

## TGP Successful in Motion to Dismiss Cross-Claims Between Settling Defendant Insurers

### Result

In *Vale Canada Limited v. Royal & Sun Alliance Insurance Company of Canada*, Tom Donnelly of TGP successfully argued on behalf of the settling defendant insurers that the plaintiff Vale Canada Limited (“Vale”) had no standing to oppose the settlement reached between the defendant insurers (the “Settlement”). Justice Myers agreed with the defendants’ position. He approved the Settlement to bar present and future cross-claims by non-settling insurers against settling insurers.

### Background

The plaintiff Vale sued its insurers for coverage for historical pollution that occurred between 1958 and 1992. TGP represented Fireman’s Fund Insurance Co (“FFIC”), one of the many insurers who insured Vale under its policy.

There is an ongoing dispute regarding jurisdiction, with both the Ontario Court of Appeal and the New York Court of Appeals holding that their respective courts have jurisdiction. The litigation is accordingly proceeding in both jurisdictions concurrently.

Vale had settled with FFIC and eight other insurers. The 10 non-settling insurers had actual or potential cross-claims against the settled insurers. The settled insurers brought Rule 20 and 21 motions to dismiss the cross-claims of the non-settling insurers and to bar any future cross-claims. TGP and the settling insurers ultimately reached a consent dismissal with the non-settling insurers on a with prejudice basis. Vale, however, objected to the Settlement and claimed that the settlement prejudiced its position in the jurisdictional dispute.

The New York Court of Appeals had deferred consideration of any cross-claims between the defendant insurers until liability of the defendants to Vale had been established. The defendant insurers agreed that the Settlement would dismiss cross-claims in the US action *without* prejudice. Therefore, under the US settlement the insurers can bring claims for contribution and indemnity in the future.

Vale desires for the claim to proceed in Ontario. Vale argues that the insurers will rely on the difference in settlement structure in the Ontario and New York actions to claim that the US is the more convenient forum because the US action is more comprehensive. Vale requested that Justice Myers refuse the Settlement unless the defendants forfeited the right to future crossclaims in the US action.

Justice Myers noted that the Settlement concerned matters of contribution and indemnity claims between the defendants and did not prejudice Vale’s economic or legal rights. Justice Myers also found that what transpired in the US action did not affect Vale’s rights in the Ontario action. He rejected Vale’s arguments and approved the Settlement, dismissing all cross-claims between insurers in the Ontario action.