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CASE SUMMARY: HOMEOWNER INSURER UNDER DUTY TO DEFEND INSURED WITH ROAD RAGE

**Insurance law – Automobile insurance – Homeowner’s insurance – Exclusions –
Duty to defend – Third parties – Practice – Appeals**

Pembridge Insurance Co. of Canada v. Chu, [2019] O.J. No. 5769, 2019 ONCA 904,
Ontario Court of Appeal, November 15, 2019, J.M. Simmons, G.I. Pardu and I.V.B.
Nordheimer JJ.A.

The Dominion of Canada General Insurance Company appealed the motion judge’s decision that Pembridge Insurance Company of Canada was under no duty to defend its insured from a claim arising out of a motor vehicle accident. Dominion was the insured’s auto-insurer. The insured was also covered by Pembridge’s homeowner policy issued to his father.

A third party claim was made against the insured by another driver alleging the insured drove negligently and also:

- got out of his vehicle;
- threatened the other driver and that driver’s passenger with violence;
- yelled at them, hit the window and other parts of the vehicle; and
- made other gestures causing the other driver and his passenger to fear for their lives.

The other driver claimed that his flight from the insured led to the motor vehicle accident.

The Pembridge policy excluded coverage for claims arising from “the ownership, use or operation of any motorized vehicle”. The Court of Appeal held it was arguable that when the insured left his vehicle, it broke the chain of causation connecting the use of his car, the alleged threats and assaults, the other driver’s flight and the motor vehicle accident. The policy had other exclusions which excluded coverage for bodily injury arising “directly or indirectly” from that excluded event. The automobile exclusion did not include that language. The court found the automobile exclusion did not apply to exclude the insured’s alleged threats and assaults after he left his vehicle.

The Pembridge policy also excluded bodily injury “caused by any intentional or criminal acts” by any person insured by the policy. The Court affirmed that this exclusion applies only when there is both an intentional act and an intent to injure. In this case, there was no allegation that the insured intended to cause harm. Interpreting the exclusion narrowly, and since there was a possibility that Pembridge may have to indemnify its insured depending on the facts found at trial, the duty to defend was triggered.

The Court found the motion judge erred in ordering that the insured’s actions after exiting the vehicle were deemed to be incidental to the ownership, use or operation of a vehicle. A duty to defend motion does not resolve ultimate factual issues when finding a duty to indemnify. The motion judge further erred by determining the insured was not entitled to indemnity from Pembridge and that the trial judge and Dominion were bound by this determination.

This case was digested by [Dominic Wan](#), 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 Dominic Wan at dwan@harpergrey.com.