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CASE SUMMARY: DAMAGE CAUSED BY ERROR IN INSURED'S WORK COVERED BY INSURED'S CGL POLICY

An insured settled with a facility owner for fire damages caused by an error in the insured's work. The insured's CGL policy indemnified the insured for the insured's losses as "compensatory damages for property damage".

Insurance law – Commercial general liability insurance – Builder's risk – Property damage – Exclusions – Interpretation of policy – Practice – Summary judgments

Community Electric Ltd. v. Sun Alliance Insurance Co., [2018] S.J. No. 484, 2018 SKQB 319, Saskatchewan Court of Queen's Bench, November 20, 2018, G.M. Currie J.

The insured applied for summary judgment for payment under an insurance policy.

A fire broke out in a canola processing facility during its construction, due to an error in the insured's work. The facility owner withheld payment from the insured in the amount that it identified as its losses due to the fire. The insured sought payment of the withheld funds from its insurer under a commercial general liability ("CGL") insurance policy. The insurer denied that the policy insured the loss.

In resisting the application, the insurer argued that the construction contract required the facility owner to provide builder's risk insurance that would include the insured and be the primary insurance. The Court rejected this argument because a loss may fall under the coverage provisions of more than one policy, and the CGL policy expressly provided that it was primary.

Second, the insurer argued its policy was not engaged because the damage to the facility owner's property was not damage to a third party's property (the facility owner being an insured under the CGL policy). The Court rejected this argument because the policy does not specify that the property damage must be damage to the property of a stranger to the policy.

Third, the insurer argued that the policy was not engaged because the insured's settlement of the claim with the facility owner was unreasonable, due to speculated collusion between the insured and the facility owner. The Court rejected this argument as there was no evidence that there was collusion or the settlement was otherwise unreasonable.

Fourth, the insurer argued that the claim was excluded by the policy's exclusion for property damage to "that particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it." The Court rejected this argument because the exclusion applies to the cost of remedying the insured's defective work itself – but the exclusion does not extend to damage to property that was not property on which the insured's work was incorrectly performed. The Court found a minimal amount of the claimed loss fell into this exclusion, and subtracted it from the insured's claim.

This case was digested by [Erika L. Decker](#), 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 Erika L. Decker at edecker@harpergrey.com.