COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Honeywell International Inc. v. XL Insurance Company Ltd.,* 2024 BCCA 375

Date: 20241112
Dockets: CA48334; CA48335

2024 BCCA 375 (CanLII)

Between:

Docket: CA48334

Honeywell International Inc.

Appellant
(Third Party)

And

XL Insurance Company Ltd.

Respondent
(Third Party)

- and -

Docket: CA48335

Between:

Honeywell International Inc.

Appellant
(Third Party)

And

XL Insurance Company Ltd.

Respondent
(Third Party)

Before: The Honourable Mr. Justice Willcock
The Honourable Mr. Justice Butler
The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia, dated May 10, 2022 (*Owners, Strata Plan BCS 3206 v. KBK No. 11 Ventures Ltd.*, 2022 BCSC 766, Vancouver Dockets S1510419 and S1510431).

Counsel for the Appellant: M.D. Adlem

Counsel for the Respondent: A.N. Epstein

Place and Date of Hearing:	Vancouver, British Columbia October 1, 2024
Place and Date of Judgment:	Vancouver, British Columbia November 12, 2024

Written Reasons by:
The Honourable Mr. Justice Willcock

Concurred in by:
The Honourable Mr. Justice Butler
The Honourable Madam Justice Horsman

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Summary:

The appellant challenges a finding that it does not qualify as an "insured" under a wrap-up insurance policy and the consequential dismissal of its claim to be indemnified for costs incurred in the defence of a claim, now settled. Held: Appeal allowed. The definition of insured "sub-contractors" includes suppliers, even those who do not perform site services, provided they perform some function other than merely supplying materials to the project. On its plain wording, that definition includes off-site manufacturers of components incorporated in the project. There was no evidence before the judge to the effect that there is a specific intent or industry practice to exclude all off-site suppliers from the definition of insured sub-contractors. Any such limitation in the definition of covered suppliers must be found in the wording of the policy, not in the "nature" of a wrap-up policy. That is consistent with the rule that the intent of the parties is generally ascertained within the four corners of the policy.

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Reasons for Judgment of the Honourable Mr. Justice Willcock:

Introduction

[1] Applications brought by the appellant Honeywell International Inc. for orders that XL Insurance Company Ltd. indemnify it for defence costs incurred in two actions pursuant to a wrap-up insurance policy were dismissed, for reasons indexed at 2022 BCSC 766. The judge concluded Honeywell did not fall within the definition of an Insured under the Policy. He dismissed Honeywell's third party claims against XL.

[2] Honeywell appeals those orders. It contends the judge erred in interpreting the Policy. In particular, it says the judge erred in concluding the definition of insured "sub-contractors" did not include Honeywell; in failing to consider allegations made against Honeywell which should have been a primary basis for a duty to defend analysis; and in basing his conclusion with respect to coverage upon a conception of the nature and purpose of wrap-up insurance and the underwriting intent in the absence of evidence and without regard for the wording of the Policy.

[3] For the reasons that follow, I am of the view Honeywell falls within the definition of an Insured under the Policy; the appeals should be allowed; the order dismissing the third party claims should be set aside; and the proceedings should be

remitted to the trial court for adjudication of XL's warranty exclusion and recall exclusion arguments (described below).

Background

[4] The plaintiffs in the underlying actions alleged deficiencies in sealed insulated glass units (IGUs) forming part of the exterior curtain wall of the Shangri-La tower in downtown Vancouver. The actions were initially brought against principal contractors responsible for the construction of the building. The defendants, in turn, brought third party proceedings against other parties. Honeywell is a third party in both actions. It is alleged in each of those third party proceedings that Honeywell manufactured defective desiccant, a substance intended to absorb moisture that was used in the manufacture of the IGUs, and the failure of the IGUs was a result of that defect.

[5] XL Policy CA00001122L105A, issued on October 6, 2005 to one of the principal contractors, described as a "wrap-up liability policy", provided coverage described in Section I as follows:

> 1. Insuring Agreement
>
> a. … subject to the Conditions, Definitions and other terms of this Policy we will:
>
> …
>
> (2) Coverage B - Property Damage
>
> pay on your behalf all sums which the insured becomes legally obligated to pay as compensatory damages because of "property damage" which occurs during the Policy Period.
>
> ...

[6] The Policy provided coverage for defence costs under the heading "Additional Insuring Agreements". XL agreed to:

> a. Defend in your name and on your behalf and at our cost any "action" against the insured seeking compensatory damages for "bodily injury", "property damage" or "personal injury" …

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[7] Coverage was extended to any person or organization qualifying under Section II of the Policy which defined the "Insured" as follows:

> 1. The term "Insured" means:
>
> a. The Named Insured and others listed in the Declarations.
>
> b. Any other physical person or legal entity or consultant or sub-consultant providing engineering, architectural, laboratory or testing services under contract with the Named Insured.
>
> c. Each "contractor" designated as an Insured under written contract with the Named Insured, its "sub-contractors" and their "sub-contractors", with respect to loss or damage arising out of their operations, activities or existence of property at the Project Site for the performance of operations of activities in connection with the Project.
>
> d. Any partner, director, member, officer, stockholder of the Insured mentioned in paragraphs a. to c. while acting for or on behalf of any Insured.
>
> [Emphasis added.]

[8] Honeywell claims to fall within the definition of an Insured under Section II para. 1(c) of the Policy as a "sub-contractor". That term is defined in Section VII of the Policy:

> 4. "Contractors["] and "sub-contractors" include all persons or organizations who perform any part of the work under the Insured Project but do not include:
>
> a. Suppliers whose only function is to supply materials, machinery or other supplies to the project and who do not carry out any installation, construction, or supervisory work on the Insured Project;
>
> [Emphasis added.]

[9] The third party notices are replete with references to Honeywell's role as a manufacturer of a component of the IGUs. Referred to at paras. 22–42 of the reasons of the judge, the allegations include:

a) The allegation of Garibaldi Glass Industries Inc. ("Garibaldi") that Honeywell manufactured the desiccant used in the fabrication of the IGUs and that the alleged construction deficiencies and defects were caused or contributed to

by the negligence, breach of contract and/or breach of duty of Honeywell and defects and deficiencies in the manufacture of the desiccant.

b) The allegation of Guardian Glass, LLC, Guardian Industries Corp. and Guardian Glass Company (jointly "Guardian") that Honeywell manufactured the desiccant used in the fabrication of the IGUs and that the alleged construction deficiencies were caused in whole or in part by the defects and deficiencies in the manufacture of the desiccant.

c) The allegation of Intertek Testing Services NA Ltd. ("Intertek") that repeats and relies on the allegations of the negligence, breach of duty, breach of statute, breach of warranties, and breach of contract as set out in the Garibaldi and Guardian Third Party Notices.

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[10] Honeywell seeks coverage for its defence costs on the basis that the allegations bring it within the definition of a supplier as an *organization that performed a part of the work under the Insured Project*. It says it is not alleged to have played the limited role that would bring it within the class of sub-contractors excluded from the definition; it is alleged to have *performed a function other than supplying materials, machinery or other supplies to the project*. It says it is described as a manufacturer of a product incorporated in the project and is named as a third party in the action in that capacity.

[11] On May 11, 2021, Justice Walker granted Honeywell leave to file a third party notice against XL, seeking a declaration that XL has a duty under the Policy to defend claims against Honeywell; an order for indemnity for defence expenses; and an order for indemnity for any amounts it might be found liable to pay the claiming parties. The application had been opposed by XL on three grounds:

a) the essential allegation against Honeywell is that it was a mere supplier of a product to the project and not an Insured;

b) coverage is excluded by a provision of the Policy excluding *warranty claims*; and

c) coverage is excluded by a provision of the Policy excluding *recall or withdrawal claims*.

[12] Addressing the question whether Honeywell is an Insured, Walker J., in reasons indexed at 2021 BCSC 894, held:

> [61] There is no evidence on the instant applications from which I can conclude that the limiting language in the definition of an insured excludes Honeywell from the ambit of coverage is engaged so that Honeywell's claim against XL is bound to fail. Other than its denial letter, XL did not tender any evidence in support of its characterization of Honeywell's role in the construction of the Shangri-La Building.
>
> [62] Instead, and even though there is no allegation or reference to Honeywell's status as a contractor, sub-contractor, or supplier in Garibaldi Glass' third party notices, Honeywell is described as a manufacturer who is liable for negligence, breach of contract, and breach of duty. Thus, one possible construction of the claim against Honeywell, assuming it is true, places it within the definition of insured…

[13] Honeywell then brought applications for declaratory relief and indemnity for defence costs by way of a summary trial, heard on August 9 and 10, 2021. Judgment was reserved to May 10, 2022, when the applications and the underlying third party proceedings were dismissed. Because the summary trial judge concluded Honeywell was not an Insured, he did not address the provisions excluding warranty claims or recall or withdrawal claims. The parties to this appeal say, if the appeal is allowed, the matter must return to the trial court for adjudication of XL's warranty exclusion and recall exclusion arguments.

[14] The underlying claims have now been settled. Honeywell's only remaining claim against XL is for indemnity for costs incurred in defending the third party claims against it.

The Judgment Below

[15] The summary trial judge held:

> [99] In my view, the essence or "true nature" (as per *Scalera* [*Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24]) of the claims made against Honeywell are that its product, which was incorporated in the IGUs by other parties, was defective or deficient. There are no allegations

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> that Honeywell performed any part of the work under the project or that it carried out any installation, construction or supervisory work to the project.
>
> [Emphasis added.]

[16] He analysed the coverage afforded by the Policy as follows:

> [106] I begin the interpretation process by examining the nature of the contract. A wrap-up policy is a “liability policy that provides insurance coverage for owners, contractors and subcontractors involved in project from lawsuits”: *Temple Insurance Company v. Aberdeen Specialty Concrete Services*, 2021 SKCA 94. I accept, of course, that a policy can provide coverage for whoever the parties wish, but the essential nature of the policy is to provide coverage for those involved in a construction project.
>
> [107] Honeywell’s argument – that by also being a manufacturer it is more than a mere supplier (and so it is not a “supplier[s] whose only function is to supply materials”) – does not fit well with the “commercial atmosphere” of a wrap-up liability policy as Honeywell was many steps removed in the supply chain and not involved in the project in any way.
>
> [108] Furthermore, in my view a requirement that the supplier be involved *in the project* in some way beyond the mere supply of good or materials is revealed in a full and fair reading of the disputed Policy provision, which grants coverage to “all persons or organizations who perform any part of the work under the Insured Project” and to those suppliers who “carry out any installation, construction, or supervisory work on the Insured Project”.
>
> [109] In other words, Honeywell’s submission centres on one phrase (“suppliers whose only function is to supply materials”) and fails to interpret the entire provision as a whole in the context of the nature and purpose of a wrap-up liability policy.
>
> ...
>
> [112] In summary, the fact that Honeywell is also – allegedly – a manufacturer of material that was ultimately used in the IGUs does not make it a “supplier” covered by the Policy because it did not do anything on the project itself, as the grant of coverage requires.
>
> [Emphasis added.]

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Discussion and Analysis

Standard of Review

[17] There is no question the Policy is a standard form in commercial use and that the appropriate standard of review of the judgment is correctness. The following

excerpt from the judgment of Justice Jackson in *Temple Insurance Company v. Aberdeen Specialty Concrete Services*, 2021 SKCA 94, is apposite:

> [48] The Wrap-Up Policy … easily meets the *Ledcor* [*Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37] criteria for a standard form contract. It employs substantially identical language that is used by multiple, different parties. There is no factual matrix specific to the parties that is probative of the issue of contract interpretation. It is a contract that has been repeatedly entered into by others. … Since the Wrap-Up Policy satisfies the three *Ledcor* criteria, its interpretation has *precedential value* and is, therefore, a question of law that attracts the correctness standard of appellate review.

Duty to Defend

[18] The duty to defend is broader than the obligation to indemnify; the duty was described by Justice Rothstein in *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33, in the following terms:

> [19] An insurer is required to defend a claim where the facts alleged in the pleadings, if proven to be true, would require the insurer to indemnify the insured for the claim (*Nichols v. American Home Assurance Co.*, [1990] 1 S.C.R. 801, at pp. 810-11; *Monenco Ltd. v. Commonwealth Insurance Co.*, 2001 SCC 49, [2001] 2 S.C.R. 699, at para. 28; *Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada,* 2006 SCC 21, [2006] 1 S.C.R. 744, at paras. 54-55). It is irrelevant whether the allegations in the pleadings can be proven in evidence. That is to say, the duty to defend is not dependent on the insured actually being liable and the insurer actually being required to indemnify. What is required is the mere possibility that a claim falls within the insurance policy. Where it is clear that the claim falls outside the policy, either because it does not come within the initial grant of coverage or is excluded by an exclusion clause, there will be no duty to defend (see *Nichols*, at p. 810; *Monenco,* at para. 29).

[19] In order to succeed on its application for declaratory relief and indemnity for defence costs, it falls to Honeywell to satisfy the court that there is a possibility it will come within the definition of an Insured in respect of the third party claim made against it. The record before the summary trial judge was the same as that which was before Walker J. As he noted, there is no evidence with respect to Honeywell's role in the construction of the Shangri-La tower. We have only the pleading alleging that Honeywell manufactured the desiccant used in the fabrication of the IGUs, and affidavit evidence of Honeywell’s sale of desiccant to RPM Rollformed Metal Products.

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[20] The application for judgment was, therefore, heard on the footing that an allegation that Honeywell manufactured a product used in the fabrication of the IGUs, without more, is sufficient to bring the claim within coverage. Nothing in this case turns upon the "pleadings rule" as described in the trilogy of cases consisting of *Nichols*, *Scalera* and *Monenco*. There is no issue with respect to the "true nature" of the claim.

Principles of Interpretation

[21] The appropriate method of construction of insurance policies was also described by Rothstein J. in *Progressive Homes*:

> [22] The primary interpretive principle is that when the language of the policy is unambiguous, the court should give effect to clear language, reading the contract as a whole (*Scalera*, at para. 71).
>
> [23] Where the language of the insurance policy is ambiguous, the courts rely on general rules of contract construction (*Consolidated-Bathurst*, at pp. 900-902). For example, courts should prefer interpretations that are consistent with the reasonable expectations of the parties (*Gibbens*, at para. 26; *Scalera*, at para. 71; *Consolidated-Bathurst*, at p. 901), so long as such an interpretation can be supported by the text of the policy. Courts should avoid interpretations that would give rise to an unrealistic result or that would not have been in the contemplation of the parties at the time the policy was concluded (*Scalera*, at para. 71; *Consolidated-Bathurst*, at p. 901). Courts should also strive to ensure that similar insurance policies are construed consistently (*Gibbens*, at para. 27). These rules of construction are applied to resolve ambiguity. They do not operate to create ambiguity where there is none in the first place.
>
> [24] When these rules of construction fail to resolve the ambiguity, courts will construe the policy *contra proferentem* — against the insurer (*Gibbens*, at para. 25; *Scalera*, at para. 70; *Consolidated-Bathurst,* at pp. 899-901). One corollary of the *contra proferentem* rule is that coverage provisions are interpreted broadly, and exclusion clauses narrowly (*Jesuit Fathers*, at para. 28).

[22] It is significant, in my view, that both the definition of an Insured and the definition of a sub-contractor in the Policy contain words that describe persons or organizations *included* in the definition and words that *exclude* persons or organizations from the definition. In keeping with the rules of construction of insurance policies, where there is ambiguity, the inclusive words should be construed expansively and exclusive words should be construed restrictively.

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[23] The respondent says the task before the court is interpretation of the grant of coverage (a qualified promise) and the insured has the burden of establishing that it falls within the definition of an "Insured". It says the cases with respect to the narrow reading of exclusion clauses have no application; that they apply only to provisions appearing under the heading "Exclusions" in the Policy. There are two answers to this submission. First, an expansive reading of the grant of coverage calls for us to read the limiting words within that definition narrowly. Second, it does not matter where an exclusion appears in an insurance policy, a clause that has the effect of narrowing the grant of coverage should be given its plain meaning, and, where there is ambiguity, it should be read in favour of the insured.

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[24] In *Munroe, Brice & Co. v. War Risks Association Ltd.*, [1918] 2 K.B. 78 at 88, Justice Bailhache described the distinction between a qualified promise and a promise with exceptions. His description of the applicable principles, frequently applied, is nicely addressed by Justice Crossley in *Davidiuk v. Non-Marine Underwriters, Lloyd's London* (1988), 85 A.R. 113, 1988 CanLII 3813 (K.B.), as follows:

> [15] … I have noted the defendant's argument that the definition of "sickness" is a "qualified promise" and not an "exception". If such were the case, the onus would remain on the plaintiff at all times to prove coverage under the "qualified promise". The authority for this principle stems from *Munro, Brice and Co. v. War Risks Association Ltd.*,[1918] 2 K.B. 78, cited in Ivamy, *General Principles of Insurance Law* (2nd Ed. 1970), at p. 370.
>
> > "The rules now applicable for determining the burden of proof in such a case as the present may, I think be stated thus:
> >
> > > 1. The plaintiff must prove such facts as bring him *prima facie* within the terms of the promise.
> > >
> > > 2. When the promise is qualified by exceptions, the question whether the plaintiff need prove facts which negative their application does not depend upon whether the exceptions are to be found in a separate clause or not. The question depends upon an entirely different consideration, namely, whether the exception is as wide as the promise, and thus qualifies the whole of the promise, or whether it merely excludes from the operation of the promise particular classes of cases which, but for the exception would fall within it, leaving some part of the general scope of the promise unqualified. If so, it is sufficient for the plaintiff to bring himself prima facie within the terms of the promise, leaving it to the defendant to prove that, although

> prima facie within its terms, the plaintiff's case is in fact within the excluded exceptional class.
>
> …
>
> 4. Whether a promise is a promise with exceptions or whether it is a qualified promise is in every case a question of construction of the instrument as a whole ...
>
> 5. In construing a contract with exceptions it must be borne in mind that a promise with exceptions can generally be turned by an alteration of phraseology into a qualified promise. The form in which the contract is expressed is therefore material."
>
> [Emphasis added.]

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[25] As G. Hilliker notes in *Liability Insurance Law in Canada*, 7th ed (LexisNexis Canada, 2020), at §2.93, these rules apply generally to all classes of insurance.

[26] The "exceptions" to the definition of an "Insured" in this case are not as "wide as the promise". The "promise" is a "promise with exceptions" and not a "qualified promise". The onus in this case does not depend upon whether the exclusions are found in a separate clause or not. If the Insured falls *prima facie* within the definition of a sub-contractor, the insurer bears the onus of establishing that the Insured falls within the excluded class, in this case: suppliers whose only function is to supply materials, machinery or other supplies to the project.

[27] It is appropriate, in this case, to consider the wording of the exclusions from the definition of "sub-contractors" when interpreting the grant of coverage. As Hilliker, at §2.68, observes:

> Words and phrases in an insurance policy should not be construed in isolation. The entire policy must be taken into account. The meaning of a particular word or phrase may well be coloured by the context in which it appears and by the use of that word or phrase or related words or phrases in other portions of the policy. For example, a contractual liability exclusion (with certain exceptions) in a policy insuring against "liability imposed by law" will require one to read the insuring agreement as including contractual liability; otherwise the exclusion would be superfluous and the exceptions would have no application.

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The Intent of a Wrap-Up Policy

[28] The respondent contends the judge correctly started his analysis by examining the nature of the contract, adopting the view expressed in *Temple Insurance*, at para. 57, that a wrap-up policy is a "*liability* policy that provides insurance coverage for owners, contractors and subcontractors involved in a project from lawsuits that may be brought against them for property damage they caused."

[29] The appellant does not take issue with that general description of the intent of the insurer, but notes that *Temple Insurance* is of no assistance in addressing the specific coverage issue before us, as the insurer was affording a defence to the insured in that case. The sole issue before the court was whether Temple was liable to pay for the insured's legal costs in defending against third party before Temple acknowledged its obligation to defend.

[30] The respondent refers us to a passage in *A Guide to Canadian Construction Insurance Law* (R.B. Reynolds and S.C. Vogel (2nd ed) Thomson Reuters, 2023) at 297:

> Unlike a CGL Policy, which covers an insured's ongoing operations and is not project-specific, a wrap up liability policy will cover insured risks for the owner, general contractor and sub-contractors over the course of construction, and usually covers the completed operations for a specified term. It also generally covers consultants (except for professional liability), but not suppliers who perform none of their work on-site.

[31] This is a description of what is *generally* covered. The Policy we are considering could have accomplished that objective by providing:

> "Contractors" and "sub-contractors" include all persons or organizations who perform any part of the work under the Insured Project but do not include:
>
> *Suppliers who perform none of their work on site.*

[32] It did not do so. Our ask is to determine how the specific words in this case should be interpreted.

[33] In support of its submissions with respect to the nature of the coverage afforded by wrap-up policies, the appellant refers to *McGinnis v. Union Pacific*

Railroad Co., 612 F. Supp. (2d) 776 (S.D. Tex. 2009). In that case, the court cited the following excerpt from the wording of the grant of coverage in the wrap-up policy written by Liberty Mutual Insurance:

> The "ADDITIONAL NAMED INSURED SCHEDULE" provides:
>
> All subcontractors of any tier, as their interests may appear, for whom the First Named Insured has agreed by contract to provide general liability coverage under the owner controlled insurance program, excluding vendors, suppliers, off-site fabricators, material dealers and others who merely make deliveries to or from the Project Site(s).
>
> [Emphasis added.]

[34] It is noteworthy, in my opinion, that whatever their general purpose and intent, wrap-up policies occasionally specifically exclude "off-site fabricators". It is not clear to me that there is a generally-recognized rule that wrap-up policies do not afford coverage to off-site fabricators or manufacturers of component parts. Clearly, such manufacturers can be considered to be sub-contractors involved in a project. There was no evidence before the judge to the effect that there was a specific intent or industry practice to exclude them from the definition of insured sub-contractors. Any such limitation in the definition of covered suppliers must be found in the wording of the policy, not in the "nature" of a wrap-up policy.

[35] That is consistent with the rule that the intent of the parties is generally ascertained within the four corners of the policy: *Vancouver General Hospital v. Scottish & York Ins. Co.* (1988), 55 D.L.R. (4th) 360, 1988 CanLII 3228 (B.C.C.A.). It is also consistent with the approach described by Justice McLachlin (as she then was) *in Reid Crowther & Partners Ltd. v. Simcoe & Erie General Insurance Co.*, [1993] 1 S.C.R. 252 at 261–62, 1993 CanLII 150:

> ... The essential is not the label one places on the policy, but what the policy says. The courts must in each case look to the particular wording of the particular policy, rather than simply attempt to pigeonhole the policy at issue into one category or the other. Construction of policies at issue in these kinds of cases depends much more on the specific wording of the policy at issue than on a general categorizing of the policy.

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And at 268–69:

> ... In each case the courts must examine the provisions of the particular policy at issue (and the surrounding circumstances) to determine if the events in question fall within the terms of coverage of that particular policy. This is not to say that there are no principles governing this type of analysis. Far from it. In each case, the courts must interpret the provisions of the policy at issue in light of general principles of interpretation of insurance policies…

The Provisions of the Policy

[36] In my opinion, with respect, the judge adopted an inappropriately narrow conception of what it meant to "perform any part of the work under the Insured Project". His narrow construction of that phrase, that it applies only to organizations that do something "on the project itself", cannot be reconciled with the definition of an Insured.

[37] For ease of reference, I repeat that the definition of sub-contractors includes those who perform any part of the work under the Insured Project but excludes:

> Suppliers whose only function is to supply materials, machinery or other supplies to the project and who do not carry out any installation, construction, or supervisory work on the Insured Project;

[38] Suppliers must be considered to perform part of the work under the Insured Project. If that were not the case, there would be no need to identify specific suppliers who are excluded from the definition.

[39] Suppliers who do not carry out any installation, construction, or supervisory work on the Insured Project are excluded from the definition if, and only if, they do not perform any function other than supplying materials, machinery or other supplies to the project. By implication, suppliers:

a) who carry out installation, construction, or supervisory work on the Insured Project, or

b) who perform some function other than supplying materials, machinery or other supplies to the project,

are included in the definition of contractors and sub-contractors.

[40] It follows that the "function other than supplying materials" must be something other than work on the site. What role can a supplier perform off the work site that amounts to performance of part of the work under the Insured Project, if not off-site fabrication or manufacturing of a component?

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[41] The judge held that the Policy requires an insured to be involved *in the project* in some way and that it does not cover manufacturers "many steps removed in the supply chain". In my respectful view, this interpretation of the Policy appears to reflect a misinterpretation of the exclusions from the definition of insured suppliers. In para. 108 of his reasons, the judge concluded:

> ... [A] requirement that the supplier be involved *in the project* in some way beyond the mere supply of goods or materials is revealed in a full and fair reading of the disputed Policy provision, which grants coverage to "<u>all persons or organizations who perform any part of the work under the Insured Project</u>" and <u>to those suppliers who "*carry out any installation, construction, or supervisory work on the Insured Project*</u>".
>
> [Emphasis by underlining added.]

[42] The first highlighted portion of that description of the grant of coverage is accurate. The second is not, to the extent that it is incomplete. The Policy does grant coverage to all persons or organizations who perform any part of the work under the Insured Project. The Policy excludes from coverage suppliers whose only function is to supply materials, machinery or other supplies to the project <u>and</u> who do not carry out any installation, construction, or supervisory work on the Insured Project. The judge, in concluding that the Policy covers "those suppliers who carry out any installation, construction, or supervisory work on the Insured Project" effectively read into the definition of coverage the second half of the exception but not the first half.

[43] The respondent says:

> "contractors and subcontractors" are defined as explicitly excluding "suppliers" that do not provide site services.

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[44] In my view, that incomplete description of the exclusion results in a widening of its scope and an interpretation of the exclusion unsupported by the text of the policy.

[45] The respondent says:

> Justice Blok did not err when finding that the Appellant was not adequately connected to the Project and Project site. There is no allegation against the Appellant which suggests that it provided any installation, construction or supervisory work to the Project. There is no allegation that the Appellant provided any site services to the Project at all.

[46] This argument does not address the Policy wording and, in my view, erroneously reads into the Policy a requirement that a party provide “site services” to the Project in order to fall within the definition of an Insured.

[47] The respondent says that part of the exclusion which refers to suppliers who perform some function other than supplying materials is surplusage, and need not be given any effect. I disagree. As Chief Justice Finch noted in *Booth v. B.C. Life & Casualty Co.*, 2004 BCCA 133:

> [19] In interpreting an insurance policy, the normal rules of contract construction apply. These require the court to “search for an interpretation which, from the whole of the contract, would appear to promote or advance the true intent of the parties at the time of entry into the contract”: *Consolidated-Bathurst Export Ltd. v. Mutual Boiler & Machinery Co.* (1979), [1980] 1 S.C.R. 888 at 901, 112 D.L.R. (3d) 49 at 58. In undertaking this interpretative task, one must attempt to give meaning to all the words the parties have used to express their intention, so long as that does not achieve an absurd result at odds with the clear intention of the parties. As Somervell L.J. explains in *Maritime et Commerciale of Geneva SA v. Anglo-Iranian Oil Co. Ltd.*, [1954] 1 All E.R. 529 at 531 (C.A.), “… one leans towards treating words as adding something, rather than as mere surplusage”.
>
> [Emphasis added.]

Conclusion

[48] I am of the view the allegation that Honeywell negligently manufactured the desiccant used in the IGUs is an allegation that it performed some function other than supplying materials to the project. That allegation brings it within the definition

of an “Insured” sub-contractor. For that reason, the appeal should be allowed and the case be remitted to the trial court.

[49] In my opinion, it is unnecessary for me to deal with the argument that the order appealed is inconsistent with the order made by Justice Walker granting leave to Honeywell to commence third party proceedings against XL.

“The Honourable Mr. Justice Willcock”

I agree:

“The Honourable Mr. Justice Butler”

I agree:

“The Honourable Madam Justice Horsman”

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