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CASE SUMMARY: BROKERAGE AGREEMENT BETWEEN THE INSURER AND THE BROKER CONTAINED AN OBLIGATION BY THE BROKER TO INDEMNIFY THE INSURER

Insurance law – Agents and brokers – Duties and liabilities of agent; Errors and omissions policies

Routh Chovaz Insurance Brokers Inc. v. Aviva Insurance Co. of Canada

A broker's subrogated claim against an insurer which voided an insured's policy was summarily dismissed.

[2016] O.J. No. 2682

2016 ONSC 2567

Ontario Superior Court of Justice

May 25, 2016

G.R. Dow J.

The insured requested his broker, which held binding authority for the insurer, to change the insured's insurance policy to insure a different motor vehicle. The broker did not do this. That vehicle was then involved in a car accident. The insurer took the position that it did not cover the loss, voided the policy, and refunded the premiums to the insured. The broker's errors and omissions insurer paid the insured's property damage claim, and brought a subrogated claim against the insurer, in the name of the broker, for this sum. The broker also sought a declaration that the insurer had a duty to defend and indemnify the insured in a related personal injury claim arising out of the accident. The insurer then brought a summary judgment application to dismiss the broker's claim.

The court dismissed the broker's claim. The court found that the brokerage agreement between the insurer and the broker contained an obligation by the broker to indemnify the insurer. This provided a complete defence to the claim. There was no duty of care between the insurer and the insured in the circumstances. If the law imposed a duty on the insurer to determine the insured's requirements, duplication of effort between the insurer and broker would result. The equitable remedy of recoupment could not be relied upon as it was expressly contradicted by the indemnity clause in the brokerage agreement.

This case was digested by [Kora V. Paciorek](#) and edited by [David W. Pilley](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at kpaciorek@harpergrey.com or dpilley@harpergrey.com or review their biographies at <http://www.harpergrey.com>.