



## Intellectual Property Scenarios

# Contractual Indemnity

Organisations are increasingly required by clients and customers to provide a contractual indemnity in respect to the goods and service they are supplying. This indemnity is becoming more important considering the costs when they arrive unexpectedly.

### Case Example

#### **Weak links in your supply chain: contractual indemnity**

Blackthorn Distribution is a multi-million toy manufacturer, selling products via numerous retailers and provides a contractual indemnity to Casars plc. The contract with Casars specifies that should Casars be sued by a third party in respect of intellectual property infringement caused by the goods supplied by Blackthorn, then the latter shall indemnify and defend Casars against all defence costs and damages.

Casars has been selling Blackthorn Distribution's products for six months when they receive notice that they are being sued by a third party toy manufacturer in relation to patent infringement. Casars currently makes CAD6m profit from selling Blackthorn's products. Blackthorn makes CAD1m profit from its sales to Casars.

#### **Scenario 1 – Blackthorn Distribution is uninsured**

Casars contacts Blackthorn informing them of the alleged infringement and request indemnity. Blackthorn appoints a representative to defend Casars (as contractually required) and Blackthorn itself. The costs of defending both are met by Blackthorn from its balance sheet. Defence costs are estimated at CAD2.5m and damages (if found to be infringing) of CAD4m based on the profits generated by Casars per annum.



## Scenario 2 – Blackthorn Distribution has purchased Intellectual Property Insurance

### Sample policy\*\*

<b>Coverage:</b>	Infringement Defence
<b>Limits of Indemnity:</b>	CAD5,000,000 any one claim and in the aggregate – representatives Fees & Liability
<b>Excess:</b>	CAD75,000
<b>Co-Insurance:</b>	7.5%

Casars contacts Blackthorn informing them of the alleged infringement and request indemnity. Blackthorn notifies the insurer and agrees to the appointment of a representative to fight the legal case on behalf of both Blackthorn and Casars (as contractually required).

Defence costs are estimated at CAD2.5m and damages (if found to be infringing) of CAD4m based on the profits generated by Casars plc per annum, both of which are reimbursed by the insurer on behalf of Blackthorn Distribution and Casars plc.\*

\* Less any applicable self-insured retention and coinsurance

\*\* These coverage scenarios are hypothetical only and do not increase or limit your coverage, the nature and extent of which will depend on the specific circumstances of each case, which remains subject to all policy terms, conditions, limitations and exclusions.

To Be a **Good Company**

#### Tokio Marine Kiln

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. For further information please visit [www.tokiomarinekiln.com](http://www.tokiomarinekiln.com)