

NOVA SCOTIA COURT OF APPEAL

Citation: *Royal & SunAlliance Insurance Company of Canada v. Meridian Construction Inc.*, 2012 NSCA 84

Date: 20120823

Docket: CA 349660

Registry: Halifax

Between:

Royal & SunAlliance Insurance Company of Canada

Appellant

v.

Meridian Construction Inc. and Tribeca Mechanical Limited

Respondents

Judge: The Honourable Justice Peter M. S. Bryson

Appeal Heard: June 7, 2012, in Halifax Nova Scotia

Subject: Insurance. Duty to defend. Duty to pay for defence costs.
Other insurance.

Summary: Royal had issued a property policy to a project owner, Shannex Healthcare Management Inc., and a Builders' Risk/Wrap Up Policy to the respondent contractors in relation to a construction project. A water pipe burst causing loss to Shannex. Royal paid Shannex and brought subrogated proceedings against Meridian and Tribeca, arguing that the loss occurred after the expiry of the Wrap Up Policy. Initially, Meridian and Tribeca's CGL insurers defended. Then Meridian and Tribeca applied to have Royal defend and pay for independent counsel. The Chambers judge found that Royal owed Meridian and Tribeca a duty to defend and ordered appointment of independent counsel and reimbursement of defence costs by Royal to Meridian and Tribeca.

Issues: Did the Chambers judge err:

- (1) in finding that there was a possibility of coverage under the Wrap Up Policy?
- (2) in failing to consider the CGL policies as primary “other insurance” coverage under the Wrap Up Policy?
- (3) by allowing Meridian and Tribeca to retain independent counsel at Royal’s expense?
- (4) by indemnifying Meridian and Tribeca for legal defence costs?

Result: Appeal dismissed. The Chambers judge did not err. There was a possibility of coverage under the Wrap Up Policy. In the absence of the CGL insurers, the judge was right not to rule on the effect of those policies on the Wrap Up Policy. Royal’s adversarial relation to Meridian and Tribeca by bringing subrogated proceedings against them and arguing that there was no duty to defend, placed Royal in an actual (as opposed to potential) conflict of interest with Meridian and Tribeca, justifying appointment of independent counsel. The judge did not err in ordering reimbursement of defence costs. The Court of Appeal’s decision was expressly without prejudice to any subsequent order allocating defence costs amongst Royal and the CGL insurers.

This information sheet does not form part of the court’s judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 15 pages.