

APPENDIX N

Brief narrative on open CLLAS claims with ground up reserves in excess of \$2,000,000 (December 31, 2020):

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 liability claims that extended over many years. Several actions were defended without the claimant's insurers contributing to defence costs. The claimant instructed the 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.

The claimant subsequently made a proposal under the *Companies Creditors Arrangement Act*. The Ontario Courts stayed all proceedings by or against the claimant. The claimant has not renewed the tolling agreement. There has been some discussion between the parties about continued mediation, but the primary has indicated that it will not participate unless the claimant considerably moderates its settlement expectations.

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 was required in order for the expert to provide a damages estimate.

Continued examination of the representative plaintiff was not helpful for the claimant's case. The claimant's counsel has still not provided a cogent theory or statement of damages. The court has dispensed with the necessity of a mediation. CLLAS made a time-limited settlement offer which was not accepted by the claimant.

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 was unsuccessful on appeal and was denied leave to appeal to the Supreme Court of Canada. The litigation continues.

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 court denied the motions for summary judgment.

The parties are proceeding with documentary disclosure. Due to the Covid-19 pandemic, the parties had to readjust the timetable for the litigation. The parties have scheduled to complete Examinations for Discovery by the end of October 2021.

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 only matter not covered by the settlement was a personal claim by the former CEO.

After a long period of dormancy, the personal claim of the former CEO reactivated. After an initial flurry of activity, the matter has again gone quiet.

2016-023

The claimant is a commercial lender. The claimant had taken a mortgage on a commercial property. A third party obtained a Certificate of Pending Litigation (CPL) against the subject property. Although the CPL was of dubious merit, the insured inadvertently consented to an order which permitted the CPL to remain on title. The claimant had to pay off the third party to have the CPL removed. Because the CPL was on title, the claimant lost a potential buyer for the subject property. Because of local market conditions, the property remained unsold for several years. The claimant has sued the insured for damages including the cost to remove the CPL, carrying costs, lost profit, and costs.

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 Ontario action was certified upon the agreement of the parties. The Saskatchewan action proceeded to a certification hearing in December 2019. The Saskatchewan court reserved its decision. It has now been over a year since the Certification motion and the Saskatchewan court has yet to release its decision. In the Ontario action, the parties are working out issues regarding documentary disclosure.

LawPRO's limits were exhausted on defence costs on file 2016-107 in the fourth quarter of 2020, triggering CLLAS' reimbursement of defence costs incurred by the insured firm for engaging counsel at hourly rates above those covered by the underlying insurer.

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 firm's crime insurer successfully resisted a coverage application by the firm. The mortgage company rejected efforts to negotiate a settlement short of litigation. Counsel has commenced an action against the mortgage company. Pleadings have been delivered and counsel is preparing Affidavits of Documents.

2020-001

The insured acted for the claimant, a producer of agricultural products, in the sale of its Canadian and U.S. distribution rights to a large U.S. entity. The agreement provided that the distributor would commit to minimum annual purchases of product from the claimant. Due to a market downturn, the distributor fell far short of the minimum purchase requirements.

The claimant made demand for payment of the minimum purchases. The distributor took the position that, pursuant to the language of the distribution agreement, its liability is limited to the amount of product actually purchased in the previous year. This position is at odds with the claimant's intention and another provision of the agreement.

The claimant retained new counsel who takes the position that the insured was negligent in the drafting of the agreement such that there is an ambiguity which severely prejudices the claimant's bargaining power and ability to recover from the distributor. The claimant and distributor reached a settlement which involved new distribution agreements. The claimant has commenced an action against the insured firm for alleged losses.