodily Injury and Property Damage to third parties 5,000,000
- Medical Payments 2500 each person
10,000 per occurrence
- Tenants' Legal Liability (each occurrence) 1,000,000
- Employee Benefits Liability 1,000,000
- Wrongful Dismissal (defence costs only) 50,000
- Non-owned Auto 5,000,000
- Legal Liability to Non-owned autos 50,000



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Exclusions

- Auto: *Why?* Because there is separate policy sold for auto
- Aircraft: *Why?* Because there is a separate policy sold for aircraft
- Watercraft: There is limited coverage for watercraft but for the most part if you own a boat you should purchase your own coverage
- Asbestos
- Fungi and fungi derivatives
- Data
- Terrorism
- Pollution
- Professional Liability (separate policy see below)





Umbrella Liability

- Umbrella coverage is in excess to the Commercial General Liability Policy and sits on top of the CGL and the Auto (if you have auto):
 - It does not sit on top of the Errors and Omissions or the Directors' and Officers' Liability policy
- Automobile: can be purchased

Claims Example

- Go to www.elliottsr.com
Go to News Board for Quarterly claims results



Part 2: Errors and Omissions (E&O): Professional Liability

- Insurer
 - Encon
- Limit
 - 5,000,000 per loss/policy period
 - Subject to a **\$20,000,000 shared** aggregate for all Certificate Holders in program





What is Covered?

- Simply put, it provides coverage for situations not covered by a general liability policy. A general liability policy addresses situations of property damage or bodily injury. However, it does not cover professional errors or negligence.
- Legal defense costs are covered
- Covers for an error or omission in the scope of the insured's business
- Premium is based on the charge per professional
- Is a claim made policy, so all claims must be made in the term of the policy term that they occurred
- **Damages:** Compensatory DAMAGES including all pre and post judgment interests
- Has retroactive date of 1 May 2003. This means that even though the claim occurred for example a few years ago but was reported in this term then the loss would be covered under a claims made policy.
- Claims made policies have a Retroactive Date. This is generally the effective date of the first claims made policy written. This date means that the insurance carrier WILL NOT pay any claims that occur prior to that date.
- Furthermore, once the policy expires, any claims that have not been reported during the policy term are not covered in that policy term. You don't actually have any less coverage, but you have less time to report a claim. There are endorsements you can buy to extend the claim reporting time once the policy expires.



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Who is Covered?

- **Who is an Insured:** All present or former partners, directors, officers or trustees, any present or former employee, volunteer or student excluding physicians, surgeons or dentist
 - Examples are: Coverage for staff acting as professionals such as, child care workers, early child care workers, social workers, sociologist, psychologist





Exclusions

- Claims arising out of Abuse and Sexual Misconduct
- Claims arising out of Bankruptcy
- Claims to property
- Fines or penalties
- Insured versus insured
- Pollution
- Claims arising out legal liability of the insured resulting from the operations of any business enterprise other than the **Insured Services**
- Prior Knowledge
- War
- Asbestos

- Claims examples:
 - Also, here are two other few short form examples as it were:
 - › *File mix up and the counselor gives results to the wrong patient*
 - › *Failure of the counselor to disclose info to other members of the patient's medical team*



Difference Between Claims Made and Occurrence Type Policies

- An “occurrence” policy applies based on when the accident, loss or injury happened regardless of when a claim is made subject to statutes of limitation
- A “claims made” policy applies to claims made during the policy period



Part 3: Directors' and Officers' Liability

- Insurer
 - ENCON
- Limit
 - \$2,000,000 – \$5,000,000 per certificate, \$15,000,000 aggregate



Who is Covered?

- The entity
- Past, present, future director, officer, trustee, employee, volunteer, or member of any duly constituted committee



When Coverage Applies

- D&O policies are claims made and are triggered by a Wrongful Act
- A Wrongful Act is broken down into D&O Wrongful Act, EPL Wrongful Act, Fiduciary Wrongful Act and an Outside Directorship Wrongful Act



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What is D&O

- Protects Directors and Officers against liabilities they incur in carrying out their duties/functions in managing the affairs of the corporation
- Coverage applies when indemnification is granted by corporation, and more importantly, when it is not



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What is Excluded?

- Matters covered under other policies
 - e.g., bodily injury, property damage, pollution, professional
- Matters uninsurable under the law
 - e.g., fraud, dishonest acts
- Uninsurable risks
 - e.g., war, nuclear liability; consequences of deliberate and intentional wrongdoings
- Matters too precarious to underwrite
 - e.g., insured vs. insured claims, prior and pending litigation



Claims Examples

