

Headline: **The Case Of The Unpaid Insurance Deductible – Part 1**

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Who pays the insurance deductible for claims on Strata Corporation insurance policies?

This question has plagued most Strata Corporations at one time or another.

A recent decision of the British Columbia Supreme Court has now provided some assistance in answering this question.

In the case of *The Owners, Strata Plan LMS 2835 v. Mari*, the Strata Corporation brought an action in Small Claims Court against the Maris, owners of a strata lot, for an insurance deductible of \$5,000.

As a result of approximately \$10,000 in damage cause by an overflowing washing machine in the Maris' strata lot, the Strata Corporation made a claim on its insurance which had a \$5,000 deductible. The Strata Corporation sued the Maris for the amount of the deductible.

The evidence was that the washer had overflowed because of a faulty water level switch. At trial, the Maris argued that they were not negligent because they did not know that the washer level switch was faulty and therefore that they should not be liable for the deductible.

Section 158 of the *Strata Property Act* ("SPA") addresses the matter of insurance deductibles as follows:

Insurance deductible

158 (1) Subject to the regulations, the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with section 99 (2) or 100 (1).

(2) Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.

At trial, the Strata Corporation relied on section 158(2) of the SPA which permits the Strata Corporation to sue an owner if the owner is "responsible" for the damage. The Strata Corporation argued that the meaning to be given to the word responsible did not require an owner to be negligent, but merely to have allowed or caused the event that resulted in the damage.

In relation to the Maris, this meant that they did not need to be negligent in the operation or maintenance of their washing machine in order to be "responsible" for the deductible. Instead, to be responsible for the deductible all that was required was that the Maris had the washing machine in their strata lot and allowed or caused the washer to be used. Because the washer subsequently overflowed

and caused damage, the Maris were “responsible” for the deductible. The Small Claims Judge agreed with the argument of the Strata Corporation. On appeal to the British Columbia Supreme Court, the British Columbia Supreme Court also agreed with the Strata Corporation and upheld the decision. The Maris were required to pay the deductible.

The British Columbia Supreme Court considered the circumstances that exist in a single family home. The Judge noted that there are a number of examples of appliances and other items that may result in water escape such as dishwashers, air conditioners and water dispensing refrigerators. The Judge noted that if an appliance malfunctioned and allowed water to escape in a single family home, the homeowner would make a claim on their insurance to repair the damage but the homeowner would be responsible for the amount of the deductible. The Judge concluded that section 158(2) of the SPA simply allows a Strata Corporation to set the same standard for the payment of a deductible as would exist in a single family residence. As a result of section 158(2) and the meaning given to the word “responsible” in that section, it is clear that owners may be called on to pay the deductible whenever their actions have caused the damage even though they were not negligent. In the *Mari* decision the Supreme Court did not consider the Strata Corporation’s bylaws, but relied on section 158(2) of the SPA which provided the Strata Corporation with the authority to sue the Maris.

The decision in *Mari* is very important for strata lot owners. It is now clear that strata lot owners can be required to pay the Strata Corporation’s insurance deductible which can be as high as \$25,000 and in some case, even higher. The obligation to pay may arise even though the owner was not negligent. Strata lot owners should be aware of this possible obligation and should discuss the availability of insurance to insure against this risk with their insurance agent.

In the *Mari* case, the Strata Corporation had a bylaw which stated only that the insurance deductible costs are the responsibility of the strata owner. However, in many Strata Corporations, the bylaw only requires owners to pay the deductible if the owner commits an “act or omission” that causes the damage. Such language has been interpreted by the Courts to imply negligence. If a Strata Corporation with such a bylaw attempts to collect the deductible from an owner, a Court may conclude that the Strata Corporation has limited the circumstances under which it may collect a deductible from those circumstances where owners are “responsible” to those circumstances where owners are “negligent”. In other words, a Court may determine that the owners, through their bylaws have intentionally limited the times when owners must pay the deductible. If a Strata Corporation that has a bylaw referring to acts or omissions wishes to sue owners to collect insurance deductibles in cases where owners are “responsible”, the Strata Corporation should seek legal advice with regard to amending their bylaws.

The *Mari* decision clarifies once and for all, that a Strata Corporation may sue a strata lot owner to recover the insurance deductible even though the owner is not negligent and has merely caused or brought about the events that resulted in the damage.