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## CASE SUMMARY: AWOL INSURED DID NOT BREACH DUTY TO COOPERATE

The insured's failure to provide her son's updated contact information did not breach the duty to cooperate.

### **Insurance law – Automobile insurance – Breach of policy – Relief against forfeiture – Practice – Appeal – Summary judgments**

*Ruddell v. Gore Mutual Insurance Co.*, [2019] O.J. No. 2130, 2019 ONCA 328, Ontario Court of Appeal, April 25, 2019, K.M. van Rensburg, C.W. Hourigan and G. Huscroft JJ.A.

The insured's son was the driver of a vehicle owned by the insured that was involved in a motor vehicle accident where the plaintiff was injured. The son plead guilty to dangerous driving. The plaintiff obtained a civil judgment for damages and brought an action pursuant to s. 258(1) of the *Insurance Act*, R.S.O. 1990, c. 1.8, to recover monies from the vehicle owner's insurer. The insurer took the position that the insured had forfeited coverage by breaching the duty to cooperate. The motion judge held the insured was not in breach and, in any event, would be entitled to relief from forfeiture. The insurer appealed.

The insured gave a statement following the accident wherein she advised that she had recently sold her home in Ontario and that her son worked and stayed in different places. The insured later provided updated contact information for her son and a Quebec address where she was temporarily living. The insured was served with the claim at the Quebec address and received a letter from the insurer advising that the claim may be in excess of the policy limits. The letter advised the insured to keep the insurer advised of any change in address.

Over the course of two years, defence counsel retained by the insurer was unable to contact the insured or her son. They sent multiple letters to the insured's old Ontario address and attempted to reach her by phone at several numbers. A skip trace was unsuccessful. On the eve of examinations for discovery of the son, the insurer took the position that the policy was breached because the insured had failed to assist in obtaining her son's cooperation. The insured and her son were eventually noted in default and the insurer was added as a statutory third party. The insured's contact information was later obtained by a third-party investigator.

The Court of Appeal dismissed the insurer's appeal. A breach of the duty to cooperate must be substantial. In this case, there was nothing in the evidence to suggest that the insured was acting in concert with her son, had encouraged him not to cooperate or had failed to assist in locating him. The insured's failure to provide her updated contact information in response to the policy limits letter was not sufficient to find a breach of the duty to cooperate.

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](mailto:mrobinson@harpergrey.com).