On November 4, 2008 the Alberta Legislature passed Bill 11, a Bill to amend the Insurance Act of Alberta. Bill 11 was introduced as a means to update the Alberta Insurance Act which has not been significantly changed in the past thirty years. Among other items, Bill 11 introduced greater clarification with respect to the subrogation rights of an insurer.

Much of the call for reform started when the Supreme Court of Canada delivered its judgment on May 1st, 2003 in K. P. Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada. This decision interpreted the provisions of the British Columbia Insurance Act and, specifically, Part V of the Act dealing with Fire Insurance Policies. In this decision, the Supreme Court held that sections of the B.C. Insurance Act under Part V (Fire Insurance) related only to policies which were solely written for protection against the risk of fire. In the K. P. decision, the issue is centered on the proper time limitation involved with respect to making a claim under the policy of insurance. However, the ramifications of the decision was, in essence, to render all statutory provisions listed under the heading “Fire Insurance” inapplicable to today’s multi-peril policies of insurance. The Supreme Court’s decision in K. P. Pacific affected not only the British Columbia statutes, but the insurance statutes of all Provinces which generally include property insurance provisions under the general heading of “Fire Insurance.” The Supreme Court understood that its decision would impact the statutory conditions read into policies of insurance written on a comprehensive basis and stated in the K. P. decision that it was “our hope that legislatures will rectify the situation by amending the Insurance Act to provide specifically for comprehensive policies.”

Sometime after the release of the decision in K. P. Pacific, the British Columbia Legislature did in fact table a Bill to amend British Columbia’s Insurance Act. British Columbia Bill 40 was introduced into legislature for that specific purpose. However, to date, the Bill has not been passed by the British Columbia Legislature.


The new section deals with a number of issues relating to limitation periods, changes to dispute resolution and protection of innocent co-insureds. In addition, it also expands the subrogation rights of the insurer by incorporating wording which was previously found under the automobile insurance section into the property insurance section.

Under the old Alberta Insurance Act, the subrogation section reads as follows:

“553(1) the insurer, on making any payment or assuming liability for making any payment under a contract of fire insurance, is subrogated to all rights of recovery of the insured against any person, and may bring action in the name of the insured to enforce those rights.” (Emphasis added)

Under the wording of the new Alberta Act, the subrogation rights have been stated as follows:
“546(1) subject to section 570(6), an insurer that makes any payment or assumes liability for making any payment under a contract is subrogated to all rights of recovery of the insured against any person and may bring an action in the name of the insured to enforce those rights.”4 (Emphasis added)

Of particular importance is the exclusion of the words “Fire Insurance.” This establishes the right of an insurer to pursue subrogation of its claim once a decision has been made to cover a loss under a multi-peril policy. This wording clarifies the scope of the legislative intent with respect to subrogation and also removes the argument that until full indemnity is paid for a loss, no rights of subrogation exist. Often in complex commercial property claims it will take some time to finalize not only the adjusting of the loss but the investigation into the cause and origin of the loss itself. Under the wording of the new Act, an insurer will be able to commence its subrogated action and acquire rights of subrogation upon making a determination that it is liable to indemnify the insured.

In addition to the above-noted provisions, the new subrogation section of the Alberta Act also provides a specific structure for an application to the court if there is any question as to whether or not the insurer or the insured is to control the subrogation proceedings. The Act provides that the court may make an order it considers “reasonable,” having regard to the interests of the insured and the insurer in any recovery.5

Lastly, the new Act states that a settlement or release given before or after an action is brought does not bar the rights of the insured or insurer unless the insured or the insurer has consented to that settlement/release.6 This provision will further protect an insurer whose insured may enter into a settlement or execute a release prior to commencement of a subrogated action without the insurer’s knowledge.

While it is encouraging to see that Alberta has passed legislation updating its Insurance Act and that B.C. has introduced similar legislation, there has been no such legislation introduced into Ontario Parliament. The Ontario Insurance Act as it stands is subject to the same arguments raised in the Supreme Court’s decision in K. P. Pacific. The Ontario Insurance Act currently refers to its section dealing with property insurance issues under the heading “Fire Insurance”. As such, the conditions contained within that section of the statute may not be applicable under the reasoning of K. P. Pacific to the standard multi-peril property lines of insurance. However, it is interesting to note that the current Ontario statute has language which mirrors one section of the Amended Alberta Act: under section 152 of the Ontario Insurance Act, the insurer “upon making a payment or assuming liability therefore under a contract which this part applies, is subrogated to all rights of recovery of the insured.”7

The wording of the Ontario Act specifically relates it to the “Fire Insurance” part of the statute. Under the decision of K. P. Pacific, it can be argued that the subrogation provisions contained within the Act do not apply to today’s multi-peril lines of insurance. Until the Ontario Parliament introduces clarifying legislation, Ontario insurers will want to ensure that their policies mirror the language of section 152 of the Insurance Act.

For additional information, please feel free to contact the author of this Subro Alert, or any members of Cozen O’Connor’s National and International Subrogation and Recovery Department.

5. Insurance Amendment Act, S.A. 2008 c. 19, s. 546(4).
7. Insurance Act, R.S.O. 1990, i8 s. 152.