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BRIEFING NOTE

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In a decision handed down last month, the British Columbia Supreme Court did not extend coverage under a wrap-up policy to a company that did not perform any work installation, construction, or supervisory work on building project. The reasons are a helpful reminder of the general scope of coverage under such policies.

Owners, Strata Plan BCS 3206 v. KBK No. 11 Ventures Ltd., (2022 BCSC 766) is a coverage decision in the midst of a larger construction dispute relating to the Shangri-La tower in downtown Vancouver. In 2015 three plaintiffs began a total of five actions for compensation from various entities for alleged building deficiencies. Those alleged deficiencies later narrowed to *inter alia*, the window curtainwall.

Honeywell International Inc. manufactured a moisture-absorbing substance, called desiccant, used in the Shangri-La's curtainwall. The desiccant is alleged deficient and Honeywell was added as a third party to two of the actions commenced by the stratas. Honeywell learned of a wrap-up policy and sought coverage from XL insurance. When the insurer denied coverage, Honeywell proceeded with a summary trial.

Wrap-up insurance is a liability policy that is usually taken out by the project owner or general contractor, and provides liability coverage for owners, contractors, and subcontractors involved in the project. For large construction projects, such as the Shangri-La, the usual advantages of wrap up insurance are to reduce global premiums though 'bulk' buying power and eliminating redundant insurance coverages (such as would be the case if the bid documents included insurance requirements for each contractor & subcontractor). However coverage is generally limited to those entities actually involved in the construction, and does not extend to suppliers of materials used in the project.

This was the dispositive issue in this case (i.e., whether or not Honeywell fell under the definition of an "insured" in the policy). The relevant wording in Section II of the policy ("Who is an Insured") states:

> *4. "Contractors" and "sub-contractors" include all persons or organizations who perform any part of the work under the Insured Project but do not include:*
>
> *a) Suppliers whose only function is to supply materials, machinery or other supplies to the project and who do not carry out any installation, construction, or supervisory work on the Insured Project;*
>
> ...

Honeywell argued that because it both supplied and manufactured desiccant, its function was not "only" to supply materials, and therefore the exclusion to the definition did not apply.

The court said that interpreting coverage in this situation requires that the contract be interpreted in a commercially reasonable fashion that considers the context, nature, and purpose of a wrap-up liability policy.

Blok J held that Honeywell's argument failed because it centered on one phrase, "suppliers whose only function is to supply materials" with no regard for the entire provision and that the purpose is to provide coverage for entities involved in a construction project. Honeywell was held to be "*many steps removed in the supply chain*", and did not perform any part of the work on the Shangri-La, did not install anything on the Shangri-La, and did not supervise any part of the project. Furthermore, the court noted that Honeywell's interpretation would lead to unrealistic results suggesting that a supplier who delivers goods, materials, or even pre-fabricated components to the gates of a construction site would not be covered; but a party many steps removed in the supply chain and entirely unaware of the project would be covered as long as they did something in addition to supplying.

Ultimately this case highlights the importance of context and commercial reasonableness when interpreting insurance provisions. Blok J concluded that the fact Honeywell was also allegedly a manufacturer of material that was ultimately used in the construction "*does not make it a "supplier" covered by the Policy because it did not do anything on the project itself, as the grant of coverage requires.*"

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