

# In the Court of Appeal of Alberta

**Citation: Paramount Resources Ltd v Chubb Insurance Company of Canada, 2024 ABCA 266**

**Date:** 20240813  
**Docket:** 2301-0306AC  
**Registry:** Calgary

**Between:**

**Paramount Resources Ltd**

Respondent  
(Plaintiff)

- and -

**Chubb Insurance Company of Canada, Lloyd's Underwriters, and  
Royal and Sun Alliance Insurance Company of Canada**

Appellants  
(Defendants)

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**The Court:**

**The Honourable Justice Bernette Ho  
The Honourable Justice Alice Woolley  
The Honourable Justice Joshua Hawkes**

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## **Memorandum of Judgment**

Appeal from the Order by  
The Honourable Justice J.T. Eamon  
Dated the 8th day of November, 2023  
Filed on the 29th day of January, 2024  
(2023 ABKB 627, Docket: 1801 08113)

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## Memorandum of Judgment

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### The Court:

[1] The appellants appeal a summary trial judgment which held that the insurance policies issued to the respondent, Paramount Resources Ltd. (“Paramount”), provided coverage for losses sustained by Paramount arising from release of pollutants from a pipeline: *Paramount Resources Ltd v Chubb Insurance Company of Canada*, 2023 ABKB 627 [Reasons]. The appeal proceeded on a written record. The underlying facts were not contentious; the parties filed an extensive agreed statement of facts. The parties agreed that the release commenced “on or about April 21, 2016”<sup>1</sup> and the main coverage issue in the summary trial was whether the release was “detected by any person” within 720 hours after its commencement. The summary trial judge concluded that there was coverage and granted judgment in favour of Paramount in the amount of \$9,740,000.00, plus costs and interest.

[2] For the reasons outlined herein, the appeal is allowed.

### Background

#### *The Operations and the Release*

[3] Paramount and ConocoPhillips (BRC) Partnership (“Conoco”) each owned a half interest in the Resthaven facility, which included a gas plant, low vapour pressure pipeline (“LVP pipeline”) and sales tanks. Paramount and Conoco were parties to a Construction, Ownership and Operating Agreement for the Resthaven facility dated October 1, 2005 (the “CO&O”) that outlined the terms of ownership and operation. Pursuant to the CO&O, Conoco was the operator of the Resthaven facility. Exhibit A to the CO&O is the 1999 Petroleum Joint Venture Association Operation Procedure.

[4] The LVP pipeline transported low vapour pressure condensate from the gas plant to the sales tanks. In late 2015, Conoco decided to install measurement devices called Coriolis Meters on both the inlet and outlet of the LVP pipeline. Paramount authorized the expenditure for the Coriolis Meters by mail ballot. The pipeline went out of service on April 14, 2016. The Coriolis Meters were: installed on April 17, 2016; proven on April 20, 2016; and calibrated and recording accurate information as of April 21, 2016.<sup>2</sup>

[5] On April 30, 2016, Conoco became aware of anomalies in the data being collected by the Coriolis Meters that showed a discrepancy between the amount of condensate entering and leaving

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<sup>1</sup> EKEA 359, Agreed Statement of Facts at para 63.

<sup>2</sup> EKEA 359, Agreed Statement of Facts at paras 60-61.

the LVP pipeline. Conoco conducted further meter reconciliations and pressure testing through May and June 2016, all of which failed or indicated pressure loss. Conoco personnel believed the data anomalies and discrepancies were unreliable, occurring as a result of the newly installed equipment, but nonetheless increased the frequency of right-of-way visual inspections to monitor for leaks.

[6] On June 9, 2016, Conoco personnel observed hydrocarbon contamination on the LVP pipeline right-of-way. Conoco immediately advised the Alberta Energy Regulator (“AER”) and notified Paramount on either June 9 or 10, 2016. Conoco implemented an emergency response plan on June 10, 2016.<sup>3</sup>

[7] In June 2016, Conoco delivered an Authorization for Expenditure (“AFE”) to Paramount demanding reimbursement for fifty percent of the costs associated with remediation of the release of condensate. In addition, starting in June 2016, Conoco issued several joint interest billing invoices to Paramount for further costs and expenses associated with remediation, as well as repairing the LVP pipeline. Paramount refused to pay the AFE and joint interest billing invoices, principally on the basis that Conoco’s acts and omissions constituted “Gross Negligence” as defined in the CO&O. Conoco commenced an arbitration against Paramount and, at one point in time, Paramount’s fifty percent share of the remediation costs was approximately \$24 million. Paramount and Conoco eventually agreed to settle the arbitration proceeding upon Paramount’s agreement to pay \$11 million (the “Settlement”).<sup>4</sup>

### *The Policies*

[8] All parties to the insurance policies at issue in this case are sophisticated corporate entities. Paramount accessed internal and external expertise in securing the policies described below.<sup>5</sup>

[9] Paramount entered a contract of insurance with Chubb Insurance Company of Canada effective July 1, 2015.<sup>6</sup> Paramount also entered contracts of insurance with Lloyd’s Underwriters and Royal & Sun Alliance Insurance Company of Canada effective that same date. The insurance contracts all contain the same terms, definitions, exclusions and conditions, except as to the amount of the premium, amount of coverage and limits of liability (collectively, the “Policies”).<sup>7</sup>

[10] The Policies contain a “Discovery and Reporting Provision Endorsement” providing coverage for sums the insured is legally obligated to pay as compensatory damages because of

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<sup>3</sup> EKEA 359, Agreed Statement of Facts at paras 62-67.

<sup>4</sup> EKEA 360, 368 and 372, Agreed Statement of Facts at paras 69, 96-98, 112 and 118.

<sup>5</sup> EKEA 353, Agreed Statement of Facts at paras 24-25; *Reasons* at para 130.

<sup>6</sup> EKEA 167.

<sup>7</sup> EKEA 351, Agreed Statement of Facts at para 19.

property damage caused by a “Pollution Incident”, provided that the “Pollution Incident” is “detected by any person” within 720 hours (30 days) after commencement. Key provisions of the Endorsement state [emphasis added]:<sup>8</sup>

“Pollution Incident” means an unexpected and unintentional emission, discharge, release or escape of pollutants into or upon land, the atmosphere, or any watercourse or body of water, provided:

- (1) that such emission, discharge, release or escape results in “environmental damage”;
- (2) that such emission, discharge, release or escape is detected by any person within 720 hours after commencement of such emission, discharge, release or escape;
- (3) that the Insured mails or delivers to us notice, in writing, of such emission, discharge, release or escape not later than 2160 hours following the discovery of such emission, discharge, release or escape as described in paragraph (2) above. However, if the insured is a non-operator, such notice must be delivered to us not later than 2160 hours following notification to the Insured by the operator of such emission, discharge, release or escape; and
- (4) that such emission, discharge, release or escape does not occur in a quantity or with a quality that is routine or usual to the Insured’s operation.

...

As a condition precedent to our obligation under this policy, there must be strict conformance with the requirements specified above, regardless of whether we are prejudiced by the failure of these requirements to be met.

[11] The agreed statement of facts provides that “an unexpected and unintentional discharge, release or escape of pollutants into or upon land from the LVP pipeline (the “Release”) ...commenced on or about April 21, 2016”.<sup>9</sup> Thus the Policies required “detection” by May 20, 2016.<sup>10</sup>

[12] The appellants denied coverage on the basis that Paramount had not brought itself within the insuring agreement as the loss was not “detected by any person within 720 hours after

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<sup>8</sup> EKEA 170 and 191.

<sup>9</sup> EKEA 359, Agreed Statement of Facts at paras 62-63.

<sup>10</sup> *Reasons* at para 76; Transcript at p 5/37.

commencement of the emission, discharge, release or escape.”<sup>11</sup> Conoco, as the operator of the facility, took the position that “detection” did not occur until their personnel observed the Release on June 9, 2016.

*The Within Action*

[13] Paramount filed a statement of claim seeking, among other things, damages from each of the appellants in an amount equal to Paramount’s defence costs associated with the Conoco arbitration proceedings, as well as damages for breach of the Policies to the extent that Paramount was legally obligated to pay remediation costs, interest and legal fees and expenses, or any reasonable settlement.

[14] The agreed statement of facts includes a section titled “Agreed List of Issues”:

121. The Insurers dispute that there is coverage under the Policies (up to policy limits) for the Settlement for the following reasons:

- (a) The Release was not detected by any person within 720 hours after its commencement as provided for in the Discovery and Reporting Provision Endorsement;
- (b) Paramount failed to take the steps an insured is required to take after detecting or discovering a “pollution incident” (as defined in the Policies), and such failure resulted in the loss of coverage under the Policies; and
- (c) Paramount did not act as a reasonably prudent uninsured when it settled its dispute with the operator, Conoco, given the Gross Negligence carveout in the CO&O.

[15] All parties agreed that the claim was suitable for summary trial on the basis that the claim was not complex. There were no material factual issues in dispute and resolution of the claim did not depend on witness credibility. The principal dispute was whether the Release was detected by Conoco or its representatives by May 20, 2016.

[16] At the summary trial, Paramount took the position that the Release was detected within the requisite time frame based on events that occurred between April 30 and May 19, 2016. Paramount submitted that detection “requires only that a person has observed or is aware of information indicative of a release”: *Reasons* at para 80. In the alternative, Paramount submitted that Conoco<sup>12</sup>

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<sup>11</sup> EKEA 368, Agreed Statement of Facts at para 95.

<sup>12</sup> The appellants conceded that a “person” could be a person or a corporation.

“had sufficient corporate information to have detected” the Release, and “the Court should apply an objective test, looking at the information that’s in Conoco’s possession and determining what would a reasonable corporation know, based on that information”.<sup>13</sup>

[17] The insurer appellants argued that “detection requires that a person subjectively concludes or is actually aware that a release occurred or is occurring”: *Reasons* at para 80. The insurers’ position was that detection did not occur until Conoco personnel observed the hydrocarbon contamination and subjectively concluded the pipeline was leaking on June 9, 2016. The insurers submitted that before that date, “Conoco personnel were ‘blind’ to the warning signs that the pipeline was leaking and therefore had not detected the release”: *Reasons* at para 16.

### *The Summary Trial Decision*

[18] The summary trial judge held that in interpreting the contract, and for the purpose of determining the objective intentions of the parties, he was required to consider the surrounding circumstances. Those surrounding circumstances included (i) the regulatory context and the customary practice of the industry in which the appellant operates, being the oil and gas industry, and (ii) the customary practice of the insurance industry. The summary trial judge found that the parties were aware that Paramount and Conoco were operating in a highly regulated industry where they were expected to observe safe and efficient practices: *Reasons* at para 142.

[19] The summary trial judge held that the regulatory context included several instruments relating to the operation and environmental regulation of pipelines: the *Pipeline Act*, RSA 2000, c P-15; the *Pipeline Regulation*, Alta Reg 91/2005 (in force at the relevant time); and the Canadian Standards Association (CSA) CSA Z662, *Oil and Gas Pipeline Systems* as adopted by section 9 of the *Pipeline Regulation*. Annex E of CSA Z662 sets the industry standard for leak detection.

[20] Paramount submitted expert evidence on the interpretation of Annex E and how it operates in the industry. It was described by counsel as a “leak detection manual”. While counsel acknowledged that the surrounding circumstances should not overwhelm the reading of the Policies, Paramount nevertheless submitted that the objective intention of the parties was that the word “detect” in the Policies has the same meaning as that word is used in Annex E.

[21] The summary trial judge described the standard in Annex E as requiring operators to have a leak alarm, and operators should presume the leak alarm is indicating a leak unless and until the leak alarm could be clearly and readily explained by some other cause: *Reasons* at paras 143-144, and 235. The summary trial judge concluded that “[t]his regulatory context lends some support to Paramount’s definition of detected – a leak is detected where there is some evidence of a leak and

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<sup>13</sup> Transcript at p 4/17-19.

that evidence has not been clearly and readily explained by some other cause”: *Reasons* at para 145.

[22] The summary trial judge also held that the surrounding circumstances included the practices of the insurance industry, and that the detection clause was “intended to limit exposure to accidents that are ongoing and unaddressed for a defined time period”: *Reasons* at para 137.

[23] The summary trial judge framed the issue before him as follows (*Reasons* at para 112):

The primary issue is: when did Conoco personnel detect the release? Was it when the known data indicated the possibility of a leak? The date when the operator was legally required to behave as if the pipeline was leaking, or when Conoco ought to have known or had reasonable grounds to believe the pipeline was leaking having regard to the known data? When Conoco personnel subjectively concluded the pipeline was leaking? When the evidence shows on the balance of probabilities that the pipeline was leaking? This requires the Court to discern the meaning of “is detected by any person” as used in the insurance policies.

[24] The summary trial judge concluded that the insurer’s interpretation of “detected” was too narrow (subjective conclusion of a release), and Paramount’s interpretation was too broad (some evidence indicative of a release). The summary trial judge arrived at the following definition of “detected”, at paras 176-177:

...The import of detection is that sufficiently significant information becomes known within the detection period that would likely trigger an appropriate inquiry and response.

The parties must have intended, from the objective perspective, that “detected” means knowledge by the person concerned of credible information that, in the mind of a person of ordinary prudence, would provide reasonable grounds to believe that an emission, discharge, release or escape of pollutants may have occurred or be occurring. Reasonable grounds to believe is not speculation nor is it as high as the balance of probabilities. In the case of a pipeline, it is information that would normally require the pipeline under industry practices or CSA Standard Z662 to be shut in pending resolution of the anomalous information.

[25] Based on the summary trial judge’s definition of “detected”, he concluded that the Release was detected no later than the end of day on April 30, 2016 regardless of Conoco’s “subjective refusal to accept the implications of the data anomalies”: *Reasons* at paras 236-237. This was within the 720 hours required by the Endorsement. In effect, the summary trial judge found that the Release was “detected by any person” approximately 40 days prior to the observation of the Release on June 9, 2016, when Conoco notified the AER. Stated differently, the summary trial judge found that the Release was “detected” within 720 hours as stipulated by the Policies,

notwithstanding condensate continued to leak for 40 days after “detection” without Conoco taking any steps to address same.

[26] The summary trial judge characterized the behaviour of Conoco in continuing to operate the pipeline in the face of volume and pressure data anomalies for that period of time as inconsistent with that of a reasonable operator: *Reasons* at paras 8, 16, and 106-110.

### **Grounds of Appeal**

[27] The appellants submit the summary trial judge erred by:

- (a) attributing a meaning to “detected” that was contrary to the clear words of the Policies;
- (b) finding that Conoco, as operator of the LVP pipeline, was not acting as agent for Paramount such that Paramount was not bound by representations made by Conoco to the AER; and
- (c) finding that Paramount was not bound by admissions it made in the arbitration proceeding between Paramount and Conoco regarding Conoco’s failure to detect the Release until June 9, 2016.

### **Standard of Review**

[28] In *Earthco Soil Mixtures Inc v Pine Valley Enterprises Inc*, 2024 SCC 20 the Supreme Court re-affirmed that contractual interpretation involves issues of mixed fact and law which are afforded deference on appellate review: para 27. This is because ascertaining the objective intention of the parties, which is the prevailing goal of contractual interpretation, is an “inherently fact specific” exercise: *Earthco* at para 28.

### **Analysis**

[29] We need only address the first ground of appeal as it is dispositive of the matter.

[30] Much of the argument before the summary trial judge centred on Annex E and Conoco’s actions to investigate the data anomalies in search of the cause of the discrepancy between the amount of condensate entering and exiting the LVP pipeline. On April 30, 2016, it seems that Conoco personnel attributed the data discrepancies to installation of the new Coriolis Meters, rather than as evidence of a leak in the pipeline. In a May 9, 2016 email, Conoco operators noted an approximately 30% discrepancy and wrote: “This system has not balanced from Day 1 when we started it”: *Reasons* at para 96. Conoco recorded a similar anomaly on May 16 but still maintained as late as May 25, 2016 that the LVP pipeline was not leaking. A note from a Conoco

meeting stated: “May 25th leadership meeting working with all parties on the LVP balance issue. Felt confident the line was not leaking. Has been thoroughly inspected”: *Reasons* at para 101.

[31] The foregoing led the summary trial judge to find that “the Conoco operators did not have an organized, documented approach to assessing evidence of leaks for the LVP pipeline”: *Reasons* at para 109. He further found that Conoco did not comply with the mandatory requirements of Annex E for leak detection for the period between April 21 to June 9, 2016: *Reasons* at para 110.

[32] The Policies did not include an express reference to CSA Z662 or Annex E and its leak detection requirements. Despite this, the summary trial judge explicitly referred to CSA Z662 and its detection methods when ascertaining the meaning of “detection”, writing at para 169:

The surrounding circumstances strongly suggest that the parties also contemplated that energy company operations would frequently occur under tight regulatory requirements. The parties probably expected that regulatory requirements imposing standards for detection would be considered in deciding whether a release was detected.

[33] And at para 177 [emphasis added]:

The parties must have intended, from the objective perspective, that “detected” means knowledge by the person concerned of credible information that, in the mind of a person of ordinary prudence, would provide reasonable grounds to believe that an emission, discharge, release or escape of pollutants may have occurred or be occurring. Reasonable grounds to believe is not speculation nor is it as high as the balance of probabilities. In the case of a pipeline, it is information that would normally require the pipeline under industry practices or CSA Standard Z662 to be shut in pending resolution of the anomalous information.

[34] In *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53, the Supreme Court held that while surrounding circumstances may be relied upon in the interpretive process, “courts cannot use them to deviate from the text such that the court effectively creates a new agreement”: para 57. In our view, while the summary trial judge was rightly cognizant of the surrounding circumstances when arriving at an interpretation of “detected”, the summary trial judge allowed those surrounding circumstances – the regulatory context, the contents of Annex E, and the actions of Conoco’s personnel – to overwhelm the analysis, effectively introducing a deviation from the text of the Policies in a way that was not intended by the parties at the time the agreements were entered into. We arrive at this conclusion for several reasons.

[35] First, in determining the objective intention of the parties, the “actual words chosen are central to the analysis because this is how the parties chose to capture and convey their contractual objectives”: *Earthco* at para 63. We agree that the phrase “is detected by any person” is a coverage provision that should be construed broadly (*Ledcor Construction Ltd v Northbridge Indemnity*

*Insurance Co*, 2016 SCC 37 at para 51), but we see no reason to stray from the plain and ordinary meaning of those words. Conoco observed the Release on June 9, 2016 when personnel were inspecting the LVP pipeline right of way, and thereafter reported it to the AER.

[36] Second, as already noted, the Endorsement and definition of Pollution Incident did not refer to any regulatory instruments, including CSA Z662 or Annex E. It would have been simple for the parties to expressly incorporate Annex E by reference at the time the Policies were entered into if that is what the parties intended. In these circumstances, the trial judge erred by going beyond the language of the contract to incorporate regulatory provisions that the parties could have incorporated, but did not.

[37] Third, the summary trial judge's interpretation increases the likelihood of needing a third-party to adjudicate when a person of "ordinary prudence" had "reasonable grounds to believe" a release occurred. Detection in that interpretation does not depend on events that occurred like actual detection by a person, but events that ought to have occurred. The parties are more likely to be able to determine and agree without third-party adjudication what did occur, than what ought to have occurred. In our view the summary trial judge's interpretation leads to a commercially unreasonable result, contrary to the canons of contractual interpretation: see *Swan Group Inc v Bishop*, 2013 ABCA 29 at para 23 citing *Consolidated-Bathurst Export Ltd v Mutual Boiler and Machinery Insurance Co*, [1980] 1 SCR 888 at 901, 112 DLR (3d) 49; see also *Ledcor* at para 78. Requiring a third-party to adjudicate what was "in the mind of a person of ordinary prudence" would introduce delay and complexity to an insurance claim process; that is, in our view, not a commercially sensible result.

[38] Fourth, the summary trial judge's interpretation exposes the insurer to a risk that it did not bargain for and renders the 720-hour clause in the Endorsement meaningless. The requirement for a release to be detected by any person within 720 hours after commencement is, on its face and as found by the summary trial judge, intended to limit the insurer's risk: "the detection clause is part of the policy structure intended to limit exposure to accidents that are ongoing and unaddressed for a defined time period": *Reasons* at para 137 [emphasis added]. In our view, the summary trial judge's interpretation defeats that main objective: see *Consolidated-Bathurst Export* at 901-2. The objective standard of "reasonable grounds to believe" introduces a potentially indeterminate time period between when "reasonable grounds to believe" are established and the time when a release is actually observed, whether through measurement devices or direct observation. This potentially indeterminate time gap unreasonably subjects an insurer to exposure for losses that were never bargained for.

[39] Finally, in construing the words chosen by the parties, the words must be read in light of the entire agreement: *Sattva* at para 57. In this respect, the summary trial judge's expansive interpretation of Pollution Incident and reporting requirements is inconsistent with the provision requiring "strict conformation" with those reporting requirements included in the Endorsement.

[40] We conclude that based on the contract as a whole and the objective intent of the parties, the Release was “detected” on June 9, 2016. As a result, the appellants were justified in denying coverage to Paramount on the basis that a Pollution Incident, as defined in the Endorsement, had not been established because the Release was not detected by any person within 720 hours of its occurrence.

[41] Accordingly, the appeal is allowed.

Appeal heard on June 13, 2024

Memorandum filed at Calgary, Alberta  
this 13th day of August, 2024

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Ho J.A.

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Woolley J.A.

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Hawkes J.A.

**Appearances:**

J.A. Legge

N. Ng

for the Respondent

K.D. Marlowe, KC

D.V. Tupper (no appearance)

C. Williams

for the Appellants