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Wrap-up and Completed Operations Hazard policies: When do they apply?

The recent decision in Compagnie d'assurances Missisquoi c. Constructions Reliance inc. (Construction Reliance du Canada ltée), 2018 QCCS 1049, was the occasion for the Superior Court to clarify the scope of application of wrap-up and Completed Operations Hazard policies.

A general contractor had been hired for the construction of a condo building. Temple Insurance Company ["Temple"] issued a "wrap-up" insurance policy initially in force from March 2010 to March 2011, and subsequently renewed three times, until March 2012. On November 14, 2011, an employee of a subcontractor who was painting a staircase accidentally hit a sprinkler head, causing water damage.

After indemnifying the syndicate for the damage, its insurer filed a subrogated claim against the general contractor, the subcontractor (which later became bankrupt, thus triggering a suspension of the claim) and the latter's own liability insurer who called Temple in warranty. The latter denied coverage.

The general contractor raised the absence of legal relationship with the syndicate as a defence. The Court ruled that although the contract had been signed with the condo promoter, the general contractor could be held liable under article 1442 of the *Civil Code of Quebec* since the rights of the promoter had been transferred to the syndicate when the declaration of co-ownership came into force in July 2011. The Court also held that the subcontractor was responsible for the damages: its employee had been negligent, since the sprinkler head was visible and had even been covered with tape to shield it from the paint.

The recourse in warranty against Temple was dismissed. The Court ruled that the risk was included in the coverage for "all sums which the Insured shall become legally obligated to pay, or for any liability assumed by the Insured under

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Contract […] for damages arising out of the Insured's Work in connection with the Insured Project": the damage had been caused by the subcontractor's employee while he was painting.

However, the Court concluded that the following exclusion applied to the claim:

> Injury to, or destruction of, or loss of use of:
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> […]
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> (d) property of every kind and description either forming part of or to form part of the Insured Project. This exclusion does not apply during any extension beyond the expiry date of this policy with respect to the Products Hazard and Completed Operations Hazard as defined herein;

The Court then had to determine if the claim fell within the scope of coverage for Completed Operations Hazard, defined in these terms:

> 3. Completed Operations Hazard
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> […] liability arising out of the Insured's Work in connection with […] Property Damage, but only if such […] Property Damage results from an Occurrence after the Insured's Work has been completed or abandoned.
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> The Insured's Work shall be deemed completed at the earliest of the following times:
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> […]
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> (c) when that portion of the Insured's Work out of which the Bodily injury or Property Damage arises has been put to its intended use by other than another Contractor or Subcontractor engaged in performing operations for the Named Insured as part of the same Insured Project;
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> (d) when the Insured's Work has been accepted by or on behalf of the owner.

The Court explained that coverage will apply when the subcontractor's task is completed and that this clause determines when the insured's work is deemed to be completed. The Court therefore had to decide whether paragraphs (c) or (d) applied.

As to whether the portion of the insured's work had been "put to its intended use" (par (c)), the Court explained that the clause could mean that the work 1° is put in service for its intended purpose; 2° serves its intended use; or 3° is used for its intended purpose. Since the painting of the staircase was still on-going when the damage occurred, and that the subcontractor had to paint other floors, the work was not put to its intended use or used for its intended purpose. Painting the staircase was not corrective work, but was the very obligation to which the subcontractor was bound by contract.

Moreover, the fact that the architect in charge of the project had issued a certificate of substantial completion for the whole project prior to the damage did not mean that the work was deemed completed. Finally, there was no evidence that the owner had accepted the subcontractor's work (par (d)). The recourse in warranty against Temple was dismissed but the one against the contractor and the subcontractor's insurer was granted.

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