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CASE SUMMARY: LAND AND SOIL AROUND INSURED HOME NOT INSURED BASED ON POLICY LANGUAGE

Court of Appeal overturned finding that a water damage extension extended the definition of insured property to include the land and soil in the insured's backyard.

Insurance law – Homeowner's insurance – Extension – Interpretation of policy – Practice – Appeals

Osborne v. Family Insurance Solutions Inc., [2021] B.C.J. No. 413, 2021 BCCA 104, British Columbia Court of Appeal, March 5, 2021, R. Goepel, G. Dickson and G.B. Butler JJ.A.

The insured held an all perils homeowners' policy that included extended water damage coverage (the "Watercover Extension") intended to cover damage caused by excessive rainfall.

During the policy period, heavy rainfall caused a portion of the insured's backyard to wash away, but the insurer denied coverage on the basis that the land and soil in the backyard were not insured property. At the hearing, the insured argued that the Watercover Extension extended coverage to the "Premises", which, by definition, included the land and soil within the insured's back yard. The insurer argued that the property insured under the Policy did not include land and soil and that the Watercover Extension did not modify what was insured. The chambers judge concluded that the Watercover Extension extended coverage to loss or damage to the "Premises", which included land and soil, and that the damage was covered under the Policy. The insurer appealed.

On appeal, the insurer alleged that the chambers judge erred by failing to note that the Watercover Extension did not change the scope of the property insured, which did not include land and soil.

In allowing the appeal, the court held that the Watercover Extension did not create an independent grant of coverage. It found that the Watercover Extension was an insured peril, and that, although it provided coverage if a sudden accumulation of rain entered the insured Premises and caused damage, it did not provide coverage for loss or damage to property that was not insured under the Policy. The court was satisfied that the inclusion of the word "Premises" in the Watercover Extension did not modify or change the property that was insured under the Policy or extend covered to uninsured property.

This case was digested by [Alicia Catalano](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Alicia Catalano at acatalano@harpergrey.com.