Interpreting detection provisions in pollution insurance: Insight from the Court of Appeal of Alberta

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On Aug. 13, 2024, the Court of Appeal of Alberta (the ABCA) released its decision in *Paramount Resources Ltd v. Chubb Insurance Company of Canada*, 2024 ABCA 266 [*Paramount*]. The ABCA allowed the appeal, holding that Paramount Resources Ltd.'s (Paramount) insurance policies do not cover losses arising from the Resthaven pipeline leak.

This decision provides guidance on the interpretation of insurance policy provisions that require detection of pollution incidents within a specific timeframe. **The ABCA overturned the summary trial decision because the summary trial judge's interpretation of "detected" relied too heavily on surrounding circumstances, and deviated from the text of the insurance policies.**

Background: Pollution insurance policies and the detection of leaks

Paramount and ConocoPhillips jointly own the Resthaven pipeline, with ConocoPhillips acting as operator. A leak in the pipeline became apparent in 2016, following this timeline:

- On April 21, 2016, the pipeline began to leak low vapour pressure condensate into the surrounding land.
- On April 30, 2016, ConocoPhillips learned of a discrepancy in the amount of condensate entering and leaving the pipeline, but it attributed the issue to the installation of a new measurement system rather than a leak.
- On June 9, 2016, ConocoPhillips observed hydrocarbon contamination on the pipeline right-of-way, and reported the leak to the Alberta Energy Regulator.

Subsequently, ConocoPhillips asked Paramount to pay fifty per cent of the cost of remediating the leak.

Paramount had three active insurance policies that all contained a discovery and reporting provision endorsement, providing coverage for losses related to a “Pollution Incident” that is “detected by any person” within 720 hours (30 days) after commencement. The key coverage issue in this dispute was whether the leak was “detected by any person” within the required timeframe.

The summary trial judge interpreted “detected” to mean knowledge “of credible information that, in the mind of a person of ordinary prudence, would provide reasonable grounds to believe” that a leak occurred. In reaching this definition, the summary trial judge drew heavily on surrounding circumstances, such as the regulatory context and the oil and gas industry standards for leak detection.

The summary trial judge concluded that ConocoPhillips “detected” the leak on April 30, 2016, when it learned of the discrepancy in the amount of condensate entering and leaving the pipeline, even though it did not attribute the discrepancy to a leak at the time.

Analysis: Interpreting leak detection as per the parties’ intentions

In this appeal, the ABCA held that the summary trial judge erred by attributing a meaning to “detected” that strayed from the words of the insurance policies and the parties’ intentions.

In its determination of this issue, the ABCA relied on the contractual interpretation principles set out in *Sattva Capital Corp v. Creston Moly Corp*, 2014 SCC 53. These principles indicate that while surrounding circumstances may be useful in the interpretive process, “courts cannot use them to deviate from the text such that the court effectively creates a new agreement.” The actual words chosen by the parties should be central to the analysis of the parties’ intentions.

The ABCA saw no reason to stray from the plain and ordinary meaning of “detected by any person” or go beyond the language of the contract to incorporate regulatory instruments the parties did not refer to in the insurance policies. It concluded that the leak was not detected until June 9, 2016, when ConocoPhillips observed the contaminated right-of-way. As such, the insurers were justified in denying coverage, as the leak was not detected within 30 days of commencement.

The ABCA further rejected the summary trial judge’s definition of “detected” because it leads to the commercially unreasonable result of requiring a third party to determine when a person of ordinary prudence would have had “reasonable grounds to believe” a leak occurred. This introduces complexity and delay to the insurance claim process.

In addition, provisions requiring pollution detection within a specific timeframe are designed to limit insurers’ exposure to accidents that are ongoing and unaddressed. The summary trial judge’s definition of “detected” exposes insurers to risks they did not bargain for, because “reasonable grounds to believe” can be established before the insured actually observes and addresses the leak.

Key takeaways

This decision clarifies the role of surrounding circumstances in the interpretation of insurance policy provisions that require detection of pollution incidents within a specific timeframe. **Parties that wish to incorporate external standards from regulatory instruments into their detection definition should make explicit reference to these in their insurance policies**. Otherwise, the plain meaning of the word “detected” takes priority, and detection is established when *someone* becomes aware of the incident.

Contact us

If you have questions about this decision or similar insurance-related issues, make sure to reach out to any of the authors or contacts below, or any lawyer from BLG’s Insurance Claim Defence Group.

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