

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: ELEVATOR MAINTENANCE COMPANY REQUIRED TO DEFEND OWNER AND PROPERTY MANAGER OF BUILDING BASED ON COVENANT TO INSURE IN CONTRACT WITH PROPERTY MANAGER

Insurance law – Property insurance – Covenant to insure – Additional named insured – Duty to defend

Henry v. Thyssenkrupp Elevator (Canada) Ltd., [2018] O.J. No. 1391, 2018 ONSC 1659, Ontario Superior Court of Justice, March 14, 2018, J.F. Diamond J.

The plaintiff sued the owner, property manager, and elevator maintenance company of a residential apartment building following an accident as she exited the elevator, which caused personal injuries. The owner and property manager brought a cross claim against the elevator maintenance company seeking contribution and indemnity with respect to any judgment or settlement obtained by the plaintiff. These parties relied on the elevator maintenance agreement which required the elevator maintenance company to add them as additional insureds on its insurance policy, which was to cover them for any liability resulting from the elevator maintenance company's "presence or operations." Those parties subsequently brought a motion seeking an order requiring the elevator maintenance company to reimburse them for defence costs to date and to pay their legal costs moving forward.

The court held that the allegations in the claim raised the mere possibility that there could be coverage. The allegations in the claim could lead to a finding that the elevator maintenance company did not perform its scheduled maintenance properly or at all. As such, the elevator maintenance company had a duty to defend the owner and property manager of the building.

This case was digested by [Cameron B. Elder](#), 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 Cameron B. Elder at celder@harpergrey.com.