

## *Precision Plating Ltd. v. Axa Pacific Insurance*

### *Court Case Announcement:*

On June 18, 2015 the British Columbia Court of Appeal issued a decision that has potentially far reaching implications in duty to defend cases where multiple sources of liability are alleged and one of those sources is caught by an exclusion clause in a CGL policy.

The appeal of *Precision Plating Ltd. v. Axa Pacific Insurance*, 2015 BCCA 277, concerned the applicability of a pollution exclusion clause contained in a CGL policy. The facts of the case concern a fire at Precision's plant and consequential chemical contamination of the surrounding properties. Precision sought a declaration that Axa was obliged to defend it from third-party claims under a GCL policy. Axa relied on the pollution exclusion clause contained in the CGL policy to deny defence costs and indemnity. The exclusion clause excluded coverage for property damage, "caused by, contributed to by or arising out of" the escape of pollutants. At summary trial, the court found that the one of the causes of the release of the pollutants was a fire, and that fire damage was covered under the CGL. Furthermore, the court interpreted the pollution exclusion clause as ambiguous. The court held that Axa was required to defend the claims.

Axa appealed the summary trial decision. On appeal, the court found that the judge had erred in framing his analysis as a question of causation of the damage, rather than causation of liability. More importantly, the Court of Appeal considered the anti-concurrent cause language contained in the exclusion clause, which included the phrase "caused by, resulting from, contributed to or aggravated by". The Court held this language was clear and unambiguous and that the CGL Policy does not cover a claim where liability associated with the release of pollutants is alleged, whether as a sole or concurrent cause. In other words, even though the Policy might provide coverage for fire-related liability, the anti-concurrent cause language used was sufficient to exclude any and all coverage because pollution also contributed to the claim.

This decision may still be appealed to the Supreme Court of Canada. However, it signals the need to carefully review all exclusions and the effect of anti-concurrent cause language when determining whether allegations trigger a duty to defend under a CGL policy.

