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CASE SUMMARY: BC COURT AFFIRMS THE INSURER'S OBLIGATION TO SAVE HARMLESS THE INSURED FROM THE COSTS OF DEFENDING THE ACTION ENCOMPASSES THIRD-PARTY PROCEEDINGS

Insurance law – Actions – Duty to defend – Third parties – Agents and brokers – Costs – Special or increased costs

[Williams v. Canales](#)

Where the insurer denies coverage and the insured is forced to bring third party proceedings to enforce the insurer's obligations under the policy, the court will award the insured complete indemnity for both defence costs already incurred and the costs of enforcing compliance.

[2016] B.C.J. No. 2067

2016 BCSC 1811

British Columbia Supreme Court

October 3, 2016

M.B. Blok J.

The insurer denied coverage after the insured was sued for personal injuries. The insured added the insurer and its broker as third parties. The insured successfully obtained a declaration that the insurer was obliged to defend them following a summary trial. At the costs hearing the insured sought an order for special costs against the insurer. The broker also sought an order for costs against the insurer by way of a Sanderson order, though on the ordinary scale.

After reviewing appellate decisions from Ontario, Newfoundland and Labrador, and New Brunswick, and a trial decision from Manitoba, the Court agreed that the law was settled in other jurisdictions: where an insurer denies coverage and the insured must bring proceedings to enforce the insurer's obligation, the court will award the insured complete indemnity for both defence costs already incurred and the costs of enforcing compliance. As explained in *E.M. v. Reed* (2003), 49 C.C.L.I. 57 (ONCA) [Reed]:

[22] Entitlement to solicitor-client costs in the third party proceedings flows directly from the unique nature of the insurance contract which entails a duty to defend at no expense to the insured. The obligation to save harmless the insured from the costs of defending the action is sufficiently broad to encompass the third-party proceedings. It is the contractual basis for the claim to solicitor-and-client costs that justifies the award and therefore constitutes an exception to the usual rule that solicitor-and-client costs will not be awarded except in unusual circumstances. [Emphasis added by the court.]

This was an issue of first impression in British Columbia. Based on the reasoning in *Reed* and the weight of the appellate authority in other jurisdictions, the court held that the same exception should apply and awarded special costs to the insured.

The court also awarded costs, though on the ordinary scale, to the broker. The court looked to the substance of the events and noted that it is typical for both the insurer and the broker to be added as third parties after coverage is denied. It was reasonable for the insured to have done so, and, now that the insured's success against the insurer had substantially disposed of the third party proceedings, the court exercised its discretion pursuant to the Sanderson cases to award costs.

This case was digested by [Michael J. Robinson](#) 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 mrobinson@harpergrey.com or dpilley@harpergrey.com or review their biographies at <http://www.harpergrey.com>.