

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: THE MANITOBA PUBLIC INSURER WAS REQUIRED TO DEFEND AND INDEMNIFY ITS INSURED FOR A MOTOR VEHICLE ACCIDENT IN ONTARIO DESPITE THE INSURED'S NON-PAYMENT OF PREMIUMS AND FAILURE TO REGISTER HIS VEHICLE IN ONTARIO PRIOR TO THE ACCIDENT

Insurance law – Automobile insurance – Third parties – Duty to defend – Limitation of actions – Jurisdiction – Uninsured motorist

Harte v. Lavrov, [2018] O.J. No. 3965, 2018 ONSC 4368, Ontario Superior Court of Justice, July 26, 2018, R.A. Lococo J.

A vehicle owned by the insured rear-ended the plaintiff in Ontario. The insured's vehicle was registered in Manitoba and insured with Manitoba Public Insurance ("MPI") as the insured had only recently moved to Ontario. However, the insured's insurance was suspended at the time of the accident due to non-payment of premiums. As a result, MPI took the position that the vehicle was not covered by a valid insurance policy at the time of the accident and denied coverage to its insured. The matter proceeded by way of a special case brought by MPI and the plaintiff's insurer to determine whether MPI was entitled to deny coverage in light of the inter-jurisdictional undertaking which precluded MPI from raising a defence not available to an insurer in Ontario.

MPI took the position that it was entitled to deny coverage because: first, the defendant had failed to register his vehicle in Ontario as required by s. 58 of the *Manitoba Public Insurance Act*, C.C.S.M., c. P215; and second, the failure to pay the premium meant that it was entitled to cancel or suspend the insured's driver's certificate, which meant the insured, without a valid driver's certificate, was not an "insured" at the time of the accident. The plaintiff's insurer took the position that the inter-jurisdictional undertaking precluded MPI from denying coverage in the circumstances because: first, MPI would be raising a defence not available in Ontario as there was no equivalent to s. 58 under Ontario law; and second, due to the fact that MPI had failed to comply with the notice provisions regarding suspension of the insured's driver's certificate under Manitoba or Ontario law.

The Court found in favour of the plaintiff's insurer. The Court agreed that the lack of an equivalent provision to s. 58 meant that MPI would be raising a defence not available to the plaintiff's insurer. The Court also agreed that MPI had failed to comply with the notice provisions under Manitoba or Ontario law, and thus coverage remained in place at the time of the accident. The Court found there was no evidence that MPI's delivery of a "Notice of Upcoming Suspension" by certified mail to the insured's previous Winnipeg address met the requirement or an acknowledgement of receipt as required by the Manitoba legislation. Further, the Court found that the notice did not contain specific information as required under Ontario law. As a result, the Court held that the insured had a valid insurance policy in place at the time of the accident and MPI was required to defend and indemnify the insured against the plaintiff's claims.

This case was digested by [Michael J. Robinson](#), 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 Michael J. Robinson at mrobinson@harpergrey.com.