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CASE SUMMARY: MARIJUANA GROW OPERATION WAS A MATERIAL CHANGE OF RISK THAT ENTITLED THE INSURER TO VOID THE INSURED'S HOME INSURANCE POLICY AFTER A FIRE

Insurance law – Homeowner's insurance – Void policy – Material change in risk – Misrepresentation in obtaining insurance – Statutory provisions

Schellenberg v. Wawanesa Mutual Insurance Co., [2019] B.C.J. No. 221, 2019 BCSC 196, British Columbia Supreme Court, February 19, 2019, M.L. Fleming J.

The insurer voided the insureds' homeowner policy after a fire for failure to disclose a material change of risk. The insureds did not notify their broker or insurer of a legal marijuana grow operation in an outbuilding on the property or of an upgrade to the property's electrical system. The fire occurred in the outbuilding but was unrelated to the grow operation. The broker sent renewal documents to the insureds each year reminding of the need to provide notification of material changes of risk, including renovation and alterations to a building. Insureds denied they knew or should have known the grow operation was an insurance risk.

The court held the insurer was entitled to void the policy. The grow operation was a material change in risk. It was not necessary to determine whether statutory condition 4 (material change) requires the insurer to prove the insured knew, objectively or subjectively, that the change in risk was material to the insurer. The grow operation was a significant change, very far from an ordinary use of the property. It was not believable that the insureds did not know that the grow operation was an increased insurance risk. The insureds' claims in negligence and breach of contract against the insurance broker were also dismissed.

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.