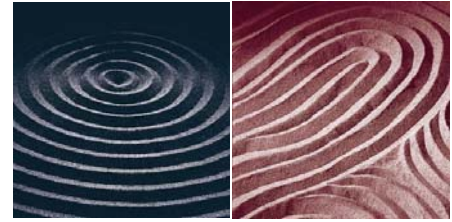


MILLER THOMSON LLP

Barristers & Solicitors
Patent & Trade-Mark Agents

Robson Court
1000-840 Howe Street
Vancouver, BC Canada
V6Z 2M1
Tel. 604.687.2242
Fax. 604.643.1200
www.millerthomson.com



VANCOUVER

WHITEHORSE

TORONTO

CALGARY

EDMONTON

LONDON

KITCHENER-WATERLOO

GUELPH

MARKHAM

MONTREAL

If We Have Insurance, Why Do We Have To Worry About Fixing The Hazard?

Mari Worfolk

Condo News

Canadian Condominium Institute
Vancouver Chapter

Winter 2007

If We Have Insurance, Why Do We Have to Worry About Fixing the Hazard?

By Mari Worfolk, Miller Thomson LLP.

I sometimes am asked by strata corporations to look at their insurance policies to see if they have liability coverage for certain risks. This can be a very useful exercise, since insurance companies tend to try to avoid paying out large amounts of money when they can. It is important, therefore, for a strata corporation to know what exclusions are in the policy, and whether they actually have coverage for the likely risks.

Where a strata corporation has an unusual feature of some kind, this type of analysis can be especially useful. For example, it is very disconcerting to discover, if there is a swimming pool, that because of some standard exclusion there is no liability coverage for an accident relating to that pool. Usually such coverage can be obtained; it is simply a matter of no one ever telling the insurer about the swimming pool so that the need for the extra coverage was never identified.

This is one of the reasons to have an appraisal done periodically, and to discuss possible changes in the nature of the risk with the insurer or broker. There is an obligation to tell an insurer about a change that could affect the insurer's decision making process; either about whether it should insure the risk or what premium it should charge. So if you put in a swimming pool, or something else of a similar nature (ie making a meeting room into an exercise room) that could change the risk for the insurer, be sure to tell the insurer about it. You may have to pay a higher premium, but that is better than finding out after an accident happens that you have no insurance coverage because the insurer did not know about the pool.

Sometimes the strata council identifies a possible hazard and could lower the risk by spending some money. For example, if you have a steep hill on your property, and someone notices that it would be possible for a car to go off a cliff under a certain set of circumstances, and the strata corporation could reduce the risk of this happening by building a retaining wall at a certain location, should the strata corporation do so?

If the retaining wall is inexpensive and easy to build, the answer is easy. What if the retaining wall would cost \$300,000? What if to do so increases the risk of the slope collapsing into the neighbouring property? These are examples of practical issues that will come into play in each case in slightly different ways.

If there is presently liability coverage for the risk, does the strata corporation need to do anything, especially if the cost is high and the risk of it occurring is fairly low?

The answer may well still be yes. There are at least two very practical reasons. The first is that if the insurer decides at some point that the risk is increasing, it may decline to continue to insure the strata corporation, or may require the strata corporation to take steps to reduce the risk before it will continue to insure the property. It is usually better to do work of this nature on your schedule than the insurer's schedule. When I purchased an old house with knob and tube wiring, my insurer declined to insure the house unless we had the knob and tube wiring removed. (The electrician muttered the whole time about what a waste of time it was, but I wasn't willing to do without fire and theft insurance!)

There is another reason to take active steps to decrease the likelihood that a known risk will occur, particularly if the potential injury or damage could be severe. A recent motor vehicle accident case in Ontario brings this home. This case, which involved a single vehicle accident where two of the three passengers were not wearing seatbelts and were thrown from the car, resulted in a damage award of \$24 million to the two plaintiffs. A good liability policy gives \$10 million in coverage. You do the math. If a relatively young person with a demonstrated ability to earn a high income is catastrophically injured while on a strata corporation's premises, and survives, with a significant reduction in their quality of life, the damages awards for cost of care and loss of earnings capacity can be very large indeed. Under the *BC Strata Property Act*, the difference between what the insurance covered and the court awarded could be registered against the title to a strata corporation, and every strata lot owner would be liable for their share in accordance with their unit entitlement (see section 166).

By the way, the case is the best advertisement for wearing your seatbelt that I have seen in a while: the one person in the car who was wearing his seatbelt apparently walked away from the accident scene, while the two plaintiffs were very seriously injured indeed (one suffered brain damage as well as various physical injuries, while the other is a paraplegic).

Every decision that a strata corporation makes involves the weighing and balancing of different factors; cost, the impact on individual residents, the likelihood that the identified risk could occur, the severity of the damage or injury if the risk is realized, the inconvenience of doing the work, the ability to get contractors and engineers. That there would be insurance coverage if the risk was realized and the strata corporation was sued, is a factor that should not be given too much weight.

CCI - Vancouver Board of Directors - 2006/2007

Jamie Bleay - President
Christina Garson - Vice President & Secretary
Stanley Dong - Treasurer
Kevin Grasty
Andrew Chan

Welcome New Members

Suncorp Valuations Ltd.
Peter Crichton