A GOOD REMINDER FOR CLIENTS: CHECK INSURANCE

A recent British Columbia Supreme Court decision with respect to insurance coverage for contaminated sites is a good reminder that environmental consultants should be reminding their clients to check with their insurance provider as to whether their insurance policies may cover property damage caused by contamination or triggers an insurer's duty to defend in a lawsuit claiming damage to property caused by contamination.

The conventional thought these days may be that insurance policies have evolved to the point where the wording of the insurance policies are clear as to coverage. However, a recent British Columbia Supreme Court case held that the policy wording in that case, triggered, at a minimum, a duty to defend in a lawsuit where there is alleged property damage caused by migrating contamination.

West Van Holdings Ltd. v. Economical Mutual Insurance Company (2017 BCSC 2397) *("West Van")* involved facts whereby the owner/operator of a drycleaning operation was sued by neighbouring landowners in a lawsuit for damages arising out of contaminants alleged to have migrated from the property owned and operated by them to adjacent lands. The drycleaning companies had Commercial General Liability insurance policies for the years 1998 to 2012. The drycleaners sought a Court declaration that their insurers had an obligation to defend them in the lawsuit (that is, pay for the legal costs of defence) where the drycleaners were being sued by the neighbouring landowners in negligence, nuisance, strict liability and for cost recovery under the British Columbia *Environmental Management Act,* for the alleged damage to the adjacent lands caused by the drycleaning business.

While much of the *West Van* case is focussed on insurance law principles and interpretation of insurance contracts, the key point of interest for environmental consultants is that the Court found that the drycleaners' Commercial General Liability insurance policies were not so clearly worded so as to exclude coverage for property damage to the adjacent properties caused by contamination. While the insurance policies included pollution exclusion clauses, the Court determined that the lawsuit against the drycleaners included allegations that provided a sufficient basis from which to find that the action against them raised claims within the scope of the coverage of the insurance policies. The Court then went on to find that the pollution exclusion clause did not "clearly and unambiguously" preclude coverage. Accordingly, the BC Supreme Court determined that the insurers had a duty to defend the drycleaners in the lawsuit commenced by the adjacent landowners against the drycleaners for contaminants that had migrated from the drycleaning operations to the adjacent lands. (The decision does not address whether the insurance policy required the insurer to pay a claim. It addressed the issue of the insurer's responsibility for costs of defence.)

The *West Van* case is a good reminder that clients should check with their insurance providers as to whether insurance coverage may apply. A word of caution, however: Perhaps not surprisingly, the insurers in the *West Van* case have appealed to the BC Court of Appeal. Stay tuned for further developments, but in the meantime check your insurance!

*Note: This is a case law update and is not legal advice