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CASE SUMMARY: A DEDUCTIBLE WAS NOT BINDING ON THE INSURED BECAUSE THE INSURER DID NOT COMPLY WITH SECTION 31 OF THE BC INSURANCE ACT

The deductible in a course of construction policy was not binding on the insured because the insurer failed to comply with s. 31 of the *Insurance Act*.

Insurance law – Builder’s risk policy – Statutory provisions – Rectification – Promissory estoppel

PCL Constructors Westcoast Inc. v. Royal & Sun Alliance Insurance Co. of Canada, [2019] B.C.J. No. 929, 2019 BCSC 822, British Columbia Supreme Court, May 23, 2019, C. Murray J.

The insured construction company brought a summary trial application seeking a declaration that its insurance claim was not subject to a deductible. The insured had obtained an order declaring it an insured under a course of construction policy, but the insurer took the position the claim was subject to a \$250,000 deductible. The insured argued that the claim was not subject to the deductible because the policy did not comply with s. 31 of the BC *Insurance Act*, which requires a contract of insurance containing a deductible to “have printed or stamped on the front page in conspicuous bold type words ‘This policy contains a clause which may limit the amount payable’”. The issues before the court were the effect of non-compliance with s. 31 of the Act and whether the insurer could rely on equitable doctrines of rectification or promissory estoppel to give effect to the deductible.

The court granted the insured’s application. The case law was clear that if the words mandated by s. 31 of the Act do not appear on the front page of a policy, then a deductible is not binding on the insured. Section 31 of the Act was to be strictly construed even when the insured knew of the deductible and agreed to it. The law was settled that equitable remedies are not available against statutory duties. Equitable remedies could therefore not be invoked by the insurer in the face of a mandatory statutory requirement enacted for the benefit of the insured.

This case was digested by [Paul R. Saunders](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Paul R. Saunders at psaunders@harpergrey.com.