



**MECHANICAL CONTRACTORS  
ASSOCIATION OF ALBERTA**

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Dear MCA Members,

A recent decision issued by the Supreme Court of Canada (SCC) dealing with coverage under a Builders' Risk insurance policy has important implications for trade contractors. The SCC decision was brought to our attention in a [recent article](#) published in the Alberta Construction Association [newsletter](#). MCA Alberta approached our Aon broker, Doug Baird for his opinion on what contractors can and should be doing to protect their business against future claim actions.

The following is MCA's correspondence with Doug Baird:

**Hi Doug,**

In regard to the recent decision issued by the Supreme Court of Canada dealing with coverage under a Builders' Risk insurance policy, is there any course of action that MCA members should be taking to protect their businesses?

**Doug's reply,**

The policy wording that was ruled on in this decision was a very basic policy form but unfortunately, we still see it often in the industry. There are additional policy coverage forms available that, if utilized, would have eliminated the need for this case to go to court. The problem with these superior policy forms is, they cost more money and General Contractors and Owners are hesitant to pay for them because they are contractually able to make the subs responsible for losses they cause to the project.

The recent ruling is actually good for subcontractors but the key is, there are many policy wordings and many policy exclusions and warranties in the marketplace that are exposing MCA AB members to losses that will not be covered by these policy forms. The Builders' Risk is supposed to be the first line of defence for a mechanical contractor. The MCA AB members need to do their due diligence in order to protect themselves. Without copies of Builders' Risk policies in place for the projects that members are working on, and without having someone who actually understands what they are reviewing, review the policies, then MCA members will continue to be exposed. All it will take is for one big loss caused by a subcontractor with no coverage under the Builders' Risk policy to happen and an MCA member will be out of business. Aon always suggests that subcontractors request copies of all Builders' Risk policies issued for the projects they are working on. Negotiate this request into the contract pre bid or during negotiations and make sure your members follow up for a copy and have it reviewed by someone who understands the risks. At the end of the day, gaps found within Builders' Risk insurance policies can very easily hit the balance sheet of the subcontractor. The subcontractor

will always be held contractually responsible to indemnify the Owner or GC for any and all losses caused by the subcontractor, regardless whether insurance is in place to cover the loss or not.

If you remember nothing else from these comments, remember: Always ask for and review the Builders' Risk policy on every project.

As a footnote, if the courts would have upheld the ruling of the lower courts, the subcontractor could have been responsible for the entire loss. Although this loss is a little different in nature than the type of work a mechanical contractor performs, if the sub had to remove and replace the windows because they didn't meet specifications called for, due to being installed incorrectly (faulty workmanship), which is far more likely to happen, the sub would have been left to pay the costs themselves, as faulty workmanship is not covered in a Builders' Risk policy or a General Liability policy. Unique to the MCA AB program, Aon does have coverage for Contractors' Rework (Faulty Workmanship) to a limit of \$250,000 under the General Liability policy. This coverage will pay the labour costs associated with the removal and replacement of construction materials that do not meet the contractual requirements called for due to faulty installation. I have reviewed hundreds of policies issued to mechanical contractors in Canada, by other brokers, and I have not come across one other policy that offers this form of protection!! This coverage alone provides huge value to the MCA AB members.

That's great advice Doug, do you have any examples of losses caused by contractors not doing their due diligence to review the Builders' Risk policy?

### **Doug's Reply:**

On a significant project in Alberta, the GC's broker placed a Builders' Risk policy to protect the entire project from physical damage. In the policy, there was a warranty that made the company doing "Hot Works" responsible to have a fire watcher on duty, doing no other work during the hot work and for two hours after the work was completed. This is itself is not horrible but it went on to say that post operations, the company doing the hot work had to maintain guard duty for a MINIMUM OF 4 HOURS after work was completed. If the warranty was not followed precisely and a fire ensued, the Builders' Risk insurers had the right to deny coverage.

So fast forward to the claim. A fire destroys the entire project including \$1,000,000 of the mechanical's work. Total loss is \$10,000,000. It is determined that the mechanical did not have a fire guard on duty at the area where the hot work was performed for 4 hours post operations and the fire was determined to have started 3 hours after the mechanical completed the work and left the job site. Builders' Risk insurer denies coverage due to breach of warranty. Mechanical goes to his insurance and if written properly, a portion of the \$1,000,000 may be covered under his Installation Floater (most carry \$250,000 or \$500,000) and/ or his General Liability policy. If the mechanical carries a \$5,000,000 Liability policy, which is fairly standard in the marketplace, the mechanical would have an uninsured loss on his hands for a minimum of \$4,000,000 - \$5,000,000 plus a portion of the loss to his/ her own work not covered by the Installation Floater or General Liability policy. Not many could survive this loss.

Aon is MCA Alberta's preferred insurance broker. As a broker, Aon has continually demonstrated leadership across the construction industry, designing and developing policies the work to protect the specific interests of trade contractors. As an MCA Alberta member, your business is eligible for a 10% discount on all your general insurance policies (Automobile, General Liability, Property, Tools and Equipment, etc.), up to 10% premium refunds with no loss claims on the Property portion, and up to 10% and 13% discounts on personal home and auto insurance respectfully for both you as business owner and your employees.

Check out the MCA Alberta [website](#) benefits page to learn more about MCA's Aon program.

Contact Doug directly at:  
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