

Court of King's Bench of Alberta

Citation: Sniper Pressure Services Ltd. v Ken's Custom Wood Work Ltd., 2026 ABKB 195

Date: 20260313

Docket: 2203 03388, 2403 00729, 2403 00701

Registry: Edmonton

Docket: 2203 03388

Between:

Sniper Pressure Services Ltd.

Plaintiff

- and -

Ken's Custom Wood Work Ltd., MTN Engineering & Design Inc., William A. Kazoleas, A. Martens, Alberta Truss Ltd., Woodlands County, 998046 Alberta Ltd., operating as Canadian Safety Consulting Services, ABC Corporations, John Doe 1, and John Doe II, the Litigation Representative of the Estate of George Aschenmeier (Deceased)

Defendants

- and -

Mitek Canada Inc., Abe Martens

Third Party Defendants

Docket: 2403 00729

Between:

Sniper Pressure Services Ltd.

Plaintiff

- and -

Belfor (Canada) Inc., Operating as Belfor Restoration Services, 961945 Alberta Ltd., Operating as ServiceMaster Restore of Edmonton, Alpine Systems Corporation, Raptor Developments Ltd., Westek Truss Systems Ltd., The Inspections Group Inc., ABC Corp, DEF Corp, John Doe 1, John Doe 2, and John Doe 3

Defendants

- and -

**Pacific Wall Systems Ltd., Moose Construction Ltd, Spence Corrosion Services Ltd.,
2046053 Alberta Ltd., Operating as Wrap Building Enclosures Ltd., CEP Forensic Inc.**

Third Party Defendants

Docket: 2403 00701

Between:

**Sniper Pressure Services Ltd., Northbridge General Insurance
and Northbridge Financial Corporation**

Plaintiffs

- and -

CEP Forensic Inc.

Defendant

- and -

**961945 Alberta Ltd., Operative as ServiceMaster Restore of Edmonton, Belfor (Canada)
Inc., Operating as Belfor Restoration Services, Raptor Developments Ltd., The Inspections
Group Inc., MBC Engineering Group Inc., 2046053 Alberta Ltd., Operating as Wrap
Building Enclosures, Phoenix Roofing Ltd., Alpine Systems Corporation and Westek Truss
Systems Ltd.**

Third Party Defendants

**Reasons for Decision
of the
Honourable Justice Kelsey L. Becker Brookes**

I. Background

[1] Sniper owned land and a commercial building in Woodlands County. The roof of the building collapsed on March 4, 2020. A second roof collapse occurred on January 17, 2022. Sniper was insured with Northbridge for both losses.

[2] With respect to the first roof collapse, Sniper sued the alleged tortfeasors for \$5,000,000 in damages. Northbridge paid approximately \$2,000,000 to Sniper and, in turn, Northbridge commenced proceedings as against the alleged tortfeasors for its subrogated claims arising from the loss. Sniper commenced this Action against Northbridge claiming \$650,000 which is alleged to be due to it under its insurance claims.

[3] With respect to the second roof collapse, Northbridge sued the alleged tortfeasors for \$2,670,000 for its subrogated claims arising from the loss. Northbridge commenced a separate action against CEP Forensic Inc. (“CEP”) for breach of contract and negligence for engineering services rendered, in which both Northbridge and Sniper are named Plaintiffs. Sniper commenced a second action against Northbridge, CEP and other alleged tortfeasors for \$6,500,000 in damages.

[4] Sniper applies for conduct and carriage of the three subrogated Actions pertaining to the two roof collapses suffered by Sniper, pursuant to s 546 of the *Insurance Act*, RSO 1990, c I.8 .

II. Issue

[5] Sniper has suffered substantial insured and uninsured losses because of the two roof collapses. Sniper has commenced two recovery actions, one for each roof collapse, wherein Sniper claims both its uninsured and insured losses.

[6] Northbridge has paid out insurance proceeds to Sniper of approximately \$2,000,000. Northbridge has commenced three subrogated Actions, one in respect of the first roof collapse and two in respect of the second roof collapse. Northbridge’s claims only include their subrogated claim (i.e., the insured losses).

[7] The issue is whether case management can adequately address the overlapping proceedings or whether it would be appropriate for the Court to exercise its discretion to grant conduct and carriage of the three subrogated Actions being pursued by Northbridge to Sniper, consolidating or staying Northbridge’s subrogated actions, and, if so, how best to achieve that.

III. Parties Positions

[8] Sniper asserts that, under common law, it retains control of the litigation unless fully compensated for both insured and uninsured losses. Section 546 of the *Insurance Act* only shifts control to the insurer in limited situations where the insured’s interest is confined to the deductible or co-insurance, which is not the case here. Therefore, Sniper should control the Actions. The Court may intervene for fairness, but there is no reason to depart from the common law in this instance. Sniper requests conduct and carriage of the actions to protect its interests, avoid conflict, and ensure efficiency by consolidating Northbridge’s actions with its own.

[9] Northbridge contends that an insured does not automatically have the right to conduct and carriage of litigation, and that s 546 does not apply when subrogated and uninsured claims are being pursued separately by the insurer and insured. If Sniper is granted control of the

litigation, *dominus litis*, it must act in good faith to protect Northbridge's interests in its proceedings. If Sniper is given conduct and carriage over Northbridge's subrogated claims, the scope of Sniper's obligations and Northbridge's rights must be clearly defined.

IV. Legislation

[10] The relevant portions of s 546 of the *Insurance Act* provide as follows:

Subrogation of insurer to rights of recovery

546(1) Subject to section 570(6), an insurer that makes any payment or assumes liability for making any payment under a contract is subrogated to all rights of recovery of the insured against any person and may bring an action in the name of the insured to enforce those rights.

...

(3) When the interest of an insured in any recovery is limited to the amount provided under a deductible or co insurance clause, the insurer has control of the action.

(4) When the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to

- (a) the solicitors to be instructed to bring the action in the name of the insured,
- (b) the conduct and carriage of the action or any related matters,
- (c) any offer of settlement or the apportionment of an offer of settlement, whether an action has been commenced or not,
- (d) the acceptance or the apportionment of any money paid into Court,
- (e) the apportionment of costs, or
- (f) the launching or prosecution of an appeal,

either party may apply to the Court for the determination of the matters in question, and the Court may make any order it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

...

V. Analysis

[11] I agree that under the common law it is clear the insured retains control of the litigation unless it has been fully indemnified for its insured and uninsured losses.

[12] Section 546(3) of the *Insurance Act* alters the common law where the insured's interest is limited to that amount of the deductible or co-insurance clause. Sniper's interests far exceed these amounts, therefore s 546(3) does not apply. I agree the *Insurance Act* does not presume the

insurer controls any litigation related to the insured event; the right to control should not be implied simply because the insurer is subrogated to the insured's rights.

[13] Additionally, I note it was not contested that the insurance policy does not mention any right for Northbridge to control or manage the litigation if Sniper has not been largely compensated.

[14] Based on the foregoing, I am satisfied that by default to the common law, Sniper is *dominus litis*. However, that does not, in my view, end the analysis.

[15] Section 546(4) of the *Insurance Act* applies because Sniper's interest in recovery exceeds the \$2500 deductible for each building and personal property. And s 546(4) provides that where the insured and the insurer cannot agree as to the solicitors to be instructed to bring the action in the name of the insured or the conduct and carriage of the action or any related matters, either party may apply to the Court for the determination of the matters in question. The Court may make any order it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action.

[16] Therefore, even if the default is that Sniper is *dominus litis*, it is still open to me to make any order I consider reasonable and necessary having regard to the interest of the parties in any recovery. Section 546(4) empowers the Court to intervene where fairness and reasonableness require a different result. And because s 546(4) includes "or any related matter", I do not think I am limited to situations where there is a single action that includes both the subrogated and uninsured claims (although in this case Sniper's recovery Actions do include both the insured and uninsured losses).

[17] There is significant overlap between Sniper's recovery actions (which include both their insured and uninsured claims) and Northbridge's subrogated actions (which include only the insured portion of Sniper's claims). However, I am not convinced the proper exercise of the Court's discretion is to grant Sniper conduct and carriage of the three subrogated Actions within their two recovery Actions and either consolidate or stay Northbridge's subrogated Actions.

[18] If Sniper is declared *dominus litis* and entitled to instruct its own counsel in respect of both the insured and uninsured losses, Sniper would be legally obliged to protect the interests of Northbridge in Sniper's proceedings against the alleged tortfeasors. Sniper will owe Northbridge a positive duty of good faith to pursue Northbridge's interests as diligently and faithfully as Sniper pursues its own interests.

[19] In my view, this creates the potential for conflict. It is argued by Sniper that the parties' interests are not aligned because Northbridge is simultaneously pursuing the subrogated claims in Sniper's name and defending Sniper's coverage Action arising from the same losses, as well as defending Sniper's recovery Action with respect to the second roof collapse.

[20] In the coverage Action, Sniper seeks indemnity for its loss, while Northbridge seeks to minimize or deny payment. In the subrogated Action, Northbridge has an incentive to attribute responsibility to Sniper, as opposed to third-party tortfeasors, a litigation strategy which has the potential to impact Sniper's position in the coverage Action.

[21] Given this conflict, I am not convinced Sniper could pursue Northbridge's interests as diligently and faithfully as Sniper pursues its own interests.

[22] Regarding the concerns raised with respect to Sniper's financial interest in its recovery actions, both parties have significant claims. I do not agree that by default whoever has the larger claim, or greater exposure, needs to control the litigation.

[23] Sniper now possesses all the necessary resources to safeguard and advance its financial and legal interests, including its own counsel and its recovery actions. I did not hear any evidence suggesting Northbridge has been uncooperative in advancing any of the related actions being case managed. I fail to see how giving Sniper conduct and control of Northbridge's subrogated Actions further advances its financial and legal interests.

[24] Since both parties have much to gain, or lose, it makes sense for both sides to retain their own counsel and pursue their own Actions. This prevents potential conflicts regarding solicitor-client communications and privilege. Lines of communication will be clear. This approach also prevents accusations that the controlling party is acting in a way that favours one side over the other.

[25] Two parallel Actions can proceed in an efficient manner if properly case managed. For example, a procedural order directing the two claims proceed together largely addresses the evils associated with a multiplicity of proceedings, such as wasted judicial resources or the risk of inconsistent outcomes. Procedural orders can impose conditions on both document discovery and oral discovery to ensure defendants are not unnecessarily subjected to duplicative litigation steps; while ensuring Sniper and Northbridge can each conduct their Actions in the manner they see fit.

[26] Keeping Sniper's recovery actions and Northbridge's subrogated actions distinct yet parallel will require both parties to cooperate as needed, whether for strategic reasons, necessity, or pursuant to case management orders, while ensuring each party's unique interests are preserved.

[27] Northbridge concedes that s 546(4) of the *Insurance Act* can be engaged by Sniper from time to time on an issue-by-issue basis with or without Northbridge's consent. While the current situation before me does not support the relief sought by Sniper, I note that they can avail themselves of that section should the need arise.

[28] Sniper's application for conduct and carriage of Northbridge's subrogated Actions is dismissed.

[29] If the parties cannot agree on costs, they can provide written submissions no longer than three pages, excluding attachments within 30 days of this decision.

Heard on the 23rd day of February, 2026.

Dated at the City of Edmonton, Alberta this 13th day of March, 2026.

Kelsey L. Becker Brookes
J.C.K.B.A.

Appearances:

Glenn Epp and Inez Agovic
Thompson, Laboucan & Epp LLP
for the Plaintiff

Ken Haluschak
Bryan & Company LLP
for the Defendants