lavery
Lawyers

Damages that result from inadequate product performance and tacit waiver of the right to assert a ground for exclusion: the Quebec Court of Appeal clarifies the situation

April 1, 2009

On September 24, 2008, the Court of Appeal reversed a decision by the Superior Court that had allowed an insured's claim against its insurer for damages caused as a result of the removal of a product manufactured by the insured.

The Court of Appeal ruled that a multi-peril civil liability insurance policy did not cover the damages claimed as a result of the removal of a defective product manufactured by the insured. It also ruled on the consequences of the failure to raise a ground for exclusion at the proper time.

This decision clarifies that the sole fact that an insured's product is defective cannot be considered a loss. Liability insurance does not cover monetary claims resulting from defective products where there is an exclusion clause to this effect. Only losses and damages resulting from accidents are covered.

The insurer who fails to raise the appropriate exclusion in its letter of denial and in its defence risks having to pay the price for its inadvertence.

Therefore, from the moment a claim is made, the file must be thoroughly studied in order to ensure that all the grounds of defence are invoked.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.