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“WELL, I DO DECLARE” - INSURED’S BUSINESS OPERATIONS

Richards Buell Sutton Insurance Newsletter

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The Ontario Superior Court of Justice recently ruled on an insured’s declaration of its business activities in the context of a duty to defend application. The decision highlights the significance of the insurer’s risk evaluation in assessing the scope of coverage and should serve as a reminder to insurers, brokers and insureds that courts are reluctant to find coverage for claims which involve activities that clearly fall outside those declared.

The Facts

At issue in *Intact Insurance Co. v. Viridi*, 2014 ONSC 2322 was a CGL policy (the “Policy”) issued to Multilamps Shades Co. (“Multilamps”). The insured’s business operations were described in the Policy as “manufacturing and importing lampshades”. The only additional insureds listed in the Policy were Multilamps’ customers, but “only with respect to liability arising out of the operations of Multilamps Shades Co.” The principal of Multilamps had a separate business, American Industrial Machines Inc. (“AIM”), which operated out of the same premises and utilized Multilamps employees from time to time. AIM was in the business of buying and selling heavy machinery. None of AIM, its business or its operations are referred to or described in the Policy.

A claim was brought against AIM and Multilamps, amongst others, as a result of injuries sustained by a cargo driver who was delivering heavy lathes to the subject premises for AIM (the “Action”). The driver was injured when a lathe fell from a forklift while being taken off his truck by Multilamps’ employees. All parties eventually conceded that the lathes involved were being delivered for AIM’s business only and that they had nothing to do with Multilamps’ operations.

The Parties Positions

The insurer took the position that the Policy did not respond to the claims in the Action, as those claims did not arise out of Multilamps’ operations. The claims rather arose out of AIM’s operations which the insurer had not insured at the premises or elsewhere.

The insured submitted that there was a mere possibility that the Policy should respond, pointing to the fact



that the general liability provision clearly covered occupier's liability or liability to third parties and that vicarious liability of Multilamps for the conduct of its employees had been alleged. Accordingly, it said, the duty to defend was triggered.

The Ruling

The issue before the court was whether the true nature of the activities described in the Action were within those described in the Policy as being covered. The court determined that the emphasis is, and should be, on what business operations were covered by the Policy and described in the declaration.

There was more than one occupier of the subject premises and employees involved in the off-loading of the lathes were Multilamps employees; however at the material time they were engaged in completely different and unrelated business operations. In the eyes of the court, there was no possibility that the claim related to the described business operations of Multilamps, on the following basis:

- (a) the lathes were being delivered to AIM;
- (b) the lathes had nothing to do with Multilamps' business operation; and
- (c) there was no connection between the delivery and offloading of the lathes with Multilamps' business.

The mere fact Multilamps employees might have been involved in the off-loading or that the incident occurred on the subject premises were not sufficient to give rise to a possible claim under the Policy.

In the court's view, this eliminated the possibility of coverage under the Policy. The court stated that to suggest otherwise would be to make the insurer's evaluation of risk meaningless. It would also make meaningless the insured's declaration of its operations; an integral part of the Policy and highly relevant to whether there is coverage thereunder. Entirely different and unrelated business operations will not be covered.

Practical Considerations for the Insurance Industry

This case poignantly reminds insurers, brokers and insureds how important the declaration of the insured's business activities in a policy can be for determining coverage. In this case, even though the insured's employees were directly involved in the incident and the incident occurred on the insured's premises the court focussed on the activities in question in light of the Policy declaration in denying the possibility of



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coverage.

Insurers should also be comforted by the court's recognition of the significance of the insurer's evaluation of risk. Courts recognize that insurers allocate risk based on the scope of business activities described in a policy. The *Virdi* decision illustrates that courts are weary to diminish that allocation of risk by finding coverage for activities wholly unrelated to those declared in the policy. Insurers should be mindful of this fact, and when confronted with pleadings which allege activities that may fall outside the insured's declared business activities, there may in fact be no possibility for coverage, and therefore no duty to defend. Brokers are well advised to take particular care in discussing and recording the totality of their clients' business activities and insureds must be completely forthright in providing answers or seriously risk a lack of coverage for claims that would likely be otherwise covered.



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