

Bob Ward, Q.C. and Lilac Bosma Win Landmark Insurance Law Victory

*Bulldog Bag Ltd. v. Axa Pacific Insurance Co.*, 2011 BCCA 178, is the first appellate decision regarding a CGL policy in Canada since the Supreme Court of Canada's decision in *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33. Full reasons for judgment may be found on the website of the Court of Appeal: <http://www.courts.gov.bc.ca/jdb-txt/CA/11/01/2011BCCA0178.htm>

This case marked the first opportunity for a court to apply the principles enunciated in *Progressive* to the determination of an insurer's liability, as opposed to an insurer's duty to defend.

The insurer argued that even though the requirement of third party property damage had been negated in *Progressive*, the exclusion which denied coverage for claims for property damage to goods or products manufactured or sold by the insured ought to be interpreted so that Bulldog could not recover the costs of the extensive repair program undertaken to mitigate consequential losses arising from the insured's defective goods.

Mr. Ward and Ms. Bosma argued that the language of the exclusion at issue was not sufficiently broad to exclude coverage for such a sweeping category of loss, and that the clear meaning of the language was to exclude the cost of the defective bags themselves, not all costs flowing from the supply of the defective bags.

The Court of Appeal accepted the argument of Mr. Ward and Ms. Bosma and rejected Axa's argument, holding:

"...the clause operates to exclude claims for damage to Bulldog's bags, including loss of use thereof, but cannot be extended to compensation for Sure-Gro's costs separating those bags from its products, repackaging in different bags, and salvaging the 'old' product some months later. To deny coverage would, as Mr. Ward suggested, be a 'perversion' of *Progressive Homes*."