BILL 11 – AMENDED DISPUTE RESOLUTION PROVISIONS AND NEW LIMITS ON CONTRACTUAL POWERS

Bill 11\(^1\) was introduced by the Alberta Minister of Finance and Enterprise on April 30, 2008. The purpose of the proposed legislation is to update\(^2\) the Alberta *Insurance Act*\(^3\) and harmonize it with comparable legislation being proposed in British Columbia.\(^4\) Bill 11, if passed into law, will result in a number of changes, including:

(a) greater powers for the court to strike down contractual provisions deemed unjust;
(b) expanded protections for co-insureds;
(c) new statutory conditions;
(d) clarification of the rules pertaining to fire insurance;
(e) recognition of electronic communications between insureds and insurers;
(f) harmonization of limitation periods;
(g) expanded regulatory making powers;
(h) updated rules concerning subrogation;
(i) new imported contractual provisions/limitations; and
(j) revised rules concerning dispute resolution.

The proposed legislation is aimed at protecting consumers by strengthening the rights of consumers and promoting “transparency, fairness, innovation, harmonization and sustainability”.\(^5\)

Over the past 25 years, there have been a number of minor amendments to the *Insurance Act* but Bill 11 (if passed) will bring the first comprehensive set of changes to the Act in almost 30 years.\(^6\) Bill 11 is not the first attempt by the Alberta Government to make significant substantive amendments to the *Insurance Act*. In 2007, Bill 42 (which contained many of the provisions

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5 *Supra* note 3 at 990.
found in Bill 11) was introduced. Bill 42 failed to pass in 2007 as it was felt that further consultation was necessary. Bill 11 re-introduces many of the key provisions found in Bill 42.\(^7\)

In mid October, 2008, Bill 11 passed second reading and was referred to the Committee of the Whole where a number of amendments were tabled.\(^8\) The amendments do not relate to the issues discussed in this paper. It is not clear whether Bill 11 will be passed into law during the current legislative session as the passage of the B.C. legislation has been delayed.\(^9\)

This paper is not intended to provide an overview of the entire proposed legislation or all of the changes but is rather aimed at addressing two areas where significant changes are being considered, namely, the expanded use of dispute resolution and the expanded powers of the court to strike down contractual provisions.

**DISPUTE RESOLUTION**

(i) The Current Regime

In recent years, there has been a push in most Canadian jurisdictions to encourage the use of dispute resolution procedures such as mediation and arbitration to resolve disputes. Many jurisdictions are using mandatory mediation as a means of trying to get cases resolved at an early stage in the litigation process and help clear up some of the backlog in our court system.

The *Insurance Act* currently includes provisions for dispute resolution in sections 514 and 517 which state:

**Appraisals**

514(1) This section applies to a contract, other than a contract of hail insurance, containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.

(2) The insured and the insurer must each appoint an appraiser, and the 2 appraisers so appointed must appoint an umpire.

\(^7\) *Ibid.*

\(^8\) Alberta, Legislative Assembly, *Hansard*, Issue 34a (16 October 2008) at 1363.

\(^9\) Alberta, Legislative Assembly, *Hansard*, Issue 32 (14 October 2008) at 1297 and 1302 [Issue 32]; Issue 33a (15 October 2008) at 1326 and 1329; Issue 34e (15 October 2008) at 1341; and *ibid.*, at 1367.