

CONSTRUCTION IN VANCOUVER

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SCOT

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Europe than in British Columbia, vegetative roofs are, nonetheless, gaining ground.

For example, the vegetative roof on Vancouver's new convention centre is the largest in Canada. Even it, however, is small compared to some of the vegetative roofs built in Europe and the United States.

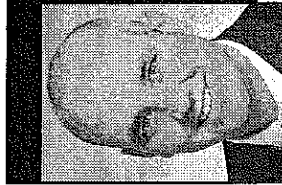
In addition to operating a series

conservative in her estimates, she is sticking with the 28% figure.

The depth of the soil is important. A six-inch-thick vegetative roof will retain considerably more water from a summer downpour than a three-inch-thick roof. This is no doubt a bigger factor in places such as Calgary or Toronto where dramatic summer downpours are

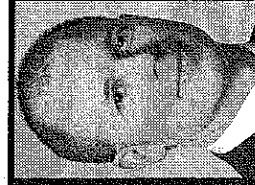
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LEGAL SPECS

STREU



HIRST

Likely good news for leaky-condo owners

Supreme Court ruling on insurance protection impacts both builders and customers

The Supreme Court of Canada recently delivered an important decision likely to have a significant impact on the construction industry and those who use its services.

The case involved the scope of commercial general liability policies, participants from legal liability, the

Progressive Homes referred the matter to Lombard for defence, but Lombard refused to defend Progressive on the grounds that the alleged damage was not covered by its policy. Progressive challenged Lombard's coverage refusal, eventually taking the case all the way to the Supreme Court of Canada.

In the Supreme Court, Lombard made three arguments as to why the damage to the buildings was not

see **Future, C11**

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Future: Plaintiffs likely to see more money

from **Likely C-1**

covered by the CGL policy.

First, Lombard argued that damage caused to one part of a building from another part of the same building did not meet the definition of "property damage" in its policy. Lombard said "property damage" only applies to damage done to a third party's property, not damage done to Progressive's own work.

Second, Lombard argued the damage was not caused by an "accident" or "occurrence." They said that where there are defects in the construction of a building, the result is a defective building, not accidental damage.

Finally, Lombard argued the policy excluded the work of subcontractors who do work on behalf of general contractors.

The Supreme Court rejected all three arguments. In doing so, it confirmed that there only needs to be the "mere possibility" that damage alleged in a lawsuit is covered by a policy to trigger the insurer's "duty to defend" the insured. Importantly, the

court emphasized that courts should approach the interpretation of insurance policies by giving the words in the policy their plain meaning.

With that in mind, the court found there was no reason to conclude that the words "property damage" in the Lombard policy could be narrowly interpreted as only meaning "damage to a third party's property" as argued by Lombard. Since there was alleged damage to the buildings in question, that was sufficient to qualify as property damage under the policy.

In a similar vein, the Supreme Court rejected Lombard's argument that faulty workmanship is never an accident. The Supreme Court gave "accident" its plain meaning -- that is, an event that the insured neither expects nor intends. Since Progressive did not intend or expect property damage, the damage was an accident for the purpose of the policy.

The Supreme Court also rejected the argument that the work of subcontractors was excluded by the "Work

compensation package. The BCCA Employee Benefit Program has been designed by industry to meet the unique needs of construction employees.

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Performed" exclusion to the policy.

In reaching its decision, the Supreme Court emphasized that each coverage case must be decided on its own facts and there are no hard-and-fast rules about what the language in CGL policies means generally. Coverage will always depend on the exact words used in each insurance contract.

Many insurers use similar policy language as the language analyzed in this decision. The finding by the Supreme Court that there was coverage here will likely have significant repercussions for numerous other construction claims in Canada where insurers have, until now, refused to

defend contractors for building deficiency claims.

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It is significant to note, however, this case only dealt with what is known as an insurer's "duty to defend." In other words, while the case has expanded the circumstances where contractors will be defended pursuant

to a CGL policy, it does not speak at all to when an CGL insurer may have to indemnify a contractor if a judgment is rendered against the contractor.

It is an interesting, albeit not well known, feature of insurance coverage that an insurer's duty to defend its insured is not always co-extensive with the insurer's duty to indemnify its insured.

What does this mean for the future? In the short term, and in particular for existing leaky condo claims in British Columbia, this decision will likely mean plaintiffs will see some increase in the amount of money available to settle claims as the cost to CGL

insurers of defending these actions will have increased. In the long term, we anticipate this decision will mean a significant tightening of CGL policy language in which insurers will attempt to exclude coverage for claims arising from the contractor's own work product. ♦

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