

# Recoveries:

## Leaving no stone unturned

*LAWPRO may not be able to control the types and scope of claims reported by insureds. But we can, and do, actively pursue our rights of recovery on files, as the following summaries of some of our successful files from 2010 indicate.*

### A repair and recovery

The insured lawyer's clerk inadvertently sent documents of a confidential nature to opposing counsel. This triggered the underlying proceeding between two brothers over a shotgun provision in a shareholder's agreement. The insured, who acted for the defendants in that underlying proceeding, in effect repaired the situation by successfully pursuing summary judgment which was upheld on appeal. We paid the insured for that repair initiative. Costs of more than \$248,000 were awarded in favour of the defendants, which were recovered and paid to LAWPRO.

### Recovering on a fraud

In this case, an insured lawyer was retained by a lender claimant in relation to a mortgage of \$740,000 on a piece of vacant land. The mortgage proceeds were issued to counsel retained by the purported owner of the property/borrower. Borrower's counsel then issued separate certified cheques to several numbered companies for the amount of the mortgage proceeds.

The borrower was a fraudster; the true owner of the property resided abroad and knew nothing about this mortgage. The mortgage broker who had arranged the financing did not complete his due diligence and arranged the mortgage after accepting only two pieces of identification and without confirming the borrower's identity.

The claimant discharged the mortgage (because a fraud was proven) in exchange for an acknowledgment that LAWPRO would pay its claim.

The insured in this case was liable because he had failed to ensure that the lender claimant's request for a title insurance policy was fulfilled in time. Had title insurance been obtained, the claimant's loss would have been covered by the title insurer.

LAWPRO paid out more than \$750,000 (\$740,000 plus costs and interest) to the lender claimant on behalf of the insured lawyer, and compensated the true owner of the property for costs associated with this fraud. LAWPRO successfully pursued the broker for the return of his \$20,000 fee, and has since recovered \$275,000 from two banks through which the cheques to the numbered companies were issued.

### The case of the sick ship

An insured lawyer failed to issue a statement of claim within the two-year limitation period applicable as per the "Athens Convention." The claim was against a cruise ship owner for damages arising as a result of the cruise ship's failure to warn of an airborne disease in existence on the boat, resulting in lasting illness. LAWPRO paid out more than \$200,000 to settle the claim and took an assignment of the claimant's cause of action against the tour operators. The subrogation/recovery proceeding was settled at mediation with LAWPRO recovering 100 per cent of its indemnity and defence costs.

### Estate taxes come back to bite

An insured lawyer acting on the administration of an estate gave the estate executor permission to make an interim disposition of the estate's assets; although the insured lawyer knew that there would be a significant tax liability because of the deemed disposition on death, the insured held back only \$12,000. The majority of the deceased's assets were in RRSPs. Subsequently the insured received the tax return prepared by the accountant which showed \$90,000 owing – plus interest and penalties. LAWPRO paid out just over \$103,000 but was able to recover more than \$76,000 from the overpaid beneficiaries.

### Pursuing the fraudster can pay

An insured lawyer's client provided the lawyer with an altered certified cheque representing purchase funds in a transaction. The original cheque for \$160 became \$160,000. There was no mortgage financing and the insured's client had title to the subject property. Once the fraud came to light, LAWPRO arranged for a no-dealings indicator to be registered on title; working with the insured, LAWPRO also arranged to cover the shortfall in the insured's trust account. The fraudster sold the property and repaid the \$160,000 so that we were fully compensated (with the exception of LAWPRO expenses).

### Pursuing the vendor

In this file, the insured lawyer, acting for a vendor in a real estate transaction, failed to discharge a mortgage and released the funds to his vendor client instead. LAWPRO settled with the title insurer on the transaction for \$55,000. LAWPRO also pursued the vendor and settled with that individual on a recovery claim for \$70,000.