

*Case Name:*

**Progressive Homes Ltd. v. Lombard General Insurance Company of  
Canada**

**Progressive Homes Ltd.  
v.  
Lombard General Insurance Company of Canada**

**[2009] S.C.C.A. No. 206**

[2009] C.S.C.R. no 206

File No.: 33170

Supreme Court of Canada

Record created: May 20, 2009.

Record updated: September 25, 2009.

**Appeal From:**

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

**Status:**

Notice of appeal filed September 25, 2009. Appeal not yet inscribed for hearing.

**Catchwords:**

*Insurance -- Liability insurance -- Comprehensive general liability policy -- Duty to defend -- Contractor alleging that it sustained losses when defects in one part of condominium project built by subcontractors caused damage to other parts of building -- Circumstances under which property damage to one or more components of a building resulting from defective workmanship by a subcontractor can trigger coverage under completed operations hazard endorsement.*

**Case Summary:**

The Respondent issued successive commercial (or "comprehensive") general liability insurance policies to the Applicant during the years 1987 to 2005. The policies are "occurrence policies" which provide coverage for the happening of covered occurrences within the period in question.

The policies provide that the Respondent will defend the Applicant for those claims where the damage which occurred falls within coverage.

In late 2004 and early 2005 four actions were brought against the Applicant by the B.C. Housing Management Commission. Each action concerned a separate condominium project that had been built by the Applicant and financed by B.C. Housing. The actions alleged significant damage due to water penetration of the buildings' envelopes. The pleadings alleged that the Applicant was in breach of contract and had been guilty of negligence in various respects, and that the claimants had suffered damages and building defects including water leakage through exterior walls, improperly installed windows, insufficient venting and drainage, and deterioration of the building components as a result of water ingress.

The Respondent initially defended each of the four actions but soon withdrew from the defence, claiming that it was under no duty to defend the actions because they were not covered under the liability insurance policies it had issued to the Applicant. Following the Respondent's withdrawal, the Applicant brought a petition seeking a declaration that the Respondent was obliged to defend.

**Counsel:**

Gordon Hilliker, Q.C., for the motion.

Ward K. Branch (Branch MacMaster), contra.

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**Chronology:**

1. Application for leave to appeal:

FILED: May 20, 2009. S.C.C. Bulletin, 2009, p. 727.

SUBMITTED TO THE COURT: July 6, 2009. S.C.C. Bulletin, 2009, p. 957.

GRANTED WITH COSTS: August 27, 2009 (without reasons). S.C.C. Bulletin, 2009, p. 1124.

Before: McLachlin C.J. and Abella and Rothstein JJ.

The application for leave to appeal is granted with costs in the cause.

2. Notice of appeal filed September 25, 2009. Appeal not yet inscribed for hearing. S.C.C. Bulletin, 2009, p. 1302.

**Procedural History:**

Judgment at first instance: Application for order declaring that Respondent is under a duty to defend dismissed. Supreme Court of British Columbia, Cohen J., March 29, 2007.

Judgment on appeal: Appeal dismissed.  
Court of Appeal for British Columbia, Ryan, Huddart (dissenting) and Kirkpatrick JJ.A., March 26, 2009.

[2009] B.C.J. No. 572.

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Time Of Request: Tuesday, November 17, 2009 20:00:34