Interpreting Builders Risk Insurance: the Court of Appeal Sets the Record Straight

April 16, 2026

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The Court of Appeal intervenes in an interpretation dispute between a general contractor and its builders risk insurance carrier, the latter declining to indemnify the former for certain financial losses resulting from a flood that occurred at a construction site.

FACTS

General contractor CRT Construction Inc. ("***CRT***") was charged with construction work by the City of Montréal (the "***City***") in May 2017 at the Atwater drinking water treatment plant, a major project that included building several structures for underground water management.

The City required CRT, among other things, to purchase builders risk insurance, which it did from the defendant insurer (the "***Insurer***"). At the time of securing the insurance, a flood coverage extension was taken out by way of endorsement, given the construction site's proximity to a water source (the "***Endorsement***").

On November 12, 2017, a major flood occurred on site. The ensuing corrective work undertaken at the breach lasted around four (4) months. During this time, although CRT was able to continue a portion of the construction work (50%), the other portion remained at a standstill as it gave way to the repair work.

A forensic accountant was hired by the Insurer to assess the extent of the damages allegedly sustained and claimed by CRT.[1] These fall into two (2) categories: 1) costs incurred to repair the breach and restore the construction site[2] (the "***Costs of Repairs***") and 2) additional costs associated with construction delays[3] (the "***Additional Costs***").

The Insurer agreed to indemnify CRT for the Costs of Repairs, but not for the Additional Costs.

TRIAL

Hence, the Superior Court of Québec was asked to study the policy at hand—including the

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Endorsement—and to decide the fate of CRT's claim for the Additional Costs.

The builders risk insurance policy provided that the base coverage included damage to "*[translation]* insured property arising from those perils designated as covered". The term "property" referred to that property "located at the 'construction site'". The "cost of making good […]", as well as "damage caused directly or indirectly by the interruption of construction […]" and "by delay, loss of market or loss of use", were, on the other hand, excluded.

However, the Endorsement provided that "*[translation]* coverage extends to direct physical loss or damage caused to insured property by a 'flood' occurring at the 'construction site' […]" and that damage resulting from a flood, under any coverage offered, were to be adjusted as one claim.

Relying on the definition of "Sinistre" ["Occurrence"][4] included in the Endorsement, CRT contended that the extension of coverage applied to any type of damage, provided it resulted from a flood, such an interpretation being in keeping with CRT's expectations, at the time of securing the insurance, to be fully covered in the event of flooding.

The Insurer, however, argued the opposite: both the base coverage and the extension of coverage under the Endorsement applied only to direct damage to the insured property, the consequences of any delays otherwise being excluded.

The trial judge agreed with the interpretation put forward by CRT and held that the claim for Additional Costs was admissible on grounds that:

1. The Insurer viewed the flood as one and the same "Occurrence"—as it caused all costs claimed to be assessed, and the Costs of Repairs to be reimbursed to CRT, it follows that the Additional Costs should also be indemnified;
2. The Insurer was unable to establish the applicability of any exclusion, and any ambiguity should be construed in favour of the insured;
3. The definition of "Occurrence" included in the Endorsement provided for broad and complete coverage of any damage resulting directly or indirectly from a flood occurring at the construction site; and
4. This interpretation, moreover, was in keeping with CRT's reasonable expectations at the time of securing the insurance.

APPEAL

The Court of Appeal overturned the trial judgment. The interpretation upheld at trial did not take into account the true purpose of the insurance coverage, which is the cornerstone of the analytical framework. The Court recalled in passing the well-known three-stage test.[5]

Having found that the insurance coverage under the Endorsement applied in the event of a flood and thus simplifying the dispute, the Court of Appeal held that the terms of such Endorsement were clear and unequivocal: this extended coverage was limited to "*[translation]* direct damage to insured property".[6] Any losses of a different nature, such as the Additional Costs in the present case, were not included. There is no basis for resorting to the definition of "Occurrence" and doing so would have had the undesirable effect of unduly extending the coverage provided by the Endorsement. Relying on the Endorsement's structure as a whole, the Court found that the definition of "Occurrence" was not meant to define coverage, but rather to implement the applicable deductible and limit of insurance.

COMMENTS

This decision is a practical reminder of the framework for interpreting an insurance policy and, further, of the overarching criterion that is the true purpose of coverage. Keeping this purpose and analytical framework in mind helps with interpretation, and also when it comes to resolving issues arising from a misalignment of an insured's expectations with the insurance protection secured. It is also interesting to note the consideration of the text's structure, in addition to its wording, as a guideline for analysis.

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Moreover, a review of this kind requires that the insurance policy as a whole be considered, rather than isolating the endorsements that are added to it and modify coverage. This is also the purport of the Supreme Court of Canada's recent decision in *Emond v. Trillium Mutual Insurance Co.*[7]

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1. It is worthy of note that the assessment was produced without taking into account the coverage under the builders risk insurance policy.
2. Cleaning, securing and repairing the site.
3. Additional wages and *per diems*, workers' inefficiency, wage indexing and cost increases, plus administrative costs and loss of profits.
4. "*[Translation]* 'Occurrence': all loss or damage attributable directly or indirectly to one cause or a series of similar or related causes. All such loss or damage shall be treated as one (1) and the same 'occurrence'."
5. Namely, 1) proof by the insured that the claim is included in the insurance coverage provided, 2) proof by the insurer of the applicability of an exclusion and 3) proof by the insured of the applicability of an exception to the exclusion.
6. Our emphasis.
7. 2026 SCC 3. See para. 36 of the decision: "[36] Endorsements are not self-contained and standalone contracts disconnected from the insurance policy of which they form a part. An endorsement "changes or varies or amends the underlying policy" (*Pilot Insurance Co. v. Sutherland*, 2007 ONCA 492, 86 O.R. (3d) 789, at para. 21). Some endorsements may be "comprehensive on the subject of the particular coverage provided in the endorsement", but they are still "built on the foundation of the policy" (*ibid.*; see also *Pickford Black Ltd. v. Canadian General Insurance Co.*, [1977] 1 S.C.R. 261, at pp. 265-66). It follows that endorsements do not change the generally advisable order. Aspects of the endorsement that affect coverage are considered as part of the coverage conferred by the insurance contract, aspects that create exclusions are considered later, followed by any exceptions to the exclusions created."

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