

Flying Marble and Old Insurance Policies



By Brian Madigan LL.B.

It was recently discovered that it is raining marble at the single best location for real estate in Canada, the intersection of King and Bay Streets in Toronto.

Canada's tallest and certainly one of its most prestigious office buildings is First Canadian Place. It is owned by Brookfield Properties and was named after its prime tenant, the ***Bank of Montreal***.

The office tower was completed in 1974 by the developer Olympia and York. At that time O&Y was one of the largest developers in the world. It held massive real estate holdings in Toronto, New York and London. But, like some other big names at the time it bought a little too much property on credit. A worldwide recession was basically enough to turn most of its empire over to the banks and other financial institutions.

First Canadian Place was to be its flagship venture. It occupied the northwest corner of Toronto's financial district's best location King and Bay. The Toronto Dominion Bank was the first to redevelop its properties at the southwest corner. The Canadian Imperial Bank of Commerce followed suit at the southeast corner. Most recently, The Bank of Nova Scotia built its two new twin towers at the northeast corner. So, this intersection hosts billions and billions of dollars worth of real estate. And, the fringe area isn't too bad either, there's real gold in the windows of the Royal Bank Plaza located one block to the south.

All in all, this is truly what is meant by the expression "location, location, location".

1974 was a major year for building in Toronto. There was a building boom underway in all types of real estate. The Reichmans who owned O&Y wanted something really different for their best office tower. It was to be clad in marble. And, who knew more about marble than O&Y. The full original name of the company was Olympia and York Tile Company. This name was retained for the tile company but thought too cumbersome and too pedestrian for a world renown real estate developer.

In any event the Reichmans decided that their new tower was to be clad in the finest marble that one could obtain, the same soft Carrara marble that Michaelangelo used to sculpt his famous figures. This was good for sculptures and lasted for centuries but maybe its not quite so good as exterior cladding. It

now seems shot after 33 years.

In 1974-1975 little seemed to be known about the use of this type of marble for exterior cladding. Nevertheless, for 33 years the marble certainly looked nice. Albeit, the 15th of May, 2007 was rather windy, so maybe it was no surprise that a 250 pound piece of marble flew off the 51st floor and plunged to the ground below (actually a rooftop, so maybe that doesn't count).

This great real estate location in Toronto is no longer pedestrian friendly, nor car friendly either. Right now, the area is closed off to traffic while inspectors thoroughly examine the entire building for flaws.

So, what about the liability here? Whose fault is it? Who is responsible? And, ultimately, who has to pay? Just finding the records related to a construction project that took place over 33 years ago is going to be hard enough.

However, let me speculate. The original parties probably no longer exist, from architects to engineering firms to the various contractors and their sub-trades. But, their respective insurers may still be around, and their policies did not have time limits in most cases. There were two types of policies "claims made" and "occurrence". If there were an old claims made policy in effect during construction it would respond to the claim within the policy period. So, by perhaps the end of 1975, if there were no claims, it would expire. But, an "occurrence" policy would respond at any time in the future. You just have to prove that the negligent act took place during construction.

Now, if you were the property manager for Brookfield Properties, wouldn't it be nice to have a copy of that old policy? And, they tell you to throw things out after 7 years!

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