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## CASE SUMMARY: USE OF NON-COMPLIANT EXCLUDED DRIVER FORM DID NOT VOID ENDORSEMENT IN INSURANCE COVERAGE DISPUTE

Use of an endorsement form not approved under s. 227(1) of the *Insurance Act* does not necessarily invalidate an agreement between the parties about exclusion from insurance coverage.

**Insurance law – Automobile insurance – Exclusions – Uninsured motorist – Duty to defend – Statutory provisions; Appeals**

[Royal & Sun Alliance Insurance Co. of Canada v. Intact Insurance Co.](#), [2017] O.J. No. 2380, 2017 ONCA 381, Ontario Court of Appeal, May 10, 2017, R.G. Juriansz, D.M. Brown and B. Miller JJ.A.

The Ontario Court of Appeal considered whether an endorsement of an automobile insurance policy that excludes coverage for a named driver is valid even though its form is not that pre-approved by the Superintendent of Financial Services as required by s. 227(1) of the *Insurance Act*. The Court of Appeal held that the use of an unapproved form does not necessarily invalidate an agreement between the parties about exclusion from insurance coverage.

The insured had met with her insurance broker because her driver's licence had been suspended for unpaid fines and the insurance on her vehicle was being cancelled. She wanted to maintain coverage on the vehicle so her husband could drive it. Insurance was arranged with the respondent Intact on the basis that the insured would be an excluded driver. The insured executed an Excluded Driver Endorsement.

The trial judge found that when the insured completed the form, the broker explained to her that even if her licence were to be reinstated, Intact would still not insure her and the Excluded Driver Endorsement would continue to apply. The insured's licence was reinstated, she drove the vehicle, and had an accident in which the MacLeods were injured. The MacLeods commenced a personal injury action against the insured.

The MacLeods' uninsured motor vehicle carrier, Royal & Sun Alliance, brought an application for a declaration the insured was fully insured by Intact. Intact, relying on the Endorsement, took the position there was no coverage and the insured was uninsured.

The application judge found the Excluded Driver Endorsement was in full force and effect at the time of the accident and that Intact had no duty to defend or indemnify the insured in respect of the accident. Royal appealed.

This case was digested by [Cameron B. Elder](#) 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 [celder@harpergrey.com](mailto:celder@harpergrey.com) or [dpilley@harpergrey.com](mailto:dpilley@harpergrey.com) or review their biographies at <http://www.harpergrey.com>.