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CASE SUMMARY: DUTY TO DEFEND CANNOT REST ON A GENERIC PRAYER FOR RELIEF

Insurer had no duty to defend a counterclaim which did not seek compensatory damages

Insurance law – Errors and omissions policies – Coverage – Duty to defend – Damages – Insurer – Rights, duties and liabilities

Roumann Consulting Inc. v. Aviva Insurance Co. of Canada, [2020] O.J. No. 2416, 2020 ONSC 3387, Ontario Superior Court of Justice, June 1, 2020, I.F. Leach J.

An insured brought a motion against an insurer seeking a declaration that the insurer had a duty to defend a counterclaim in U.S. proceedings. The insurance policy was an errors and omissions policy that provided coverage only if the claim was for compensatory damages. The counterclaim sought declaratory relief as well as “any other and further relief that the Court deems appropriate and just”.

The central issue was whether the counterclaim included a claim for “compensatory damages”, which the Ontario Superior Court of Justice defined as “sums payable by way of compensation, whether at law, or under statute”. The request for relief did not seek an order compelling the insured to pay the counter-claimant monetary sums of any kind. The Court held that the generic prayer for relief for “any other and further relief that the Court deems appropriate and just” could not be considered to expand the scope of pleaded claims to include any having a “mere possibility” of falling within coverage for the purpose of determining whether a duty to defend existed. The potential scope of such a request was so indeterminate and wide-ranging that one could never rule out, in advance, the possibility of it eventually including a form of relief not specifically pleaded but arguably still falling within the scope of coverage provided by an insurance policy. The counterclaim did not seek compensatory damages; therefore, the insurer had no duty to defend.

This case was digested by [Kora V. Paciorek](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Kora V. Paciorek at kpaciorek@harpergrey.com.