

# BULLETIN

INS 16-002

## Understand Your Coverage: Knowledge is Critical when Explaining ATE to Clients

When your clients (“policy holders”) purchase an After the Event (“ATE”) Policy they purchase substantial protection against unforeseen and potentially substantial costs.

ATE coverage varies from supplier to supplier and is subject to change, so it is important to review the policies that bind your clients so that you can manage their claim appropriately.

### What does ATE cover?

#### Maximum

- The most that will be paid is the lesser of the maximum of the policy limit (the standard policy limit is \$100,000) or the amount liable to pay under policy holder’s coverage;

#### Withdrawals / Retainer Agreement Break

- If the policy holder’s civil action is withdrawn or there is a Retainer Agreement Break, the insurer will pay the policy-holder opponent’s legal costs as assessed or agreed (including the insurer’s agreement) and the policy holder’s own disbursements;

#### Loss at Trial

- If the policy holder loses at trial, the insurer will pay the policy-holder opponent’s legal costs as assessed or agreed (including the insurer’s agreement), and the policy-holder’s own disbursements;

### Formal Offer, Wins at Trial but Costs Awarded, and/or Interim Costs Assessed

- If the policy holder court award is less than the formal offer to settle, the insurer will pay the policy-holder opponent’s legal costs as assessed or agreed (including the insurer’s agreement), and their own disbursements;
- If the policy holder wins (except as above) but the court orders that the policy holder is to pay part or all of the opponent’s legal costs and their own disbursements, the insurer will pay these costs and disbursements;
- The insurer will pay the policy-holder opponent’s legal costs as assessed or agreed (including the insurer’s agreement), and own disbursements, arising from an interim order made against the policy holder by the court requiring immediate payment;
- In the event that the policy holder wins, but the defendants cannot satisfy the award of costs made against them, the insurer will pay any shortfall in the recovery of the policy holder’s disbursements including the policy holder’s insurance premium. The insurer will calculate this claim by paying the amount of the policy holder’s own disbursements, less any amount the policy holder received from the defendants related to the civil action.

## What is not covered by ATE?

### Own Lawyer's Fees or Previous Costs

- The policy holder's own legal fees and any fees or costs incurred before the start date of the policy holder's Retainer Agreement;

### Actions in Different Provinces

- Any civil action brought outside the Province in which the policy was issued;
- If after this policy is issued, the civil action is transferred to a different jurisdiction within Canada, or to a jurisdiction outside Canada, coverage under this policy shall be suspended at that time (Costs up to the suspension date are covered);

### Fines, Penalties and Actions of Policy Holder

- Fines, penalties, compensation or damages that a court orders the policy holder to pay;
- Any counterclaim against the policy holder or any appeal the policy holder makes against the final judgment or order without the insurer's agreement;
- Any fees or costs arising from enforcement proceedings brought by the policy holder's lawyer without the insurer's agreement;
- Any fees or costs arising from negotiations about costs and any detailed assessment proceedings relating solely to the policy holder's legal fees, without the insurer's agreement;
- Any fees or costs arising from a civil action that has been ruled as fraudulent or dishonest by a court, apart from the policy holder's own disbursements which will remain covered (subject to the insurer's agreement);
- Any civil action where the policy holder causes additional costs due to the policy holder's intentional and obstructing conduct, after a warning from the policy-holder's lawyer or from the insurer;
- Any increased fees or costs arising from any delay or other default by the policy holder which, in the opinion of the policy holder's lawyer, detrimentally affects the way the civil action is handled;

### Other

- Any civil action that is part of a class action;
- To the extent that any civil action is covered under any other valid and collectible insurance, and
- An application for judicial review.

The bottom line: Understand your coverage.

### Best Practice Solutions:

1. Investigate and understand the similarities and differences between policies
2. Confer with a Provincial Registered Insurance Brokers Agent.

Learning about licensed ATE Insurance products and putting in place a proper program now will protect you, your firm and your client from unnecessary risk in the future.

We are here to help. Call us to find out more about the licensed ATE insurance products we offer, how they work and how they can protect you and your client.

Call us today at **1-844-400-4388** or visit us at **redressrisk.com** for more information!

Offices in Toronto, Edmonton, Vancouver



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