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CASE SUMMARY: LOSS SUFFERED BY RESTAURANT OWNERS EXCLUDED UNDER INSURANCE POLICY'S FREEZING EXCLUSION

Insurance law – All-risk insurance – Exclusions – Policies and insurance contracts – Interpretation of policy; Practice – Appeals – Standard of review

[Wynward Insurance Group v. MS Developments Inc.](#)

Damage to the insureds' restaurant was caused by two freezing incidents and was excluded from coverage by the freezing exclusion which provided that there was no insurance for loss or damage caused directly or indirectly by freezing.

[2016] B.C.J. No. 2737

2016 BCCA 513

British Columbia Court of Appeal

December 30, 2016

P.M. Willcock, R. Goepel and G.J. Fitch JJ.A.

The insureds owned and operated a restaurant. The restaurant was insured by an all-risk insurance policy. The restaurant building sustained damage from two freezing incidents that included cracking and displacement of its floors, walls and ceilings. The first freezing incident occurred when the heat wrap surrounding a freezer drain line failed and water in the freezer drain line froze. The freezer drain line burst and water escaped and accumulated under the freezer floor slab. The water under the floor slab froze during the second freezing incident and caused damage to the floor slab and the building's walls and ceilings.

The policy included a freezing exclusion which provided that there is no insurance for loss or damage caused directly or indirectly by freezing. The freezing exclusion had an exception for loss or damage caused directly by rupture of pipes.

The insureds made a claim for indemnity for the damage. The insurer denied coverage and commenced proceedings seeking a declaration that the insureds' losses were excluded from coverage.

The chambers judge found that the freezing exclusion applied and the insureds' losses were excluded from coverage.

The insureds appealed and took the position the chambers judge erred in failing to consider and/or apply the exception in the freezing exclusion for damage caused directly by the rupture of pipes or breakage of apparatus. The appeal involved the interpretation of a standard form insurance contract and the appropriate standard of review was correctness.

The Court of Appeal found that the loss arose from two separate freezing incidents. The initial freezing incident caused water to be discharged from the pipes; however, the discharged water did not cause the damage. The damage only occurred when the discharged water subsequently froze again. The Court of Appeal found that the damage was caused indirectly by the initial freezing. The exception only applies to damage caused directly by the rupture of pipes. In this case, the ultimate freezing which caused the damage was not a direct result of the initial pipes bursting but an indirect result. The policy was clearly drafted in such a manner that the exception to the exclusion only applied to direct damage caused by the rupture of pipes. In this case, there was no such direct damage.

The Court of Appeal found that the freezing exclusion applied to exclude the loss. The exception did not apply because the damage arose indirectly from the initial freezing of the pipes. As a result, the appeal was dismissed.

This case was digested by [Aaron D. Atkinson](#) and edited by [David W. Pilley](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at aatkinson@harpergrey.com or dpilley@harpergrey.com or review their biographies at <http://www.harpergrey.com>.