

Brief narrative on open CLLAS claims with total incurred in excess of \$2,000,000 (March 13, 2017):

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.

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.

2010-059

This matter arises out of work performed by the insured law firm with respect to the restructuring of a major manufacturing company during the financial crisis in 2008/09. Part of the restructuring included the reduction of the company's distribution network. A number of the company's distributors agreed, under severe time constraints, to accept the company's offer to terminate the relationship. Many of these distributors commenced a class action against the company and the insured firm. The decision on the common issues trial was rendered in July 2015. The judge found no liability on the part of the company, but found the insured firm liable.

The essence of the decision is that the firm owed a duty of care to the distributors and should have advised them to band together and negotiate improved terms on a collective basis. As a result, the judge assessed aggregate damages on behalf of the class members in the amount of \$45 million. We believe that the judgment is flawed and that, among other things, the firm's retainer was clear and did not include reviewing the wind-down agreements. The decision has been appealed and the Court of Appeal has reserved its decision.

2010-070

This matter was a class proceeding. Members of the class had invested in what proved to be a fraudulent scheme to acquire interests in gold mining claims. The promoters of the scheme had retained the insured very early for an opinion as to whether ownership of mining claims would qualify for certain tax credits. The investors not only did not acquire any interest in mining claims but were also reassessed by the Canada Revenue Agency for tax credits claimed. The investors sued the promoters and the firm.

We defended the action on the basis that the insured owed no duty to members of the class. The insured's opinion was directed solely to the promoter, premised on a very specific set of assumed facts provided by the promoter, contained numerous qualifications and was not incorrect. We further argued that there was no reliance by members of the class on the insured's opinion.

We were completely successful at trial and the class has abandoned its appeal. We are in the process of recovering costs.

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.

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 partyed the financial advisors who advised their clients to participate in the program.

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.

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.