
Alberta Court Of Appeal Says No Exceptions To Insurers Suing Its Own Insured.

Reported Case:	Condominium Corp. No. 9813678 v. Statesman Corp.
Citation:	2007 ABCA. 216
At Issue:	Whether any exception should be made to the general principle that an insurer has no subrogation rights against an insured.
The Court:	Alberta Court of Appeal
Judgment Rendered:	June 28, 2007
Factual Summary:	A condominium development had four sections: A, B, C, and D. A to C were built and occupied when a subcontractor working on D negligently set D on fire. The fire spread, destroying C and extensively damaging A and B. The insurer paid out the full fire loss, and sued its insured, Statesman, to get back over \$25 million dollars of that payment. The insurer alleged that Statesman, as the developer, was vicariously liable for the subcontractor's tort. The named insureds in the policies included directors, owners, unit holders, and manager. Statesman was all of these things.
At Trial:	The Queen's Bench held that the suit against Statesman could continue despite it being an insured.
Appellate decision:	Although the traditional rule barring an insurer from suing its own insured occasionally yields unpredictable results, an insurer can negotiate exceptions to coverage or to subrogation waiver clauses before it issues a policy. For generations subrogated suits against every Canadian insured have been understood to be forbidden. Appeal allowed. Suit against Statesman dismissed.