Supreme Court of Canada Addresses Role of Parallel Proceedings in Stay Applications

Canada's highest court has delivered its judgment in *Teck Cominco Metals Ltd. v. Lloyd's Underwriters* (available here). The decision is quite brief and upholds the decision of both courts below, leaving some to wonder why leave to appeal was granted.

Teck has mining and smelting operations in British Columbia. In 2004 it was sued in Washington State for environmental property damage caused by the discharge of waste material into the Columbia River, which flows from Teck's Canadian operations into the United States. Teck notified its insurers, looking to them to defend the claim, but they refused.

Teck therefore sued the insurers in Washington State to establish its entitlement under the insurance policies. The insurers sued Teck in British Columbia to establish their lack of responsibility under the same policies. So the issue became where the coverage issue would be resolved.

Stay applications were brought in both coverage actions. The application failed in the United States. It also failed in the courts of British Columbia, but those decisions were appealed to the Supreme Court of Canada.

Teck wanted Canada's highest court to take a different approach to applications for a stay in cases where a foreign court has already positively asserted jurisdiction. This position was framed in a couple of different ways, but its essence was that the parallel proceedings should be an overriding and determinative factor in the analysis. The court rejected that position, confirming that parallel proceedings are only one factor among many to be considered.

The court's decision is under s. 11 of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28. However, the court confirms that s. 11 is a codification of the common law doctrine of *forum non conveniens*, and so the reasoning should apply equally in provinces which have not adopted a jurisdiction statute (though it would have been helpful for the court to have expressly made

this clear).

Most of the decision is unobjectionable and clear. One point to consider, however, is the court's reference (in para. 3o) to a distinction between interprovincial cases and international cases. This raises the possibility that different considerations could arise as between sister provinces. A refusal to stay proceedings in one province might be treated as determinative of the issue in another, in part because of the possibility of appeal to the Supreme Court of Canada and its binding effect on all provinces, and in part if the other province were required to recognize the admittedly interlocutory decision on the stay application. Both of these are debatable issues, and the orthodoxy would suggest that parallel proceedings in a sister province remain just one factor in the analysis. More guidance from the court on this question would have been welcome.