

Headline: The Case Of The Unpaid Insurance Deductible – Part 2

Publication date: September 2007

Publication: CHOA Journal

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In the last edition of the Journal, I discussed the case of *The Owners, Strata Plan LMS 2835 v. Mari* in which the British Columbia Supreme Court considered a strata lot owner's responsibility to pay a Strata Corporation's insurance deductible. The Court concluded that a Strata Corporation can successfully sue an owner for the deductible if the owner has caused or brought about the event that resulted in the damage. The owner does not have to be negligent in order to be considered "responsible" and thus liable to pay the deductible.

A second decision regarding insurance deductibles and reimbursement to a strata corporation provides further guidance on an owner's responsibility to re-pay the strata corporation for the cost of repairs. Both cases highlight the importance for an owner of obtaining appropriate and adequate insurance.

In *Strata Plan KAS 1019 v. Kieran, Simkus and Wawanesa*, the Strata Corporation sued the owners of a strata lot in Small Claims Court for the cost of repairs to their strata lot that were required after a water pipe burst. The burst pipe was behind a bedroom wall and burst as a result of high acid levels in the local water and not as a result of any negligent act or omission of the owners.

The damage that occurred was restricted to inside the owners' strata lot. No common property was damaged. The strata corporation repaired the damage at a cost of \$3,787.80. At the time, the deductible for the insurance maintained by the strata corporation was \$10,000. Because the damage was below the amount of the deductible, the strata corporation did not make a claim on its insurance. The strata corporation requested that the owners reimburse the strata corporation for the \$3,787.80 that it paid to repair the owners' strata lot. The owners' insurance company (Wawanesa) paid \$2,500 to the strata corporation. Wawanesa refused to pay any additional funds based on the wording of the policy in place between Wawanesa and the owners.

The strata corporation sued the owners for the remaining \$1,278.80. The owners claimed against Wawanesa.

In reaching her decision, the Provincial Judge considered two issues, namely the obligation of the owners to repair their strata lot and the wording of the insurance policy that the owners had with Wawanesa.

Owner's obligations to repair

The Judge noted that, under the bylaws, owners are responsible to carry out repair and maintenance to their strata lot. The strata corporation's responsibility is to repair and maintain common property. The Judge also noted that neither the pipe nor the area that was damaged was within the strata corporation's responsibility to repair and maintain. The Judge concluded that because the damage occurred within the strata lot and not to common property, the obligation to carry out and pay for the repair was the responsibility of the owners. The Judge stated that although the strata corporation had a duty to obtain insurance, it did not have a legal obligation to pay for the repairs to the strata lot.

In this case, because the strata corporation had carried out the repair, it was entitled to recover the full amount that it had paid to repair the strata lot.

Insurance Policy

The next issue for the Judge was whether the owners could recover the amount that must be paid to the strata corporation from their insurer, Wawanesa. The Judge concluded that Wawanesa must pay to the owners the amount claimed by the strata corporation, minus the deductible of \$500. The Judge reached her decision based on the wording of the insurance policy. The decision was upheld on appeal to the British Columbia Supreme Court.

As individual policies vary, it is not necessarily helpful to review the precise wording of Wawanesa's policy. Rather, the real significance of the decision is that it highlights the need for every owner to closely review the language in their policy to be sure that they are appropriate and adequately insured.

Appropriate and adequate insurance coverage

To determine whether their insurance policies are appropriate owners should determine how their current policy would respond to the following situations:

You turn on your dishwasher and walk out of the kitchen. The pump or hose underneath the dishwasher breaks. As you are sitting in the living room reading the newspaper, you notice that your feet are getting wet and you then discover the water coming from the kitchen.

Scenario 1

1. The damage is confined to only your strata lot, but there is damage to the flooring, carpeting, parts of the drywall, and portions of the kitchen cupboards.
The strata corporation has a deductible of \$25,000.
The strata corporation contacts the restoration company and arranges for the clean up and repairs. The strata corporation then advises you that the cost is \$22,000. The strata corporation is entitled to recover these funds from you based on the *Kiernan* decision.

Does your insurance policy cover the \$22,000?

2. The damage from the dishwasher is not confined to your strata lot and the water damages common property and other strata lots.
The cost to repair is \$35,000, the insurance deductible is \$25,000.

Although you were not negligent, the strata corporation has advised you that you must reimburse the strata corporation for the \$25,000 deductible. If there are no bylaws that limit the strata corporation's ability to recover, the strata corporation is entitled to collect the \$25,000 from you based on the *Mari* decision.

Does your insurance policy cover the \$25,000?

To determine whether the amount of their insurance is adequate, owners should know the amount of the deductible on the Strata Corporation's policy. Because owners may be obligated to pay the deductible on the strata corporation's policy, owners may wish to obtain insurance, to the extent that it is available, to pay the deductible if necessary.

The significance of having appropriate and adequate insurance cannot be overstated.

Many owners believe that they will only be required to pay the strata corporation's insurance deductible if they are negligent or do something foolish. However, based on the *Mari* and *Keirnan* cases, the every day and innocent acts of turning on a dishwasher or a washing machine can expose owners to costs in the tens of thousands of dollars if the dishwasher or washing machine malfunctions. Having appropriate and adequate insurance is now more important for strata lot owners than ever before.

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page 2

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