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CASE SUMMARY: LIMITATION PERIOD CLOCK DOES NOT RESTART WHEN A PLAINTIFF GOES TO LAW SCHOOL

An insured's legal education after the expiry of a limitation period does not restart the limitation period clock when the relevant material facts were known to the insured years prior.

Insurance law – Homeowner's insurance – Exclusions – Changes in policy – Material change in risk – Good faith – Limitation of actions

Lafferty v. Co-operators General Insurance Co., [2021] A.J. No. 1423, 2021 ABCA 359, Alberta Court of Appeal, October 26, 2021, K.P. Feehan, L.B. Ho and A. Kirker JJ.A.

The insureds had a home insurance policy purchased from the insurer. The insureds rented the insured property to tenants who used the house for a marijuana grow operation. The grow operation damaged the home and significant rehabilitation work was required.

The insureds made a claim for coverage under the policy. The insurer denied the claim on the basis of exclusion clauses for illegal drug operations and vandalism. In addition, the insureds had failed to obtain a rental policy even though they had advised their broker of the change in use of the property. The insurer informed the insureds that any legal action against the insurer would be barred unless commenced within two years after the loss or damage occurred. The insurer agreed on appeal that the limitation period began to run on the date coverage was denied. The insureds did not pursue their claim at that time.

Several years later, one of the insureds attended law school. He learned of section 541 of the *Insurance Act*, RSA 2000, c I-3, which addresses recovery by innocent persons. The insureds commenced their action against the insurer approximately six years after coverage was denied. The insureds alleged the insurer was estopped from claiming there was a material change in risk because it knew about the rental and did not follow the required steps to void coverage. The insureds alleged the representation that the insurer could also deny the claim for material change in risk was misleading and made in bad faith to discourage them from pursuing a claim.

The Court of Appeal dismissed the insureds' appeal, relying on the common law discoverability rule which provides that a cause of action arises for the purposes of a limitation period when the material facts on which it is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence. The Court held that the legal education of one of the insureds did not start or restart the limitation period on the insureds' breach of good faith claim because the material facts upon which their claim was based were known to them when they received the insurer's denial of coverage letter.

This case was digested by Dominic Wan, 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 Dominic Wan at dwan@harpergrey.com.