

Brief narrative on open CLLAS claims with total incurred in excess of \$2,000,000 (December 31, 2018):

2005-177

This is a Quebec claim, so there is \$10 million in underlying insurance available from the Barreau. The claimant is a large company for which the insured acted in defending a series of product's liability claims that extended over many years. Several actions were defended without the claimant's insurers contributing to defence costs. The claimant instructed our insured to sue those insurers. The allegation is that the insured may not have amended the actions against the insurers to include additional insurers as time went by, and limitation periods have now expired. The legal costs associated with the protracted litigation have been significant.

The primary insurer attended a mediation in December 2018 and made an offer well within the primary limits. The matter did not settle but the claimant has asked that the tolling agreement be extended three months in order to obtain instructions for a counter-offer.

2008-001

This claim arose out of a shareholders' dispute in a privately held company. A disgruntled, significant shareholder wanted to sell his shares in the company but could not do so without the consent of the two other major shareholders. The company wanted to control who invested in it and did not want the shares sold in the open market.

The company consulted the insured as to how it could restrict the sale of shares. The insured recommended the company amend its Articles of Incorporation to provide restrictions on the sale of shares. The amendment was passed at the company's Annual General Meeting. The insured failed to note that, under the *Canadian Business Corporation Act*, any amendment of the company's Articles that materially varies the rights and restrictions attached to shares also gives rise to dissent rights to those shareholders who did not vote in favour of the resolution. Those shareholders who opposed the resolution became entitled to have their shares purchased by the company at fair market value.

This claim was settled. A portion of the insurers' payment is a loan to the company. The company continues to repay CLLAS on the loan. The claimant recently indicated its intention to pay out the loan.

2008-113

Between 1999 and 2003, the insured was retained to provide tax opinions about the syndication of several charitable donation programs to Canadian residents. The charitable donation program was built on the concept that leasehold timeshare weeks at various resorts were gifted to a Trust. Canadian residents could apply to become beneficiaries of the Trust. The trustee of the Trust (the "Trustee") was responsible for reviewing and accepting applications for beneficiaries and making distributions of time share units to qualifying beneficiaries ("Participants"). Participants were then requested, but not compelled, to make a donation of timeshare units to one of a select number of charities. Participants would then receive a tax credit for the donation.

In 2004, the Canadian Revenue Agency (CRA) took an increasingly aggressive stand on charitable donation programs. Many ensuing judicial decisions disallowed donations made through these and other programs. The primary basis of disallowance or reduction of the tax credit was that the actual fair market value of the donation was less than the appraised amount put forward by the promoters.

A class proceeding was commenced against the firm by donors who were reassessed by CRA. The basis of the claim is that the donation programs could not have proceeded without the insured's opinion. CLLAS has brought Third Party Claims against several advisors to members of the class. A damages expert has been retained. Further examination is required in order for the expert to provide a damages estimate.

2010-165

The firm represented the claimant in a dispute with a builder for faulty construction of a warehouse facility under a Design-Build Agreement. The firm commenced an action against the builder in 2004. In 2009, the builder brought a motion to the court to strike the action on the basis that the dispute should have proceeded by arbitration under the Design-Build Agreement. The provincial Court of Appeal agreed and the claimant's action was struck. By this time, the limitation period had tolled and the claimant was unable to commence an arbitration proceeding. The claimant has sued the firm for loss of its right of action against the builder.

The firm was unsuccessful on a motion for summary judgment on the issue that the limitation tolled while the matter was with other counsel. The firm has appealed that decision to the Court of Appeal.

2011-145

This claim concerns a class action brought on behalf of participants in a charitable donation program that operated from 2001 to 2003. The program (which was of a nature that was quite common at the time) was structured such that the amount of the tax deduction exceeded the actual cash donation made by the taxpayer. The Canada Revenue Agency subsequently took a dim view of these types of programs and reassessed the participants based on Canada's general anti-avoidance rule. The insured firm had provided advice to the promoter of the charitable donation program, who has also been named in the class action. The insured firm has third parted the financial advisors who advised their clients to participate in the program.

This matter was settled at mediation for \$37 million of which CLLAS paid \$27.75 million. The Third Party Claims were settled on the basis of a dismissal without costs.

2013-122

The insured was retained to act on the sale of the claimants' interest in an urban shopping mall. The claimants' family's business included the lease to operate the parking complex at the mall. The terms of the parking complex lease required that one of two key individuals be in active management of the parking complex. Both individuals died within months of one another. The landlord refused to renew the parking complex lease.

The claimants sued the insured on the basis that the insured was negligent in the conduct of the transaction in not ensuring that the lease was amended as the claimants intended. The insured's defence was that his retainer was limited to the sale transaction and lease amendments were not part of the retainer. The claimants alleged damages of \$20 million.

The claimants brought a motion for summary judgment. On the eve of the return of the motion, the claimants accepted a joint offer from the primary insurer and CLLAS to settle the claim for \$1 million plus costs. Costs have been settled and the action dismissed. Total payment was \$1.6 million. **2014-079**

Our insured acted in the transition of a business to a new entity due to the pending retirement of the principal owner. The new business ran into financial difficulty. It was discovered that as a part of the reorganization that certain financial guarantees made by the departed principal to the organization's surety insurer had not been released, nor were any indemnities provided by the new company. The claim by the principal was settled for \$1.25 million but portions of the claim continue. There is a third party claim against the insurance broker who arranged the surety bond.

The remaining claims were settled at mediation for \$1.5 million. The Third Party Claim was settled on the basis of a dismissal without costs.

2014-131

The insured firm acted for a pay-day lender. Pay-day lending is regulated under provincial statute. The provincial government had taken aim at the lender for alleged predatory lending practices. The lender began marketing a different product which it believed put it beyond the ambit of the provincial statute. The lender voluntarily did not renew its provincial licence. The provincial government brought an application for a declaration that the lender's new product did not put the lender beyond the government's regulation. The court found for the government. The court's decision led to the immediate collapse of the lender leaving many investors and creditors hanging.

The lender's receiver commenced an action against the insured firm, the lender's financial advisor and the lender's auditor for alleged negligent advice.

All defendants brought motions for summary judgment. The judge reserved his decision.

2014-134

The insured acted for the Board of Trustees for a real estate investment trust (REIT) on the purchase of certain investment properties.

The REIT is publicly traded on the Toronto Stock Exchange ("TSX"), and is managed by the Board of Trustees. The purchase in question had been authorized by the Trustees, without a vote of unitholders of the REIT. The transaction was subsequently unwound by the Trustees when they learned certain facts after closing that persuaded them that the interim CEO of the REIT and the Vendor of the subject properties were "related persons" or "acting together" as defined under the applicable TSX rules and *Securities Act* regulations. Because of this revelation, the Trustees determined that a unitholder vote on the transaction ought to have been held.

The price of the units declined after the unwind. A class proceeding has been commenced on behalf of a class comprised of unitholders of the REIT for the loss of unit value arising from the revelations. The insured was released from the class action but there remain pending claims by the Trustees for alleged negligent advice with respect to the transaction and the former CEO for breach of fiduciary duty and reputational damages.

The underlying class proceeding was settled by the D&O insurers for the REIT. The REIT's claim against the insured firm was settled for \$2.5 million of which CLLAS paid \$1.9 million. The personal claim of the former CEO remains outstanding but has been dormant for 18 months.

2016-107 and 2016-108

These claims relate to two class proceedings commenced in the Provinces of Saskatchewan and Ontario with respect to a charitable donation and tax shelter program which involved taxpayers making cash and in-kind donations to charities in exchange for tax receipts. The insured in 2016-108 assisted the promoter in setting up the program. The insured in 2016-107 assisted the promoter in implementing the program.

Taxpayers claimed charitable donation tax credits under the program beginning in or about the 2004 tax year. The Canada Revenue Agency (CRA) delivered Notices of Reassessment in respect of the tax credits beginning in or about 2007 and, ultimately, disallowed them. Taxpayers advanced test cases challenging the CRA's decision. The Tax Court

of Canada released reasons for judgment regarding two taxpayers on October 19, 2015 that upheld the reassessments.

More than 100 donors, including the Representative Plaintiff in the class proceeding, sued the CRA in the Federal Court for negligence. In early 2016, the Federal Court of Appeal struck the Statement of Claim and dismissed the action.

In March 2016, the proposed class proceeding in the Province of Saskatchewan was commenced on behalf of donors against 38 defendants, including the CRA, the promoters and administrators of the program, and various accountants and lawyers. In September 2017, another proposed class proceeding was commenced in the Province of Ontario. The class proceeding in Ontario is approaching the certification stage. Defendants are expected to make motions to strike the proceedings on limitations and jurisdictional grounds.

2017-091

This is a social engineering loss. The firm acted for the vendor of condominiums. A unit sold of \$2.5 million and the insured was instructed to wire the closing funds to the client's mortgage company in partial discharge of its mortgage. Someone managed to get in the middle of the email traffic and advised the firm (via an email address that closely, but not exactly, matched that of the client) to wire the funds to a Hong Kong bank account. Of the \$2.5 million, about \$800,00 has been recovered from the Hong Kong bank. We are working to see if the mortgage company and/or the firm's crime insurer will contribute to the settlement.

The mortgage company rejected efforts to negotiate a settlement short of litigation. Counsel has commenced an action against the mortgage company. The firm's crime insurer successfully resisted a coverage application by the firm.