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CASE SUMMARY: INSURER FOUND NOT TO HAVE DUTY TO DEFEND BASED ON CGL POLICY EXCLUSIONS IN AN ACTION WHERE INSUREDS ALLEGEDLY SUPPLIED DEFECTIVE GRAPE VINES

Insurer found not to have a duty to defend the insureds in an action in which it was alleged they supplied defective grape vines based on three exclusions in a “Business Choice” commercial general liability policy

Insurance law – Commercial general liability insurance – Duty to defend – Exclusions; Damages

Mori-Vines Inc. v. Northbridge General Insurance Corp., [2017] O.J. No. 5195, 2017 ONSC 5718, Ontario Superior Court of Justice, October 3, 2017, M. Koehnen J.

The insureds brought a claim against their insurer seeking a declaration the insurer had a duty to defend them in a lawsuit in British Columbia. The insureds also sought the right to appoint and instruct counsel.

The insureds are growers and wholesalers of grape vines based in Ontario’s Niagara wine region. The insureds sold vines to Andrew Peller Ltd. who planted the vines in three of its vineyards in British Columbia. Peller alleged the vines were defective and brought an action for damages against the insureds in British Columbia. The insureds had “Business Choice” insurance from the insurer.

The insurer denied a duty to defend the insureds based on three exclusions in its policies: the “Your Product”, the care custody or control, and the fungus exclusions.

The Court was satisfied Peller’s claim was a claim for the cost of replacing the defective product which was excluded by the “Your Product” exclusion. The Court found that the claims were also excluded under the care custody or control exclusion and the fungus exclusion.

The Court held in the event it was wrong on the issue of whether the insurer owed the insureds a duty to defend, then the insurer would have the right to appoint and instruct counsel to defend the insureds but defence counsel must not have acted for the insurer in the previous five years, the adjuster with carriage of the defence would be different from the adjuster with carriage of the coverage issue, the defence counsel would not have any discussions with coverage counsel, and the defence counsel would report to the insureds and the insurer.

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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