

Insurer Barred from Subrogation against Same-Risk Insurers

Reported Case	<i>Insurance Co. of the State of Pennsylvania v. Cameco Corp. & Insurance Co. of the State of Pennsylvania v. Global Aerospace</i>
Citation	[2010] I.L.R. 5026 & [2010] I.L.R. 5027
The Court	Manitoba Court of Appeal
At Issue	Where more than one insurer has issued a policy of liability insurance with respect to the same risk, and one of the insurers has fully indemnified the insured, can the paying insurer maintain a subrogated action in the name of the insured against the non-paying insurer(s)?
Factual Summary	<p>These two cases arise from the same incident, in which ten employees of Cameco were killed in a helicopter crash in Kyrgyzstan. The families of the employees sued Cameco, who had three potentially relevant insurance policies-- an aviation policy (Global Aerospace) and two general liability policies (ICSOP and American Home). All three said that they were excess policies. Global Aerospace defended Cameco on a reservation of rights basis, while the two general liability insurers denied coverage. Cameco commenced an action against all three insurers for coverage. Eventually, Global settled the families' claims against Cameco for \$6.4 million.</p> <p>More than two years later, Cameco attempted to amend its claim against the three insurers to seek contribution/indemnity on a subrogated basis on behalf of Global.</p> <p>As Cameco's application was winding its way through the system, Global Aerospace was also attempting to commence a claim in its own name against the general liability insurers. However, it was patently clear that Global was out of time for asserting such a claim. Furthermore, in support of Cameco's application to amend, Global had admitted that it was out of time, and this had been accepted by the Court.</p>
Decision	<p>The Saskatchewan Court of Appeal articulated the issue as: "whether, where more than one insurer has issued a policy of liability insurance with respect to the same risk and one of the insurers has fully indemnified the insured, the paying insurer can maintain a subrogated action, in the name of the insured, against the non-paying insurer(s)". The Court held that a paying insurer may <u>not</u> seek to recover contribution on a subrogated basis in these circumstances, but is instead required to bring its own action for contribution. Furthermore, the Court held that the insured's right to maintain an action against non-paying insurers is extinguished once it has been fully indemnified for the loss. Accordingly, not only was Cameco's application to amend its claim dismissed; the entire action was dismissed.</p> <p>Global's claim in its own name was also dismissed, on the basis of issue estoppel and abuse of process.</p>