

## Focus INSURANCE

# Decision clarifies strata damages deductible



Nicole Mangan

Conflicts often arise between strata corporations, unit owners and their respective insurers regarding payment of insurance deductibles in cases of damage to the strata common property.

The *Strata Property Act*, S.B.C. 1998 c. 43 governs strata corporation insuring obligations in B.C.

Section 158 of the act 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.”

Past litigation in B.C. has focused on whether a unit owner was “responsible” for loss or damage under s. 158 thereby entitling the strata to recover its deductible from a unit owner.

Those cases confirm that negligence or breach of duty by a unit owner is not necessary for an owner to be “responsible.”

Now, in *Louie v. The Owners of Strata Plan [2015] BCSC 1832*, the B.C. Supreme Court has



ACRYLIK / ISTOCKPHOTO.COM

addressed s.158 again and provided guidance on the responsibility for payment of a strata corporation’s insurance deductible in circumstances where damage occurs primarily within a single strata unit.

The plaintiff in *Louie* 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 and it resulted in damage primarily to the plaintiff’s unit.

Coverage for the fire loss and damage was denied under the plaintiff unit owner’s insurance

policy, however, 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...” under the strata’s policy was subject to a \$50,000 deductible.

This policy also had two relevant exclusions: an owner or tenant’s personal property or contents and remediation costs for release or escape of “pollutants.”

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. Testing confirmed parts of the unit were contaminated, therefore, responsibility for replacement of any contaminated property was an issue between the strata and the plaintiff that did not involve the insurer.

Prior to addressing s. 158, the court noted s. 155 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 plaintiff was, therefore, a named insured under the strata’s policy.

The plaintiff argued s.158 of the act 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 this section 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 s. 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 s.158, it is likely the strata must pay and then pursue any “responsible” owner for the cost of the deductible.

For insurance lawyers, navigating who is responsible for damage and repairs can be complex in a strata environment. Both the Act and the strata’s bylaws are relevant to the analysis. *Louie* confirms the scope of damage and who is making the claim under a strata’s insurance policy are also important facts to consider when assessing who is obligated to pay the deductible.

Nicole Mangan is a partner at Richards Buell Sutton LLP in Vancouver, who practises in the areas of insurance litigation, real estate disputes and employment law.



CENERI / ISTOCKPHOTO.COM

## Man in doghouse for insulting royal pooch

We all love our pets, but the King of Thailand may be taking things a little too far. The Guardian reports that Thanakorn Siripaiboon has been charged by a military court with making a “sarcastic” internet post about Tongdaeng, a street mongrel rescued by King Bhumibol Adulyadej. The lèse-majesté (injured majesty) laws in Thailand make it a crime to criticize, defame or insult members of the royal family. Although the military court that laid the charge has not detailed the precise insult towards the animal, factory worker Thanakorn faces up to 15 years for his intemperate remarks. “I never imagined they would use the law for the royal dog,” his lawyer, Anon Numpa said. “It’s nonsense.” To make matters worse, Thanakorn also faces lèse-majesté, sedition and computer crime charges for clicking “like” on a doctored photo of the king and sharing it. Lèse-majesté convictions have dramatically increased since the military seized power in 2014, with one man receiving a 30-year sentence for insulting the monarchy on Facebook. — STAFF

## THE LAWYERS WEEKLY

NEXT WEEK IN FOCUS:

- Intellectual Property
- Environmental Law

