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## CASE SUMMARY: WRAP UP HAS DUTY TO DEFEND ACTIONS ALLEGING DEFECTS IN CURTAIN-WALL SYSTEM

Wrap-up liability insurer was obligated to defend insured developers and contractors in related actions alleging damage from defects in particular parts of a curtain-wall system.

**Insurance law – Liability insurance – Wrap-up policies – Exclusions – Duty to defend – General contractors – Third parties – Interpretation of policy**

*KBK No. 11 Ventures Ltd. v. XL Insurance Co.*, [2022] B.C.J. No. 1777, 2022 BCSC 1652, British Columbia Supreme Court, September 21, 2022, W.B. Milman J.

Two developers, a construction manager contractor, and a project manager contractor brought a petition against a wrap up liability insurer seeking to enforce the duty to defend under the policy. The underlying actions for which the insureds sought a defence alleged defects and deficiencies in the design, manufacture, and installation of the curtain-wall system at the Shangri-La tower in Vancouver. The insurer's argument was that, although there was a possibility that the claims advanced against the insureds in the actions fell within the initial grant of coverage, it did not have an obligation to defend the insureds because coverage was ousted by the "your work" exclusion. This exclusion provided that the insurance did not apply to "property damage" to that particular part of "your work" out of which the "occurrence" arises. The insurer's position was that, as developers and general contractors, the insureds' "work" was effectively the entire project. The insureds' submission was that this exclusion did not apply to oust coverage because what was alleged in the actions to be defective was the various sub-components of the curtain-wall system (i.e. the desiccant and the spacer bar used in the sealed insulated glass units). Furthermore, the class action brought on behalf of original purchasers alleged resulting damage as well as damages for loss and enjoyment of units by owners.

The court held that the insurer did not meet its burden to demonstrate that any part of the pleaded claims were clearly and unambiguously excluded, so as to relieve it from the obligation that arises under the policy to fund the insureds' defence. It was not possible to disentangle the covered from the excluded claims. The curtain-wall system was not necessarily alleged to be defective as a single, irreducible unit and at least some of the more specific allegations spoke to defects and deficiencies in particular parts of the system, rather than the system as a whole.

This case was digested by [Kora V. Paciorek](#), 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 Kora V. Paciorek at [kpaciorek@harpergrey.com](mailto:kpaciorek@harpergrey.com).