

Strata Alert: D & O Insurer Denies Coverage for Strata Council, December 23, 2010

The *Strata Property Act* (SPA) s. 149 puts an obligation on the strata corporation to obtain property insurance and liability insurance. The SPA also empowers a strata corporation to take out optional forms of coverage, such as directors' and officers' errors and omissions insurance also known as "D&O" coverage. Because the coverage is optional, many strata corporations do not take out D&O insurance and, when they do, it may be too late.

That is the lesson in a recent Supreme Court of BC case in which five strata councillors brought an action against an insurer for coverage on a D&O policy. The case is the latest twist in the long-running saga of *Richard Oldaker v. VR 1008*. Mr. Oldaker has been suing VR1008 and its strata council, with mixed results, since 2001. In 2007, the strata corporation took out D&O insurance. In October of 2007, Mr. Oldaker filed another suit against the council members and the council members sought coverage for legal defence from the strata corporation's D&O insurer.

The insurer denied coverage on the basis that the D&O policy excluded claims arising before the strata corporation purchased the policy. Although the Mr. Oldaker commenced the current lawsuit during the policy period, the insurer took the position that the lawsuit was related to Mr. Oldaker's previous litigation against the current and past members council. The court agreed with the insurer and ruled that there was no coverage for strata council under the D&O policy.

You can read the reasons for judgment here: *Coleman v. Great American Insurance Co.*

<http://www.canlii.org/en/bc/bcsc/doc/2010/2010bcsc1796/2010bcsc1796.pdf%20>

This case calls attention to the importance of optional insurance coverage, such as D&O policies. Council members are always at risk of a lawsuit from a disaffected owner. Most strata corporations have bylaws providing an indemnity for strata council members, but not all stratas have D&O insurance. D&O coverage is a critical piece of the "insurance puzzle" for stratas. Without D&O coverage, members of councils without indemnity bylaws will have to pay their own legal defence costs and any damages that may be awarded by a court or arbitrator. That is a risk that most council members cannot afford.

What we do: [Lesperance Mendes](#) advises strata corporations and owners on matters such as construction defects, warranty claims, bylaw enforcement and collections. For more information about our strata law practice, contact [Paul Mendes](#) at 604-685-4894 or by email at pgm@lmlaw.ca.