
Don't End-Run BC And Expect To Get Away With It!

Reported Case:	Lloyd's Underwriters v. Cominco Ltd.
Citation:	2007 BCCA 249
At Issue:	Whether a Canadian Court should decline jurisdiction where concurrent proceedings are underway in another jurisdiction.
The Court:	BC Court of Appeal
Judgment:	April 30, 2007
Factual Summary:	The insured notified its insurers that environmental claims arising from activities of a predecessor company may be brought against it. The largest claim arose from the discharge of waste into a river in BC that found its way into Washington State. The insured started an action against its insurers in Washington State seeking a declaration regarding coverage after an action was commenced against the insured in Washington State. On the same date, the insurers commenced actions in BC seeking a declaration that the insurer had no obligation to defend or indemnify the insured for any of the claims. A judge of the US District Court denied applications by the insurers to dismiss the insured's claims against them. The insured then brought an application before the Supreme Court of British Columbia seeking an order staying the BC actions.
At Trial:	The BC Chambers judge dismissed the insured's applications for orders staying the BC actions.
Appellate Decision:	There was ample evidence to support the Chambers judge's conclusion that the BC Court was a more appropriate forum. First, the plants from which the pollution emanated were located in British Columbia. Second, the insurance policies were purchased in British Columbia or through British Columbia brokers. Third, three of the claims could only be sued upon in British Columbia. Fourth, the proper law of the insurance contracts was British Columbia law. Although the Court regretted actions would proceed in different jurisdictions, the Court observed that a party is not entitled to invoke the laws of a jurisdiction with which it has little or no connection to avoid the laws of the jurisdiction, which is the most appropriate forum for trying the dispute. Appeal dismissed.