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Merchandise Mart Properties Canada Inc. – Buildex, Construct & Design Trends Conference



**Heather A. Sanderson
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Property Insurance

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- (a) Common Commercial Property Wordings
 - some cover water ingress and seepage plus mold abatement
 - others exclude the above

Property Insurance

(b) Typical Exclusions for mold abatement:

(i) This policy does not insure against loss, destruction or damage caused directly or indirectly by:

A. Or consisting of any "fungi" or "spores", unless such "fungi" or "spores" directly result from a peril not otherwise excluded, nor does this Policy insure the cost or expense for any testing, monitoring, evaluating or assessing of "fungi" or "spores".

As used in this exclusion:

"fungi" includes, but is not limited to, any form or type of mould, yeast, mushroom or mildew, whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "fungi" or "spores" or resultant mycotoxins, allergens or pathogens.

"spores" includes, but is not limited to, one or more reproductive particles or microscopic fragments produced by, emitted from or arising out of any "fungi".

Liability Insurance

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2. Accessing the liability insurance of the contractors who built the building or supplied components

Liability Insurance

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Value of a Liability Insurance Policy



Defence paid for by
the insurance company



Indemnity for covered claims
(insurance company pays
settlements and judgments)

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(a) When is the Duty to Defend Decided?

At the outset of the matter.

(b) How does an insured go about proving that an insurer must defend?

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3. What the Insured Must Prove

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(a) Are they an “insured” under the Policy?

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- (b) Do the allegations allege “Property Damage” caused by an “Occurrence”?

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- (c) Is replacing deficient work “Property Damage” caused by an “Occurrence”?

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4. What the Insurer Must Prove

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- (a) Prove that the property damage alleged is excluded

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- (b) Common Exclusions found in Policies Last two to three years

Liability Insurance

- (i) Damage to Property – “Property Damage” to:
 - A. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another’s property;

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- B. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; or

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- C. That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed.

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(ii) Damage To Your Product

A. "Property Damage" to "Your Product" arising out of it or any part of it.

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(iii) Damage to Your Work

A. "Property Damage" to "Your Work" arising out of it or any part of it and included in the "products-completed operations hazard".

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- B. This exclusion does not apply to the damaged work or the work out of which the damage arises and was performed on your behalf by a subcontractor.

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(iv) Damage to Impaired Property or Property not Physically Injured

A. "Property Damage" to "Impaired Property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

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- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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- B. This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after it has been put to its intended use.

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(v) Professional Services

A. "Bodily Injury" (other than incidental medical malpractice injury), or "property damage" due to the rendering of or failure to render by your or on your behalf any "professional services" for others, any error or omission, malpractice or mistake of a professional nature.

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(vi) Fungi or Spores

A. "Bodily Injury", "Property Damage" or "Personal and advertising Injury" arising directly or indirectly, in whole or in part, out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "fungi" or "spores" however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with dispose of "fungi" or "spores";

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- B. Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with A. above; or

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- C. Any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in A. or B. above;

Questions?

Contact Information

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