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## WHO PAYS A STRATA'S DEDUCTIBLE?

### Richards Buell Sutton Insurance Newsletter

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Conflicts often arise between strata corporations, unit owners and their respective insurers regarding payment of insurance deductibles in cases of damage to strata common property. While the *Strata Property Act*, S.B.C. 1998 c. 43 (the "Act") governs strata corporation insuring obligations there has been virtually no jurisprudence on the operation of insuring provisions. In *Louie v. The Owners of Strata Plan VR-1323*, 2015 BCSC 1832, the B.C. Supreme Court provides guidance on responsibility for payment of a strata corporation's insurance deductible in circumstances where damage occurs primarily within a single strata unit.

### FACTS

The plaintiff owned a strata unit that was rented to a tenant. Without the plaintiff's knowledge, the tenant operated a methamphetamine laboratory in the unit. Unsurprisingly, a fire occurred.

Coverage for the fire loss and damage was denied under the plaintiff unit owner's insurance policy. An exclusion applied to property used to process or manufacture illegal substances. This coverage denial was not part of the litigation.

The strata corporation had "all risks" insurance that applied to its common property and individual strata units. Coverage for "losses arising out of . . . manufacturing, processing, storing or distribution of any drug . . ." was subject to a \$50,000 deductible. The strata's policy also had two relevant exclusions: an owner or tenant's personal property or contents and remediation costs for release or escape of "pollutants".

Testing confirmed parts of the unit were contaminated. One remediation recommendation was to replace the stove exhaust ducting and, if that ducting connected with another unit, to replace the connecting ducting. Mechanical plans indicated the ducting did not connect to another unit.

The strata's insurer agreed to cover certain losses subject to the unit contents being removed and payment of the deductible. The unit owner and the strata disagreed over who was obligated to commence the repairs and pay the deductible. By the trial date, the plaintiff had not commenced any repairs or removed or disposed of the contents or paid the deductible. The strata corporation also had not taken these steps.



The strata's insurance did not cover the duct remediation, therefore, responsibility for its replacement was another issue between the strata and the plaintiff.

#### **THE RULING**

The court noted section 155 of the Act which includes strata lot owners, tenants and persons who normally occupy a strata lot as a "named insured" if a strata corporation is the named insured. The fact that the strata's insurance policy did not have these people included as "insureds" was irrelevant to the analysis.

Deductible payment is addressed in section 158 of the Act which states that payment of an insurance deductible is a common expense, however, this "does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible . . . if the owner is responsible for the loss or damage that gave rise to the claim". The plaintiff argued this section obligated the strata to pay the deductible as a common expense while the strata argued it only provided an option for it to pay the deductible, which it could then recover from a "responsible" owner.

The court concluded section 158 does not require a strata corporation to pay the deductible every time damage occurs that could be the subject of an insurance claim. After reviewing other sections of the Act related to strata insurance and repair obligations, the court noted the permissive language those sections used. The Act was not breached by the strata's refusal to commence the unit repair work or its refusal to pay the insurance deductible. Further, the strata had a right to insist the plaintiff pay the deductible. From the factual findings, the conclusions seem based on the damage being primarily to the unit and the plaintiff's status as a named insured as opposed to the plaintiff being "responsible" for the damage under section 158.

The court also confirmed a strata corporation could be required to repair common property that was for the benefit of all, or a number of, owners. In those circumstances, the strata corporation should proceed with repairs. The court did not address who would pay the deductible in this scenario, however, given section 158, it is likely the strata must pay and then pursue any "responsible" owner for the cost of the deductible.

The court also concluded the covered portion of the loss was ultimately below the deductible amount and thus the plaintiff had no claim under the policy or against the insurer for damages.

Ducting, if it was "common property", would have to be repaired by the strata corporation pursuant to section 72(1) of the Act which requires a strata to repair and maintain common property. If, however, the ducting was part of the "strata lot", then the bylaws required the unit owner to replace it. The court concluded the ducting was "limited common property" designated for the unit's exclusive use and the





plaintiff was required to replace it.

**PRACTICAL TIPS FOR INSURERS, ADJUSTERS, STRATA CORPORATIONS AND OWNERS**

- Remember the Act applies over policy definitions and terms and contains a broad definition of “named insured”.
- Assess what is damaged: is it common property, multiple units or a single unit? The scope of damage may alter who is responsible to undertake repairs or to pay the deductible.
- A strata corporation’s bylaws are relevant when assessing whether a unit owner or a strata corporation has the obligation to repair certain property. Deductible payment obligations, beyond those in the Act, may also be set out in the bylaws.
- Negligence is not required for an owner to be “responsible” for damage under section 158 of the Act however what is required to establish responsibility remains unclear.