
General Contractor or Sub-contractor – Who is at fault?

Reported Case:	<i>Progressive Homes Ltd. v. Lombard General Insurance Co.</i>
Citation:	2009 BCCA 129
At Issue:	Whether serious construction defects attributed to subcontractors constituted “property damage” caused by an “occurrence” and were covered by a GCL policy
The Court:	British Columbia Court of Appeal
Judgment Rendered:	March 26, 2009
Factual Summary:	<p>Progressive had several actions brought against it by the BC Housing Management Commission, who had financed various condominium projects that Progressive had built. BC Housing alleged that the condominiums contained multiple defects with respect to the roof and walls, including severe water damage. Progressive argued that their insurer (Lombard) was under a duty to defend the actions.</p> <p>Progressive argued that the defects were “property damage” caused by an “occurrence” that should trigger coverage under their GCL policy. Lombard responded that the defects were not “property damage” caused by separate defective parts, but rather entirely defective buildings- meaning that the losses were not “property damage” but actually pure economic loss.</p>
Disposition Lower Court:	The British Columbia Supreme Court held that coverage under the insurance contracts had not been triggered, and Lombard was not under a duty to defend Progressive.
Appellate Decision:	<p>The majority of the Court of Appeal held that insurance only protects against “fortuitous risk” and that the results of poor workmanship do not fall into this category. The Court agreed with Lombard that the deletion of the “subcontractor’s exclusion clause” in the Broad Form Property Endorsement did not provide coverage for the faulty work of a subcontractor <i>during construction</i> (because the general contractor could check the work) but that latent defects that caused damage after the project was completed could be covered.</p> <p>This finding did not help Progressive, because the Court determined that the problem with their condominiums was that the buildings were defective <i>as built</i>, and so the “after completion” coverage did not apply.</p> <p>The minority decision disagreed, finding that the policy as a whole indicated that the defective work of subcontractors (though not of Progressive itself) was meant to be covered, and so Lombard should defend the actions until it could be decided which defective work belonged to Progressive and which belonged to the subcontractors.</p>

