The Unbreakable Limit Remains Unbroken: the Supreme Court of Canada Decision in *Peracomo Inc. v. Telus Communications Company*, 2014 SCC 29

Background and Decisions Below

This case dealt with whether the defendants could limit their liability pursuant to the *Marine Liability Act* (the "*Act*") and the *Convention on Limitation of Liability for Maritime Claims, 1976* (the "*Convention*") following the cutting of Telus' underwater cable after it was fouled on a fishing boat's anchor. Although the Defendant Mr. Vallée's thought that the cable was abandoned, the trial judge held that his actions in cutting Telus' submarine cable was negligent and that Telus' loss was solely due to Mr. Vallée's intentional and deliberate actions. Consequently, the trial Court held that the defendants could not limit their liability to $500,000.00 pursuant to the *Act* and the *Convention* nor were they entitled to coverage from their insurers as Mr. Vallée's conduct was both intentional and reckless. The trial decision broke new ground in Canadian law in that this was the first time that the limitation contained in the *Convention* was broken.

The Federal Court of Appeal dismissed the defendants' appeal and focused on Mr. Vallée's action in conducting this "dangerous" cutting operation.

Supreme Court of Canada Decision

On April 23, 2014, the Supreme Court of Canada released its decision overturning the decisions below on the limitations issue and affirming the decisions relating to the exclusion of insurance coverage.

In concluding that the defendants were entitled to limit their liability pursuant to the *Convention* the Court noted the Convention limits were intended to be "virtually unbreakable". Unlike the Courts below, the Supreme Court concluded that as Mr. Vallée "did not actually know that his actions would probably result in damaging someone's property who would then have to repair it. It was therefore an error of law to conclude that Mr. Vallée intended to cause a loss, or was reckless knowing that such loss would probably occur, within the meaning of art. 4 [of the *Convention*]."

The Court held that although Mr. Vallée's conduct did not meet the high level of fault to break the *Convention* limitation, it did amount to "misconduct with reckless indifference to the known risk despite a duty to know" and that therefore there was no insurance cover available.

As the Supreme Court of Canada is the final level of Court in Canada, its decision returns us to a situation where no Canadian Court has disallowed limitation and reaffirms a stringent test for attempting to do so in the future.

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