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The Insuring Agreement: Key Concepts of Fortuity, Accident, Occurrence, and Property Damage

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THE INSURING AGREEMENT: KEY CONCEPTS OF FORTUITY, ACCIDENT, OCCURRENCE, AND PROPERTY DAMAGE

I. Introduction

This paper will provide a general introduction and overview to the concepts of "fortuity," "accident," "occurrence," and "property damage" as they relate to the grant of coverage under an insurance policy, as well as highlight some recent cases in this regard.

II. Fortuity

A. Fortuity is Fundamental

The principle of fortuity is fundamental to the basic concept of insurance and the grant of coverage. Insurance responds to risk, rather than losses that were planned, intended or anticipated by the insured. As stated in *Couch on Insurance* [1]:

> Risk ... is the very essence of insurance. In general, the risk may be any uncertain event which may in any way be of disadvantage to the party insured. It should relate to a possibility of real loss which neither the insured nor the insurer has the power to avert or hasten.

The term "fortuitous" means accidental, unintentional or unexpected. The Ontario Superior Court described fortuity as follows[2]:

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1 George J. Couch, *Couch on Insurance*, 2d ed. (Rev. Ed., 1984), § 2:7.

2 *Brennan v. Economical Mutual Insurance Co.*, 2000 CanLII 22709 (ONSC) at paras. 15-16.

> It is also fundamental to a successful insurance claim that the loss involve "accident" or "fortuity." In *Insurance Law in Canada*, Vol. 1 (Scarborough: Carswell, 1999) at 8-23, Professor Craig Brown succinctly explained the concept of fortuity:
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> > An event is not an accident if it is bound to happen in the ordinary course of events. And loss is not accidental if it is deliberately caused by the insured.
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> The necessity of fortuity seems to spring from a recognition that insurance contracts are commercial transactions. It is thus presumed that the insurer and insured would both intend to conclude a commercially sensible arrangement. The insured could not reasonably expect that any and every loss, however caused, would be reimbursed. That would furnish a windfall to the insured. By the same token, the insurer cannot confine causation to the point where recovery would be impossible, thereby affording a windfall in the other direction. Balance is achieved by requiring that the loss be accidental or fortuitous—*i.e.,* that it be out of the reasonable control and expectation of both the insurer and insured.

The BC Court of Appeal described a fortuitous loss as "something that might have occurred not something that was bound to occur."[3]

B. The Function of Fortuity

The fortuity principle furthers public policy objectives by preventing a policyholder from fraudulently or intentionally inducing coverage. American case law has held that fraud occurs when a policy is misused to insure a certainty.[4] When an insured expects or intends to cause damage or injury to property or another person, the insured directly controls the risk of loss. As stated by the Ontario Superior Court of Justice[5]:

> Policies will not be interpreted to cover for losses that are certain to occur or for those that are deliberately caused by a person who will benefit from the insurance. A person should not be able to trigger insurance coverage of his or her own volition.

Providing insurance coverage for non-fortuitous damage or injury is contrary to public policy because it allows for potential profit from wrongdoing and eliminates the deterrent effect of financial responsibility. It also shifts the burden of loss from the intentional wrong-doer to other, innocent insureds who are forced to pay higher premiums. The requirement of fortuity also ensures that the scope of coverage provided is consistent with the reasonable expectations of the contracting parties.

The commercial reality of insurance is that insurers do not commit to cover any and all risks. An insurance contract represents the insurer's agreement to accept specific risks in exchange for a premium. Insurance premiums are generally based upon an assumption that risks covered by an insurance policy are only possibilities, not certainties.

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3 *566935 B.C. Ltd. d.b.a. West Coast Resorts v. Allianz Insurance Co. of Canada (The "P.W.D. No. 315")*, 2006 BCCA 469 at para. 8. For other statements regarding the meaning of "fortuity" see also: *Thomas Wilson Sons & Co. v. Xantho Cargo Owners* (1887), 12 Ap. Cas. 503 at 509 (H.L.), *C.C.R. Fishing Ltd. v. British Reserve Insurance Co.*, [1990] 1 S.C.R. 814; *Goderich Elevators Ltd. v. Royal Insurance Co.* (1997), 48 C.C.L.I. (2d) 232 (Ont. Gen. Div.); and *ING Insurance Company of Canada v. Miracle (Mohawk Imperial Sales and Mohawk Liquidate)*, 2011 ONCA 321 at para. 23.

4 *Scottsdale Ins. Co. v. Travis*, 68 S.W.2d 72 (Tex. App. 2001).

5 *Abdulrahim v. Manufacturers Life Insurance Co.*, 2003 CanLII 48161 at para. 54.

As noted by one author, the proper operation of the insurance system depends upon enforcement of the fortuity principle[6]:

> ... Granting coverage to policyholders for non-fortuitous losses violates fundamental insurance principles and destroys insurers' ability to set affordable premiums and supply coverage. Absent the fortuity principles, businesses could delay purchasing insurance until after the loss became highly likely and reasonably should have been known, or businesses could engage in behaviour that they may expect will cause injury. Allowing coverage in these situations undermines the ability of the insurance market to spread risk rationally. For these reasons, "[i]t is generally recognized that it is against public policy to allow insurance coverage on a certainty."

C. Known, Expected or Intentional Acts

Fortuity impacts the grant of coverage in that non-fortuitous acts are not covered. Acts or events are not fortuitous when they are known, expected or intentional.

A deliberately performed act which brings about intended consequences is not accidental. Difficulties in the application of this rule arise when the insured has acted recklessly or has deliberately performed an act without intending the consequences of that act.[7]

In some circumstances, courts have held that the fortuity principle does not exclude coverage for all claims that arise from intentional acts. An intentional act may have unintended consequences. If the unintended consequence falls within the terms of the policy, it will be covered even if caused by the intentional act of the insured.[8]

Where the loss or injury takes place in the ordinary course of things, there is no fortuity, but rather a certainty. Fortuity necessitates that there is no coverage for loss that occurs as a result of ordinary wear and tear.[9]

The mere fact that a loss is fortuitous does not mean that coverage exists under the policy. While an insurer attempting to exclude coverage may argue the event was non-fortuitous,[10] the insured is not automatically entitled to coverage for every fortuitous event.[11] Whether the loss is covered depends upon the particular terms of the policy.

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6 John C. Yang, *The Fortuity Principle: Understanding the Fundamentals Underlying the Laws of Insurance*, Insurance Law, 2005: Understanding the ABCs (New York, N.Y.: Practicing Law Institute, 2005), quoting *Intermetal Mexicana, S.A. v. Insurance Co. of N. Am.*, 866 F.2d 71.

7 For a full discussion of this subject, see Craig Brown and Julio Menezes, *Insurance Law in Canada*, vol. 1 (Toronto: Thomson Carswell, 2002) at 8.4(c) or Gordon Hilliker, *Liability Insurance Law in Canada*, 3d ed. (Toronto: Butterworths, 2001) at 161-62.

8 *Liberty Mutual Insurance Co. v. Hollinger Inc.*, 2004 CanLII 10995 (Ont. C.A.) at para. 18 and *Eichmanis v. Wawanesa Mutual Insurance Co.*, 2006 CanLII 6909 at para. 79 (Ont. S.C.J.).

9 *566935 BC Ltd. dba West Coast Resorts v. Allianz Insurance Company of Canada*, 2005 BCSC 1408 at para. 126.

10 See, for example, *Skyway Equipment Co. Ltd. v. Guardian Insurance Co. of Canada*, 2005 CanLII 25629 where this argument was raised, unsuccessfully, by the insurer.

11 *Algonquin Power v. Chubb Insurance Co. of Canada*, 2003 CanLII 44422 (ONSC) at para. 125.

D. Fortuity vs. Foreseeability

An interesting question arises as to whether the fortuity principle prevents coverage for unknown but foreseeable losses.

There is a line of case authority in the US that permits insurers to use the fortuity principle to deny coverage, or reserve their rights to do so, where coverage would otherwise exist under the policy terms. In the US, the "known loss" and the "loss-in-progress" doctrines, bar insureds from recovering for losses that the insured knows, *or reasonably should know*, have taken place or are in progress before the inception of the policy.

Losses that are already known to the insured at the outset of the insurance contract involve no element of risk or chance and thus no fortuity. Since the entire premise of the insurance contract is the transfer of risk of loss, not the transfer of the consequences of a known loss, a loss that is known to the insured is not insurable.[12]

The most obvious example of the known loss doctrine at work is the insured who purchases home insurance as his or her house is burning to the ground. In this instance, the insured is not entitled to coverage due to their knowledge of the loss at the time of purchasing the policy. In the US, liability insurers have seized on the known loss doctrine as a defence in coverage actions, particularly actions involving environmental contamination.

Whether coverage is denied on the basis of the known loss doctrine depends upon the scope given to the interpretation of fortuity. Construed most broadly, coverage has been denied when the insured should have been aware of the mere potential for loss. The Pennsylvania Supreme Court has construed the known loss doctrine broadly, stating[13]:

> We reiterate that the issue of how broadly or narrowly the known loss doctrine is to be construed is an issue of first impression in the courts of this Commonwealth. Thus, the insurers and their *amici* urge us to enunciate *a broad interpretation which would allow the doctrine's requirements to be satisfied by mere awareness of a substantial probability that liability large enough to reach the excess layers existed at the time of contracting. ...*
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> ... we think that the appropriate standard for the "known loss" defence in Pennsylvania should not be knowledge of certainty of damages and liability, *but whether the evidence shows that the insured was charged with knowledge which reasonably shows that it was, or should be, aware of a likely exposure to losses which would reach the level of coverage.* It should not be necessary that the insured has already been met with a tabulation of losses sufficient to reach the excess coverage, as that would implicate a standard tantamount to criminal fraud. Rather, when a sophisticated insured, such as Rohm & Haas, is faced with mounting evidence that it will likely incur responsibilities to the extent of the insurance which is sought, the known loss defence should intervene. Otherwise, the issue is not one of insurance, but of pure indemnity. [emphasis added]

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12 Diana S. Donaldson and Jennifer DuFault James, "The Known Loss" Doctrine – Whose Knowledge and of What?" (1996) 8:3 Environmental Claims Journal 43 at 44.

13 *Rohm and Haas Co. v. Continental Cas. Co.*, 732 A. 2d 1236 (1999) at para. 49.

The problem with such a broad interpretation of fortuity[14] is that it ignores a fundamental principle of insurance which is that, by its very nature, insurance is purchased for and intended to cover likely or potentially known risks, provided they have yet to occur. It seems unlikely that Canadian insurers would have much success in advancing such a broad interpretation of the known loss doctrine to deny or restrict coverage. It does not appear that this expansive interpretation of the known loss doctrine has been adopted by Canadian courts.

Another problem with the "known loss" doctrine, as described above, is that it confuses the definition of "loss" under first and third party policies. The loss insured under a third party liability policy is a "legal liability to pay damages," while the loss insured under a first party policy is damage to the insured's property. To succeed on a known loss argument under a third party liability policy, an insurer must demonstrate that the insured possessed pre-existing knowledge of its legal liability for damages before the insurance policy was purchased. This distinction has been explained as follows[15]:

> The insurers' version of the "known loss" defence as precluding coverage for known injury is appropriate to first-party property policies, not to liability policies. Property policies, unlike liability policies, do not insure the injury itself. By contrast, application of the "known loss" doctrine in the liability insurance context turns on knowledge of liability alone.
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> ...
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> The "known loss" doctrine, grounded in the fundamental insurance concept of fortuity, is a valid and recognized insurance defence. Significantly, the manner in which it is applied differs materially, depending on the nature of the insurance policy at issue. Where the insurance policy is a third-party liability policy, and the item insured is, by definition, damage payable to third parties, the doctrine cannot defeat coverage unless the insured clearly knows before contracting that it has incurred an obligation to pay damages. Any other interpretation eviscerates the distinction between third-party and first-party liability insurance policies. ...

Further, a broad interpretation of the known loss doctrine is inconsistent with recent jurisprudence from the Supreme Court of Canada, which rejects a narrow view of the scope of coverage granted under a CGL policy.[16]

III. Accident, Occurrence, and Property Damage

A discussion of the meaning of the terms accident, occurrence, and property damage as they relate to the grant of coverage is not complete without reference to the Supreme Court of Canada's decision in *Progressive Homes v. Lombard Insurance Co. of Canada*[17] and the BC Court of Appeal's decision in *Bulldog Bag Ltd. v. Axa Pacific Insurance Company.*[18]

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14 Other American cases dealing with the scope of the known loss doctrine include *UTI Corp. v. Fireman's Fund Ins. Co.*, 896 F.Supp. 362 (1995); *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90 (1992); and *Pittston Co. v. Ultramar America Ltd. v. Allianz Ins. Co.*, 124 F.3d 508 (3rd Circ. 1997).

15 *Supra*, n. 12 at 45 & 60.

16 *Progressive Homes v. Lombard Insurance Co. of Canada*, 2010 SCC 33 [*Progressive Homes*].

17 *Supra*, n. 16.

18 2011 BCCA 178 [*Bulldog Bag*].

A. Progressive Homes v. Lombard Insurance Co. of Canada

The facts of *Progressive Homes* are well known. Progressive Homes, a general contractor, was sued for its role in the construction of buildings alleged to have deficient building envelopes. Progressive Homes' CGL insurer denied coverage for the claim on the basis that the damages alleged were the normal, expected consequences of faulty workmanship and, accordingly, were not caused by an accident or an occurrence, and did not constitute property damage within the meaning of the policies. The Supreme Court of Canada rejected the insurer's arguments, focusing on the specific policy wording in issue and giving an expansive reading to the policy wording, as discussed below.

B. Bulldog Bag Ltd. v. Axa Pacific Insurance Company

The analysis in *Progressive Homes* was recently applied by the BC Court of Appeal in *Bulldog Bag.* Bulldog Bag Ltd. manufactured and supplied plastic packaging to Sure-Gro Inc., which was printed with Sure-Gro's logos and product use instructions. Sure-Gro intended to use the bags to fulfil its contract with Canadian Tire for the sale of soil and manure.

Sure-Gro filled the bags with soil and manure, but before the bags were shipped to Canadian Tire, it was discovered that moisture on the bags was causing the ink to come off the packaging, making the labelling partly illegible and mixing with the packaged soil and manure. Sure-Gro commenced an action against Bulldog seeking reimbursement for the cost of: emptying the soil and manure from the bags, disposing of the defective packaging, repackaging the soil and manure and damages for the 10% of the soil and manure lost during this process.

Bulldog settled Sure-Gro's claim and sought indemnity from its liability insurer, Axa, for the settlement amount. Bulldog conceded that the cost of the bags was not covered, and did not seek to recover the amount attributed to the initial cost of the defective bags already filled. Axa took the position that the only physical injury or damage to tangible property was to the bags themselves, which was Bulldog's own product, and that all other costs incurred by Sure-Gro were pure economic losses not covered under Bulldog's CGL. In determining whether Bulldog's claims were covered under the CGL, the Court of Appeal commented upon the interpretation to be given to the terms accident, occurrence and property damage, discussed below.

C. Accident

Although undefined in the standard form of CGL policy, the Property Damage Endorsement provides an extended definition of accident as follows[19]:

> "Accident" includes continuous or repeated exposure to conditions which results in property damage neither expected nor intended from the standpoint of the insured.

In interpreting that term, the courts have stated that the word accident means an "unlooked-for mishap or an untoward event which is not expected or designed."[20]

The Supreme Court of Canada's analysis in Progressive Homes rejected the Court of Appeal's fortuity analysis, finding that fortuity is built into the definition of accident. The Court described an accident as follows[21]:

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19 *Supra*, n. 7 at 148-49.

20 *Fenton v. J. Thorley & Co.*, [1903] A.C. 443 (H.L.) at 448.

21 *Supra*, n. 16 at paras. 47 & 49.

> Second, I cannot agree with Justice Ryan's conclusion that such an interpretation offends the assumption that insurance provides for fortuitous contingent risk. Fortuity is built into the definition of "accident" itself as the insured is required to show that the damage was "neither expected nor intended from the standpoint of the Insured". This definition is consistent with this Court's core understanding of "accident": "an unlooked-for mishap or an untoward event which is not expected or designed".
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> ...
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> "Accident" should be given the plain meaning prescribed to it in the policies and should apply when an event causes property damage neither expected nor intended by the insured. According to the definition, the accident need not be a sudden event. An accident can result from continuous or repeated exposure to conditions.

From a coverage perspective, there is no categorical rule which states that faulty workmanship is never an accident. The analysis as to whether or not faulty workmanship constitutes an accident must be determined on a case by case basis. Such a determination must depend on both the circumstances of the defective workmanship alleged in the pleadings and on the definition of accident contained in the policy.[22]

D. Occurrence

Subject to the particular wording of the policy, most commercial general liability policies provide coverage for bodily injury and property damage caused by an occurrence. The concept of fortuity is reflected in the definition of this term.

An occurrence has been defined as "an accident, including continuous or repeated exposure to conditions, which result, during the policy period, in bodily injury or property damage neither expected nor intended from the standpoint of the insured."[23] An occurrence has also been defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."[24] In the latter instance, the policy generally defines accident as "continuous or repeated exposure to conditions which result in property damage neither expected nor intended from the standpoint of the Insured."[25]

The requirement of fortuity is reflected by the fact that the loss must be "neither expected nor intended from the standpoint of the insured" and must be an accident.

E. Property Damage

Generally, CGL policies limit coverage to instances where damages are payable due to "bodily injury" or property damage. A discussion of bodily injury is outside the scope of this paper. Property damage has been defined as follows in a standard CGL policy[26]:

> "property damage" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time

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22 *Ibid.* at para. 46.

23 *Alie v. Bertrand & Frere Construction Co. Ltd.*, 2002 CanLII 31835 (ONCA) at para. 59.

24 *Supra*, n. 16 at para. 11.

25 *Ibid.*

26 *Ibid.* at para. 29 quoting from the policy at issue in that case. *Supra*, n. 18 at para. 9 for the reference to the policy definition of "property damage" at issue in that case.

> resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an accident occurring during the policy period.

In *Progressive Homes*, the Supreme Court of Canada rejected the insurers' contention that damage arising to one part of a building from another part is pure economic loss rather than property damage. The Court also rejected the contention that property damage is limited to property owned by third parties. The Court stated[27]:

> I cannot agree with Lombard's interpretation of "property damage". The focus of insurance policy interpretation should first and foremost be on the language of the policy at issue. General principles of tort law are no substitute for the language of the policy. I see no limitation to third-party property in the definition of "property damage". Nor is the plain and ordinary meaning of the phrase "property damage" limited to damage to another person's property. Indeed, the Ontario and Saskatchewan Courts of Appeal reached the same conclusion with respect to similar definitions of "property damage" in CGL policies: [citations omitted].

The Court also stated that it was[28]:

> ... not obvious to me that defective property cannot also be "property damage". In particular, it may be open to argument that a defect could not amount to a "physical injury", especially where the harm to the property is "physical" in the sense that it is visible or apparent (see, e.g., *Annotated Commercial General Liability Policy*, vol. 1, at 10-10). Moreover, where a defect renders the property entirely useless it may be arguable that defective property may be covered under "loss of use", the second portion of the definition of "property damage".

The Supreme Court of Canada's comments in this regard open the door to obtaining coverage for defective property.

As a result of the analysis in *Progressive Homes*, the insurer in *Bulldog Bag* conceded that Bulldog's claim constituted property damage because Bulldog's bags were "injured" and Sure-Gro lost the use of them. As well, the insurer conceded that the faulty workmanship that resulted in the defective bags qualified as an "accident" or "occurrence" within the meaning of the policy. It agreed that the failure of the ink when exposed to moisture was neither expected nor intended by Bulldog, and resulted in property damage to 10% of Sure-Gro's product.[29] Upon finding coverage under the insuring agreement, the Court of Appeal rejected the insurer's arguments that the exclusion clauses applied to exclude coverage.

In another case involving Axa, the Ontario Superior Court of Justice considered the meaning of occurrence and property damage. In *California Kitchens & Bath Ltd. v. AXA Canada Inc.*,[30] California Kitchens & Bath Ltd. sought a declaration that Axa had a duty to defend it in an action brought against it. The claim arose out of kitchen cabinetry installed by California Kitchens in a residential home. California Kitchen's CGL defined "property damage" as "physical injury to tangible property, including all resulting loss of use of that property, or loss of use of tangible property that is not

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27 *Ibid.* at para. 35. See also: *Hector v. Piazza*, 2011 ONSC 1302.

28 *Ibid.* at para. 39.

29 *Ibid.* at para. 25.

30 2010 ONSC 6125.

physically injured."[31] The policy defined occurrence as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."[32]

Axa argued that defective workmanship cannot be described as a fortuitous contingent risk and therefore cannot be an accident. The Court rejected this argument based on the reasoning in *Progressive Homes*. The Court agreed with Axa that the cost of repairing defective work that has not caused physical injury to property is not "property damage" under the policy. The Court found that the damage alleged in the underlying action fell within the second aspect of the definition of property damage in the policy, being "loss of use of tangible property that is not physically injured." The claim for loss of use of the plaintiff's home while the kitchen was being repaired fell within this meaning.

Axa also argued that coverage did not exist because the claim against California Kitchens was essentially a contract claim and therefore did fall within the coverage provided by the policy. The Court rejected this argument, stating[33]:

> ... AXA relies on the fact that the work performed by California Kitchens was pursuant to a contract. If this argument prevailed, it would eliminate virtually all coverage. What work is not performed pursuant to a contract? It is negligence in the performance of the work by California Kitchens that is the true nature of the claim. There is no claim in contract in the pleading and no basis for questioning the true nature of the claim.

In another case,[34] the Ontario Superior Court followed *Progressive Homes* in dealing with the insurer's duty to defend under a wrap up policy. The Court found that the insurer had a duty to defend as the policy provided coverage for damage to tangible property caused by an occurrence. There was no restriction contained in the policy to the types of property damage covered.

The Saskatchewan Court of Appeal cited *Progressive Homes* in its decision[35] to deny an insured's application for a declaration that its insurer had a duty to defend it under an all-risks policy. The insured was sued by the City of Saskatoon after a building under demolition collapsed onto an electrical substation owned by the City, causing significant damage. The policy provided coverage for "property damage" caused by an occurrence. The policy excluded coverage for property damage arising out of work performed on the insured's behalf by any contractor or subcontractor. The case proceeded on an agreed statement of facts, although some facts remained unclear. The building demolished was not one in which the insured ran its hotel business, but the insured had retained a contractor to demolish the building. The Court of Appeal reversed the lower court's finding that the claim was covered, stating:

> In assessing this argument, it is perhaps important to recognize that, if property damage had been caused by repair or maintenance work being done to the Patricia Hotel, a claim by a third party in respect of that damage would attract a duty for SGI to defend. SGI itself does not suggest otherwise. But the present situation is not like that. On the basis of the facts alleged in the Claim and otherwise agreed, Mr. Evans was demolishing a building physically separate from the Patricia Hotel and located across the alley from it on a legally distinct parcel of land. The building in question was not owned by the Pat but rather by P.R.M. Holdings. P.R.M. Holdings was incorporated to carry on the business of operating a nightclub but we know nothing

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31 *Supra*, n. 30 at para. 7.

32 *Ibid.* at para. 8.

33 *Ibid.* at para. 21.

34 *PCL Constructors Canada Inc. v. The Encon Group, Temple*, 2010 ONSC 5911 at paras. 22-25.

35 *Saskatchewan Government Insurance v. Patricia Hotel (1973) Ltd.*, 2011 SKCA 70.

> of its relationship (if any) with the Pat. Further, as explained above, we also know nothing of why the building was being demolished and, in particular, we do not know if the demolition related in any way to the Pat's "Hotel, Night Club and Beer and Wine Store" operations. As a bottom line, there is simply not enough here to bring the City's claim within the possible ambit of the coverage provided by the Policy.
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> Significantly, the result is the same if the inferences available from the alleged facts are stretched and the demolition is characterized as having been somehow undertaken in the larger business interests of the Pat. Even in that situation, the act of tearing down a free-standing building owned by a third party is itself (as noted by the Chambers judge) not included in what might reasonably be considered to be comprehended by hotel, nightclub and beer and wine store operations. This is determinative because those operations delimit the scope of the coverage provided by the Policy.
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> Thus, all things considered, I am not persuaded that the City's claim against the Pat engages a duty to defend on the part of SGI. This, of course, does not answer the question of whether, in light of the full factual picture, SGI might have a duty to indemnify the Pat.

This case illustrates the importance of the factual matrix as it relates to the policy language in determining coverage. It also confirms the importance of careful drafting of agreed statements of fact when such procedures are used to determine coverage.

IV. Conclusion

In *Progressive Homes*, the Supreme Court of Canada confirmed that in determining the grant of coverage, and specifically whether there has been an accident, occurrence or property damage, regard must had to the specific policy wording in issue, rather than general principles. The result appears to be a more expansive approach to the interpretation of insurance coverage provisions. This will no doubt impact insureds and insurers in the future as they consider the grant of coverage under an insurance policy.