

# Liability Coverage for Construction Contractors

Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada  
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commercial general liability coverage can apply to claims against general contractors arising from construction defects.

damage alleged, to decide if coverage is provided. That being said, the court interpreted the three clauses quite narrowly — that is to say, the court was inclined to find that coverage existed rather than not.

One of the practical issues in *Progressive* was whether the insurer was required to provide a defence to the general contractor. The court found that there was a possibility that the allegations made by the owner against the contractor would fall within the insurance policy coverage, and this was enough to trigger the insurer's duty to provide the contractor with a defence.

This case will result in a re-evaluation of decisions by CGL insurer to deny coverage for claims. It provides a national standard for the interpretation of CGL policies in a construction context, tending in general to support the provision of coverage. It is also possible that the case will have implications for the interpretation of first-party builders' risk policies, which can contain somewhat similar language.

That being said, the specific wording of any, both in terms of the coverage provisions all applicable exclusions, within the whole context of the policy and the claims made in the lawsuit, will have to be considered to determine whether coverage is likely to apply in any particular circumstance. **CB**

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**T**he Supreme Court of Canada, in a major insurance coverage decision released on September 23, 2010, *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, has held that commercial general liability (CGL) coverage can apply to claims against general contractors arising from construction defects.

In doing so, the Supreme Court of Canada overruled recent cases in British Columbia. Since 2005, British Columbia courts have consistently held that CGL policies do not cover claims against general contractors arising from construction defects (under standard policy language), because the policies are usually worded to respond to an "accident" or "occurrence" for "property damage". In the recent B.C. cases, the courts decided that construction defects are not sudden "fortuitous" events, and that "property damage" means property damage to the work of someone other than the beneficiary of the insurance policy. These B.C. decisions came to differ-

ent conclusions from the courts of Ontario and Saskatchewan, which found coverage applied in these circumstances.

In the *Progressive* case, the court ruled that damage arising from construction defects is indeed an "accident", and went on to say that construction defects themselves (rather than just the consequential damage from them) may also be covered (the point was not directly in dispute in the case, so the court was not called upon to give a definitive answer to that question). This meant that whether the policy provided coverage or not would be decided by the policy exclusions. The only exclusion seriously raised by the insurer was the exclusion for "work performed" (own work) by the contractor. In this case, the court was considering three different CGL policies, issued by the same insurer for separate years. The work performed exclusion was worded quite differently in each of the three policies. The court concluded that the specific language of the exclusion has to be considered carefully, in light of the