

## Insurance Litigation

Our lawyers live and breathe the insurance industry – we know it inside and out. We know what insurers need when it comes to claims: early attention and confident assessments, practical advice, creative and timely resolutions, and a track record of success in the Courtroom.

We have the skill and experience to handle the largest and most complicated claims. We also have the bench strength, flexibility and file handling systems in place to handle a volume of claims.

Our unique way of doing all these things for the insurance industry lets us say: Efficiency is in our DNA.

We provide services in the following areas:

### Coverage Opinions

We represent insurers in the areas of policy drafting, revisions, opinion writing and related coverage litigation over defence and indemnity obligations in liability programs as well as indemnity under first party property programs. We regularly provide coverage advice to Canadian, U.S., European and U.K.-based insurers and reinsurers with loss exposures in commercial, professional and personal lines settings including issues of priority, excess, umbrella, as well as allocation of loss both between insurers and between insurer and policyholder.

### Product Liability

The potential for product liability claims is as wide as the range of products on the market. Our insurance clients have called on us to defend claims involving every imaginable type of product from motor vehicles and parts to micro pumps for helicopters; computers to copper converter furnaces; piers to pipelines; chemical coating compounds to cranes; seat belts to stone crushers; blood products to breast implants. No product is beyond a liability claim, and we are prepared to handle them all on behalf of our clients.

Our firm is a leader in defending class actions, and our familiarity with the legislation and involvement in many of the leading cases gives our clients a distinct advantage in resolving potentially significant claims.

#### Public Authorities Liability

We have been the primary defence counsel for large and small governmental bodies for over 30 years. As a result, we have a recognized wealth of experience in the field as we have defended thousands of general liability and road liability claims involving all the operations of public authorities from maintenance of roads and properties to security and policing to regulatory enforcement and policy development.

#### Personal Injury and General Liability

Daily living brings the potential for injury. Misadventure, slip-and-falls, sports injuries and food contamination are just a few of the types of injury claims we handle for insurers on behalf of insureds as varied as corporations, property owners and individuals. We are also experienced in handling general liability claims which arise from wrongful dismissal and sexual abuse.

#### Auto and Transportation

Our firm boasts some of the country's leading defence counsel on automobile and related *Insurance Act* issues. We have a long history of handling auto tort claims across a myriad of industries, including passenger transport and commercial trucking. We are moreover asked to address cargo loss claims, logistics disputes, environmental issues arising from transport mishaps, product liability in the auto context, and have advised on the regulatory aspects of trucking.

#### Property

Our experience in property cases ranges from ground settlement and faulty building construction to explosions and fire. As in all of our insurance work, we work closely with other professionals in order to develop responsive and understandable expert opinion at an early stage to assist in resolving claims before legal costs mount.

#### Professional Liability

Our colleagues in the legal community are only one of the many groups of professionals we have successfully defended. We also represent doctors, real estate and insurance agents, engineers, architects, accountants, surveyors, adjusters, appraisers, stock and investment brokers and computer software designers.

#### Directors and Officers

We are frequently retained by insurers and insureds with respect to claims against directors and officers. In addition to representing individual directors we often act as monitoring counsel on behalf of insurers, keeping a watchful eye on the way a case is being presented, and working with defence counsel to determine strategy for a successful resolution.

#### Boiler and Machinery

There are often disputes between boiler and machinery insurers and property insurers as to coverage afforded by their policies, as well as disputes between the boiler & machinery insurer and the insured. Our procedure with respect to these claims is the same procedure we follow with respect to property claims, that is, working closely with other professionals and attempting to resolve the problem at an early stage.

#### Life and Disability

We represent life and disability carriers in all aspects of this area of insurance. In addition to drafting and commenting upon policy wording we provide initial opinions on coverage as well as defending claims arising from death, dismemberment and disability.

#### Fidelity Insurance

Our fidelity insurance practice encompasses all aspects of coverage analysis and litigation involving fidelity bonds, commercial crime policies and financial institution bonds. We also have significant experience in fraud subrogation work against employees, co-conspirators, auditors and financial institutions, including obtaining Mareva and other injunctive relief against employees, in order to maximize recoveries by insurers.

#### EPL

We have represented insurers with respect to claims made on employment practices liability policies including wrongful dismissal, and discrimination issues in civil actions and The Human Rights Commission. We have a strong labour and employment group experienced in all workplace matters.

#### Environmental

Contamination of the soil, water and air is an unfortunate consequence of modern life. Even the waste disposal sites and recycling facilities that address environmental problems are themselves subject to pollution by everything from minerals and chemicals to human and animal waste, not to mention flooding and lowering of water tables. Not surprisingly, this is a widely litigated field and one in which we have extensive experience. We have represented insurers in claims arising from chemical leaks and spills, contamination from landfills as well as various types of water and air contamination.

#### Libel and Defamation

We have represented insurers in libel and defamation claims brought against communication companies, broadcasters, newspapers and book publishers, media personalities, as well as governmental authorities.

#### Aviation

We have extensive experience in claims arising out of all types of aviation and marine losses. Representative claims include the Air India bombing, the shooting down of Korean Airlines 007 by the Soviet Union, the Air Canada Cincinnati DC9 fire and the sinking of the Ocean Ranger.

We act on behalf of claimants, defendants and insurers in claims involving everything from

catastrophic claims to a wide variety of general aviation losses. Many of these claims have involved multi-jurisdictional litigation and the application of international treaties and agreements.

### Weather Policies

We have successfully represented insurers on weather policies involving claims for cancellation of outdoor events such as motor sport and ski races and losses resulting from damage caused by weather to property and livestock.

## CLASS ACTIONS

### OUR EXPERIENCE

Blaney McMurtry has been involved in key class actions throughout their history in Canada, acting for both the defendant and the plaintiff class. We have also acted as coverage counsel on some of the major class actions that have been brought in Canada and the U.S., giving our firm a well rounded view on all sides of a class action.

Even before the Class Proceedings Act (“CPA”) was enacted, we were appointed by the Court as a member of the Plaintiffs’ Committee in the Air India litigation and were instrumental in the development of procedures which were later addressed by the CPA. We also acted for the defendants in one of the first successful attempts to defeat certification and have continued to successfully oppose certification on a variety of grounds.

We were heavily involved in the breast implant litigation, which followed a voluntary recall of the implants in 1993. Class action lawsuits were commenced against the various manufacturers of breast implants at a time when class actions legislation was in its infancy in Canada. We acted for one of the defendants in connection with the litigation commenced directly against the manufacturers in Ontario, B.C., and Quebec. We successfully brought a preliminary motion to dismiss the Ontario action, and worked together with U.S. counsel to bring about a comprehensive Ontario/Quebec class action settlement of all silicone breast implant claims.

We have continued to act for defendants in numerous product liability class actions including actions commenced against the manufacturer of the Hepatitis B vaccine, actions commenced against the Federal Government in relation to temporomandibular joint implants, and actions commenced against the Federal Government in relation to silicone gel breast implants. We have also represented defendants in connection with class actions commenced following major disasters such as a propane explosion that forced 12,000 people from their homes, a train derailment, a major fire in an apartment complex, and the August 2003 Regional blackout.

Our experience in class actions includes claims involving product liability, environmental contamination, investment advice, medical treatment, aviation and other transportation disasters, property insurance, car insurance, and travel claims.

Members of the firm's Coverage Counsel Group are also retained from time to time and are intimately involved behind the scenes for primary, excess and reinsurer entities regarding liabilities faced by some of Canada's best known commercial entities and their executives in class action litigation locally, nationally, and in cross-border litigation primarily in the United States. This includes advising on and providing monitoring counsel services for insurance interests in various Canadian and cross-border class actions which usually cannot be identified here owing to the highly sensitive and often very confidential nature of the client involvement.

Our class action lawyers have significant experience in the various provincial courts including not only Ontario, but also Saskatchewan, British Columbia, and Quebec (where, because of the language and the differences between civil law and common law, we assist local counsel rather than appearing directly in Quebec courts). As well we have expertise in Federal Court and the various provincial Courts of Appeal. We have also been involved in Leave applications to the Supreme Court of Canada in relation to some of the class actions in which we have been involved.

#### OUR APPROACH TO CLASS ACTIONS

A class action suit can be a challenge for both the defendants and the plaintiff class. For a defendant, a class action can be devastating in terms of both time and money. Blaney McMurtry's Class Action Group is skilled in guiding a case through all phases of the dispute. Our goal is not only to prevail, but also to minimize disruption, and to move the matter to resolution as quickly and efficiently as possible.

When acting for the defendant, often our first step is to try to limit the action or have it dismissed completely at the pre-certification stage. We have done so successfully in a variety of actions, with the result that our clients have been let out of actions without ever having to participate in a certification hearing or, in some cases following an unsuccessful attempt by the plaintiff to certify the action. We have always succeeded in resolving the litigation prior to a class action trial.

We have also been instrumental in negotiating favourable class action settlements for our defendant clients, giving them peace from future claims of unknown class members and giving them finality in terms of future litigation.

When acting for the plaintiff class, our first step is to properly limit the class and draft the claim in such a way as to ensure that the action is certified at an early stage. We are currently acting for the class in a large claim which seeks repayment of shipping charges. As well, we act in actions involving multiple claimants which do not proceed under CPA. These have included many of the best known transportation losses, particularly aviation including the Air Canada Cincinnati fire, Korean Air Lines 007 and Air India 182, major fire losses such as the Hagersville tire fire and the Alexis Nihon fire, and marine losses such as the sinking of the Ocean Ranger. Our experience with both class actions and large losses enables us to determine which proceeding is most suitable and to obtain the best results which ever way the claim proceeds.

When acting as coverage or monitoring counsel, we are often involved in the negotiation of class wide settlements following an analysis of the available coverage.

## CASE LIST

Specific examples of class actions and mass tort claims we have handled, and/or for which we have acted as coverage counsel, include:

- class action brought in Ontario by investors in tax driven condominium developments as a result of alleged misrepresentations
- class actions brought in Ontario, British Columbia, and Quebec by breast implant recipients against the manufacturer of the implants
- claims brought in Ontario by family members of victims of the sinking of the Ocean Ranger oil rig
- class actions brought in Ontario, Alberta and British Columbia by car owners against their insurers in which the plaintiffs sought to recover their deductibles
- class action brought in Ontario by recipients of a Hepatitis B vaccine against the various manufacturers of the vaccine
- class action brought in Ontario by the families of Special Needs children against the Ontario Government
- class actions brought in Ontario by recipients of temporomandibular jaw implants against the Federal Government
- class action brought in Ontario by insureds against their insurers for losses suffered as a result of the August 2003 Regional Blackout
- class action brought in Ontario by clients of a lawyer against that lawyer for failing to protect their investments
- class actions brought in Ontario, Saskatchewan, and Quebec by breast implant recipients against the Federal Government
- actions brought in Ontario by families of victims of the Air India bombing, the shooting down of KAL 007 and the Air Canada Cincinnati fire
- class action brought in Ontario arising out of a train derailment
- class actions brought in Ontario, B.C., Saskatchewan, Alberta, and Quebec against the manufacturer of luncheon meats
- class action brought in Ontario against telephone service providers
- class actions brought in Ontario, Saskatchewan, and the U.S. against manufacturer of pet food
- class actions brought in Ontario, Quebec, and the U.S. against plumbing manufacturer
- class actions brought in Ontario, Alberta, and the U.S. against roofing manufacturer
- class actions brought in Ontario, B.C., Alberta, Saskatchewan, Quebec and the U.S. against Directors and Officers of a major newspaper conglomerate
- class action brought in Quebec by former students of a school in relation to alleged abuse

- class action brought in Ontario against the Ontario government arising out of the Plastimet fire
- class action brought in Ontario by Canada Post parcel post customers arising out of charges alleged to violate the Weights and Measures Act
- class actions brought in Ontario and Saskatchewan by travelers to Cuba against their Travel Agency for damages allegedly suffered as a result of a water shortage
- class actions brought in Ontario against travel wholesalers arising out of alleged misrepresentations in relation to travel packages
- class action brought in Ontario by residents of an apartment complex following an explosion
- class action brought in Ontario arising out of a major propane explosion in Toronto which forced 12,000 people from their homes
- class action brought in Ontario against a major Canadian bank arising out of alleged misrepresentations made by a third party promoter in connection with loan facilities established by the bank in favour of investors in the promoter's venture
- class actions brought in Ontario and British Columbia against the manufacturer and distributor of a porcine based collagen dermal filler used in the treatment and correction of facial wrinkles and laugh lines
- class action brought in British Columbia against the distributor of a cosmetic filler arising from alleged negligence and misrepresentation in relation to the injections
- class action brought in Ontario against a financial advisor arising from allegedly improper advice relating to leveraged investing

## LEGAL RISK MANAGEMENT SERVICES

We understand that our clients prefer to avoid legal disputes or exposure in the first place. Our broad insurance coverage and litigation experience allows us to go beyond the role of traditional service provider. We help clients assess their legal risks and provide practical advice on how to avoid or minimize future legal disputes or exposures.

Using our knowledge of the law and the insurance industry, we provide a number of legal risk management services, including:

- Assisting clients to identify and anticipate legal risk by examining the context of the potential problem and suggesting practical preventive measures;
- Educating clients on what the law demands to assist in reducing or transferring legal risk;
- Advising risk managers and insurers on steps they should take immediately after a significant loss to provide for an optimal defence;
- Assisting underwriters and policyholders in managing legal risks, including policy wording review, amendment and drafting; and
- Directing coverage-related investigations, communications and negotiations to resolve differences short of coverage litigation.

## RISK MANAGEMENT COUNSEL OF CANADA

[Risk Management Counsel of Canada](#) is a Canada-wide association of independent law firms with expertise in meeting the needs of the risk management industry by providing a range of services for the insurance industry, risk retention groups and self-insureds.

Each of the member firms in Risk Management Counsel of Canada enjoys strong support from both the property and casualty insurance industry and self-insureds, and more importantly, has made a commitment to embrace technology in an effort to solve clients risk management problems.

The members of Risk Management Counsel of Canada believe that in acting collectively as law firms we can deliver legal services for the risk management industry in a manner that supplements the existing litigation management approaches. Some of the key components include:

- Preventative work to minimize claims
- Cost-effective system to handle claims
- Development of a stable, long-term partnership
- Timely response to national or regional risk management issues
- Educational services which are at the forefront of the industry
- Electronic commerce library at clients' disposal
- National magazine on legal developments

Risk Management Counsel of Canada takes the guesswork out of finding experienced legal counsel who have expertise in defending insurers, insureds and self-insureds.

To learn more about Risk Management Counsel of Canada and how its members can assist you, contact [Larry Reimer](#) (416-593-3997) or [Jay Skukowski](#) (416-597-4888).

## RELATED PRACTICES

- Litigation & Advocacy