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## CASE SUMMARY: BUILDER'S RISK POLICY DOES NOT APPLY TO PRE-EXISTING PROPERTY DAMAGED BY CONSTRUCTION ACTIVITY

**Insurance law – Property insurance – Builder's risk insurance – Interpretation of policy – Exclusion – Practice – appeal**

*Team Mechanical Construction Ltd. v. Viking Fire Protection Inc.*, [2019] N.J. No. 73, 2019 NLCA 13, Newfoundland and Labrador Court of Appeal, March 6, 2019, J.D. Green C.J.N.L., B.G. Welsh and F.P. O'Brien JJ.A.

The insurer appealed from a ruling on a question of law finding that a builder's risk policy covered damage to pre-existing property at a construction site.

The appeal related to a construction project involving renovations to a hospital complex in St. John's, Newfoundland. Team Mechanical Construction Ltd. (the second respondent in the appeal) was hired as the main contractor. A number of subcontractors were also hired to work on the project including a plumbing subcontractor, Viking Fire Protection Inc. (the first respondent). A builder's risk policy was purchased. The policy insured certain property which was referred to as the "property insured" which might be damaged in the course of construction.

During construction, when work on the project was almost complete, water escaped from a sprinkler system being worked on by Viking, which caused flooding. Water damaged the new property and building materials which had been incorporated into the project before the flooding occurred, which was referred to as the "new property". As a result, much of the work which had been completed before the flooding took place needed to be redone, using additional building materials and at increased cost. There was no dispute that the policy covered damage to the new property. However, the flooding damage was not confined to the new property. Water also spilled into other areas of the hospital complex, including nearby rooms and hallways where no construction was taking place causing damage to the existing property in those areas. This was referred to as the "pre-existing property".

An application was brought in the Supreme Court of Newfoundland and Labrador to determine as a question of law whether the insurance policy covered damage to the pre-existing property. The application judge held that it did.

On appeal the question was whether the policy coverage extended beyond damage to the new property and also included damage to the pre-existing property in the hospital complex which was unrelated to the project. Based on the language of the insurance policy and a consideration of the case authorities on builder's risk insurance, the Court of Appeal concluded it did not. As a result, the appeal was allowed.

This case was digested by [Cameron B. Elder](#), 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 Cameron B. Elder at [celder@harpergrey.com](mailto:celder@harpergrey.com).