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A PERVASIVE PROBLEM: LIMITATION PERIODS APPLICABLE TO FIRST-PARTY CLAIMS

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On April 30, 2008, proposed amendments to the British Columbia *Insurance Act* were presented for first reading. Over one year later, similar amendments to the Alberta *Insurance Act* have received royal assent while the B.C. amendments were left on the legislative table. It's uncertain when they will resurface in a new Bill.

This means that both insurers and insureds in British Columbia remain in the same position they have been for years with regard to the limitation period applicable to first-party losses—caught in a "labyrinthine" statutory scheme which encourages technical legal battles and provides little certainty.

There has been much litigation about the competing limitation provisions contained in the fire insurance, life insurance and general provisions of the *Insurance Act* as well as in various policies. Suffice it to say for the purposes of this article that the limitation period contained in Section 22(1) of the general part of the *Insurance Act* will continue to apply in many first-party insurance policies.

However, Section 22(1) is difficult to interpret. It states: "Every action on a contract must be commenced within one year after the furnishing of reasonably sufficient proof of a loss or claim under the contract and not after." In a series of cases considering coverage under first-party disability policies, the B.C. Court of Appeal appears to have accepted two approaches to Section 22(1): in one the limitation period commences upon the "clear and unequivocal denial of benefits" and in the other on submission of sufficient proof of loss.

In a 2008 case, *Falk v. Manufacturers Life Insurance Co.*, Madam Justice Humphries commented that the courts had "redefined" the limitation triggering event to be a "clear and unequivocal denial of benefits." However, this test was crafted in cases where disability benefits were paid and later denied, so submission of a proof of loss was largely irrelevant and a nonsensical triggering event.

In two earlier cases—*Watterson v. Sun Life Assurance Co. of Canada (c.o.b. Sun Life of Canada)* and *Esau v. Co-operators Life Insurance Co.*—submission of sufficient proof of loss could still operate as a triggering event under Section 22(1), especially where first-time or one-time coverage was being

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applied for (such as in the context of a policy covering specific property). In those cases, the courts assessed whether an insured had provided "reasonably sufficient proof of a loss or claim". In the trial decision in *Watterson, supra,* this phrase was judicially defined to mean "the date upon which the insurer receives a reasonable amount of information permitting it to carry out an assessment of liability in good faith."

If sufficient proof is provided to the insurer and the insurer decides to provide coverage, the limitation issue never arises. On the other hand, if coverage is denied, the insurer will often notify the insured by way of a denial letter. In our view, if an insurer wishes to rely on the date of submission of a proof of loss rather than the later date of the denial (or *vice versa* in the case of an early denial with a later proof of loss), it is prudent to put the insured on notice of the insurer's position regarding the limitation period in the denial letter itself.

As the Court of Appeal recognized in the *Esau* decision, the reluctance of insurers to do this seems to stem from confusion among lawyers and insurers regarding the statutory scheme. However, subject to changes to the current *Insurance Act*, putting insureds on notice may prevent costly litigation of a type that the B.C. Court of Appeal has called "unproductive and wasteful."

Another situation that may arise under the current scheme is one where an insufficient or technically deficient proof of loss is rejected; this defers the running of the limitation period because the insurer has neither denied the claim nor been provided with "reasonably sufficient proof of a loss or claim". It should be remembered that the rejection of a proof of loss is distinct from denial of the claim itself.

If the proposed amendments are re-tabled in their previous form, the new Section 22(1) will provide for a two-year limitation period. This will start from either the "date the insured knew or ought to have known the loss or damage occurred" or, in the case of damage to property in any other case, "the date the cause of action against the insurer arose." This may eliminate the current problems, but, given the uncertainty of the wording, may potentially create new ones.

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