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CASE SUMMARY: ALBERTA COURT OF QUEEN'S BENCH FINDS INSURER HAS DUTY TO DEFEND INSURED IN THIRD PARTY PROCEEDINGS ARISING FROM WORKPLACE INJURY

Insurer found to have duty to defend insured in third party proceedings in which it was alleged the insured had breached its contract with the defendant, the Court finding the plaintiff's claim against the defendant was in negligence and therefore the third party claim could be established on the grounds of negligence.

Insurance law – Commercial general liability insurance – Duty to defend – Third parties; Practice – Breach of contract vs. negligence – Summary judgments

Creative Door Services Ltd. AXA Pacific Insurance Co., [2017] A.J. No. 1038, 2017 ABQB 599, Alberta Court of Queen's Bench, October 10, 2017, D.A. Sulyma J.

The insurer applied for summary judgment dismissing an action brought by the insured for a declaration the insurer had a duty to indemnify and defend the insured in third party proceedings.

The insured contracted with a property owner to supply and install an overhead door. The insured used a subcontractor to install the overhead door. The insured's subcontractor was injured during the job and did not have Workers' Compensation Board coverage. The insured's subcontractor brought a claim against the owner of the premises, and the owner brought third party proceedings against the insured alleging the insured breached its contract by subcontracting the installation of the overhead door.

The insured had a commercial general liability policy with the insurer. The insurer denied any duty to defend because the third party proceedings sounded in breach of contract and there was no possibility of coverage. The insured argued if it was found liable, its liability may not be grounded in contract as the plaintiff's claim was for bodily injury and alleged negligence against the owner.

The Court concluded there was a possibility that the claim would fall within coverage and therefore the insurer had a duty to indemnify and defend the insured in respect to the third party proceedings.

This case was digested by [Cameron B. Elder](#), and first posted on Quicklaw and published in the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Cameron B. Elder at celder@harpergrey.com.

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