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CASE SUMMARY: THE INSURER WAS REQUIRED TO DEFEND ITS INSURED AS THE POLICY'S DEFINITION OF "INSURED" INCLUDED AN EMPLOYER'S VICARIOUS LIABILITY AND WOULD BE SUPERFLUOUS IF EMPLOYERS WERE COVERED ONLY FOR THEIR OWN ACTS OR OMISSIONS

Insurance law – Professional liability insurance – Duty to defend – Rights and duties of insurer – Interpretation of policy – Practice – Summary judgments

Van Huizen v. Trisura Guarantee Insurance Co., [2018] O.J. No. 4188, 2018 ONSC 4828, Ontario Superior Court of Justice, August 10, 2018, P. Hurley J.

The insured sought a declaration that the insurer had a duty to defend and indemnify him for three claims that arose out of a real estate appraisal. The insurer applied to dismiss the action on the basis that it owed no duty to defend.

There were three underlying claims. The first claim was brought by an insurance agency alleging a negligently performed appraisal. The insurance agency initiated a second action against the insured, alleging he operated the appraisal company and was vicariously liable for the appraiser's negligence. The appraiser also claimed against the insured, seeking contribution and indemnity on the basis that he was the insured's employee or agent.

The insurer had issued a professional liability policy to the Appraisal Institute of Canada and the insured and the appraiser had certificates of insurance. The policy's definition of "insured" included "an Employer, but solely for its vicarious liability arising out of Professional Services rendered, or alleged to have been rendered, by a Member..."

The insurer argued the insured was only covered for negligent acts or omissions committed by him personally. It claimed that although the policy included coverage for vicarious liability of an employer, it required the act or omission to be committed by the member to whom the certificate of insurance was issued. The insured argued he was insured for legal claims arising out of his own negligence or from his status as an employer.

The court found that the insurer owed a duty to defend the insured. The insured's denial in his statement of defence that he was an employer was irrelevant; the court needed only to determine there was a "mere possibility" of coverage based on the allegations pleaded against the insured. Viewing the insurance contract as a whole, the vicarious liability provision would be superfluous if an employer were only covered for its own acts or omissions.

This case was digested by [Paul R. Saunders](#), 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 Paul R. Saunders at psaunders@harpergrey.com.