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CASE SUMMARY: BROKER NOT ALLOWED THIRD PARTY CLAIM WHERE COVERAGE SHOULD BE DECIDED IN SEPARATE PROCEEDING

An insurance broker was denied leave to file a third party claim in relation to the plaintiff's property damage because the third party claim against the broker was related to insurance coverage and not the plaintiff's damages.

Insurance law – Liability insurance – Wrap-up policies – Breach of policy – Material change in risk (failure to notify) – Property damage – Practice – Third parties – Duties and liabilities of insurer – Agents and brokers – Duties and liabilities of agent – Breach of contract – (Alleged) Failure to obtain reasonable coverage – Negligent misrepresentation

Acorn Resorts Limited Partnership v. Kinnikinnik Developments Inc., 2021] B.C.J. No. 1790, 2021 BCSC 1617, British Columbia Supreme Court, August 18, 2021, J.S. Basran J. (In Chambers)

The plaintiffs claimed against the defendants for damages relating to two separate landslide events. The plaintiffs alleged that construction activities undertaken by the defendants caused or contributed to the landslides.

The defendants filed a third party notice against their insurers and their insurance broker alleging that their insurers breached the contract of insurance by wrongfully denying coverage, and that the insurance broker was negligent, in breach of contract, and breached its fiduciary duty by failing to place the appropriate insurance coverage. The plaintiffs made no claim against the defendants' insurers or insurance broker.

The broker sought an order for leave to file third party notices against a number of parties alleging that the parties were negligent and/or breached duties to warn, and/or breached contractual and/or statutory duties which were the cause, or a contributing cause, of the loss or damage allegedly suffered by the plaintiffs and therefore the defendants. The proposed third parties argued that the insurance brokers' application should be dismissed because there was no air of reality to the allegation that they caused or contributed to the insurance brokers' alleged fault for failing to procure appropriate insurance coverage and that there was no allegation in the pleadings that the insurance broker caused or contributed to the plaintiffs' damages.

The Court dismissed the brokers' application for leave to file third party notices on the basis that the proposed third party claims were bound to fail because any potential liability attributable to the insurance broker was for the negligent placement of insurance, not for causing damage to the plaintiffs' property. The Court held that the proposed third parties had nothing to do with the insurance coverage issues.

Further, the damages sought by the plaintiff were distinct and divisible from the damages sought by the defendants given that there were two potentially separate injuries: one for property damage and the other for insurance coverage. The two distinct claims should not proceed in the same action and the court suggested severing the insurance coverage issue.

This case was digested by [Alicia Catalano](#), 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 Alicia Catalano at acatalano@harpergrey.com.