

CONSTRUCTION SOLUTIONS CONFERENCE
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BUILDING ENVELOPE VENTILATION AND MOISTURE EXPOSED TO CLAIMS – UNINSURED – WHAT TO DO NEXT

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WHAT'S THE PROBLEM

- PROPERTY DAMAGE
 - Remediation
 - Contents
 - Diminished Value
 - Stigma
 - Loss of use and enjoyment
 - Loss of rent
 - General / Special / Punitive Damages



WHAT'S THE PROBLEM

- PERSONAL INJURIES
 - Sick Building Syndrome
 - Increased Risk to Health
 - General / Special / Punitive Damages



WHOSE PROBLEM IS IT?

- DEVELOPERS / VENDORS
 - Disclosure Statements (*Strata Plan LMS 1463 v. Krahn Bros Construction (2004)*)
 - Breach of Contract
 - Warranties
 - Negligence



WHOSE PROBLEM IS IT?

- DESIGN PROFESSIONALS / CONSULTANTS
 - Negligent Design (*Bolam v. Friern Hospital Management Committee*, (1957))
 - Field Reviews
 - Failure to Warn (*Surrey v. Carroll-Hatch & Associates* (1979))



WHOSE PROBLEM IS IT?

- BUILDERS
 - Breach of Contract (*The Owners, Strata Plan NW 3341 et al v. Canlan Ice Sports*)
 - Faulty Construction / Materials
- PROPERTY MANAGERS
 - Maintenance
 - Breach of Contract
 - Negligence



WHOSE PROBLEM IS IT?

- LANDLORDS
 - Maintenance
 - Breach of Contract
- REAL ESTATE AGENTS
 - Negligent Misrepresentation (*Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.*, (1964))
 - Non Disclosure



WHOSE PROBLEM IS IT?

- STRATA CORPORATIONS/ SERVICE PROVIDERS
 - Non-disclosure
 - Maintenance
- EMPLOYERS
 - Maintenance
 - Occupational Safety



WHOSE PROBLEM IS IT?

- PUBLIC BODIES / LOCAL GOVERNMENT
 - Policy Decisions (*Anns v. Merton*)
 - *Operational Duty* (*Kamloops v. Nielsen (1985)*)
- INSURERS / SURETIES
 - Coverage Issues (*Privest Properties Ltd. et al v. The Foundation Company of Canada Limited (1991)*; *Axa Pacific Insurance v. Guildford Marquis Towers (2000)*; *Allstate Insurance Co. v. Axa Pacific Insurance (1998)*; *Swagger Construction v. ING Insurance Co. of Canada (2005)*; *Pilot Insurance v. Whiten (2002)*)
 - Good Faith Obligations



WHAT IS THE TEST FOR RECOVERY?

- Cause and Effect (*Donoghue v. Stevenson (1932)*; *Anns v. Merton (1977)*; *Kamloops v. Nielsen (1985)*)
- Balance of Probabilities
- Substantial Danger – *Winnipeg Condominium v. Bird Construction et al (1995)*



SPECIFIC CLAUSES FOR PROTECTION

- Exclusion of Liability (*Photo Productions Ltd. v. Securicor Transport (1980)*)
- Limitation of Liability (*RBO Architecture*)
- Disclaimers (*Wigmar Construction v. Defence Construction (1997)*)
- Indemnities



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