

# Insurance Legal Ledger

## Case Summaries

Fall Issue | September 2025

### IN THIS ISSUE:

- *Kashin v G.E.S. Construction Limited*,  
2025 ONCA 354
- *Intact Insurance Company v. Hydromec Inc.*,  
2025 QCCA 803
- *Kushniruk v. O'Reilly Insurance Ltd.*,  
2025 SKKB 83
- *1048977 B.C. Ltd. v. Aviva Insurance Company of Canada*,  
2025 BCSC 1532

## Ontario Court of Appeal confirms Lloyd's Underwriters, the third-party defendant, had no duty to defend or indemnify the defendant: [Kashin v G.E.S. Construction Limited, 2025 ONCA 354](#)

### Background

G.E.S. Construction Limited (G.E.S.) agreed to renovate a condominium suite and subcontracted the demolition to Land Pride Group Inc. (Land Pride), who had liability insurance with Lloyd's Underwriters (Lloyd's). G.E.S. was named as an additional insured under the policy. Notably, when Land Pride took out the policy, it advised Lloyd's that it was a snow removal and landscaping company and did not mention demolition work. On April 27, 2016, a water breach occurred during the demolition. During the investigation that followed, Lloyd's retained coverage counsel who advised Lloyd's, on June 9, 2016, that it had grounds to void the policy *ab initio* for material misrepresentation. On July 6, 2016, Land Pride submitted new applications for insurance with Lloyd's and, on July 15, 2016, Lloyd's billed Land Pride for the renewed policy which was paid by Land Pride. Two weeks later, Land Pride cancelled the policy. On Sept. 13, 2016, Lloyd's advised Land Pride it was voiding both policies *ab initio*.

### Analysis

G.E.S. sought a declaration that Lloyd's had a duty to defend and indemnify G.E.S., arguing that because Lloyd's renewed the policy and accepted the premium for an additional year, it waived the right to void the policy or is estopped from doing so. Using the test from *Saskatchewan River Bungalows Ltd. v Maritime Life Assurance Co.*, the motion judge found no evidence that Lloyd's had a conscious intention to abandon its right to void the policy. Land Pride was told that coverage was unavailable, and the policy renewal was contingent on Land Pride withdrawing its claim. Further, the nonwaiver agreement was also inconsistent with an unequivocal and conscious

intention of Lloyd's to waive its rights. With respect to estoppel, the motion judge found that Land Pride knew coverage for demolition was uncertain, and there could be no detrimental reliance with respect to the old policy because Land Pride could not have obtained coverage under that policy after the loss occurred.

The Court of Appeal dismissed G.E.S.'s appeal, ruling that the motion judge did not err in finding that Lloyd's did not waive its right to void the policy. The motion judge's finding that Lloyd's was not estopped from voiding the policy was also entitled to deference.

---

### Key takeaway

An insurer's brief delay in raising the issue of a misrepresentation should not preclude them from voiding a policy for that same issue. An unequivocal and conscious intention to waive the right to void a policy is required.

By: [Bethany Keeshan](#), [Matthew Sherman](#)

## Québec Court of Appeal reinforces that insurers are not obligated to defend claims clearly excluded by policy terms: [Intact Insurance Company v. Hydromec Inc., 2025 QCCA 803](#)

### Background

Hydromec Inc. sold forestry equipment, which later caught fire, prompting a subrogated claim by AIG Insurance based on the legal warranty of quality. Hydromec sought a Wellington Order to compel its insurer, Intact, to defend the claim. The Superior Court granted the order; Intact appealed.

The Superior Court initially ruled in favour of Hydromec, concluding that the insurer had a duty to defend. The trial judge focused on the uncertainty surrounding the cause of the fire, noting the absence of expert evidence to definitively establish whether the damage resulted from a defect or another cause. Based on this uncertainty, the Court found that the pleadings raised a possibility of coverage, thereby triggering the duty to defend under Article 2503 C.c.Q.

### Analysis

The Court of Appeal overturned the Superior Court's ruling, emphasizing that the duty to defend under Article 2503 C.c.Q. arises only when the pleadings, taken as true and interpreted broadly, suggest a possibility of coverage. However, this duty does not apply when the claim is clearly excluded by the policy. In this case, the claim was based solely on the legal warranty of quality, alleging that Hydromec sold a defective product. The insurance policy contained a specific exclusion (Clause 2.9.1) for damage caused by defects existing at the time of sale, which directly applied to the facts.

The Court criticized the trial judge for focusing on the lack of expert evidence regarding the cause of the fire, rather than analyzing the nature of the legal claim. It emphasized that the duty to defend must be assessed based on the pleadings and the applicable policy language—not on speculative possibilities. Relying on established jurisprudence, the Court concluded that the exclusion clause applied, and Intact had no duty to defend. The appeal was allowed, the Superior Court's decision was overturned and costs were awarded to Intact.

---

### Key takeaway

This ruling reinforces that insurers are not obligated to defend claims clearly excluded by policy terms, and underscores the importance of analyzing the pleadings and policy language, not hypothetical scenarios.

By: [Adelina Bocanegra](#), [Gabriel Bouchard](#)

## Saskatchewan court finds broker was negligent in placing policy, but only awards premium to insured: [Kushniruk v. O'Reilly Insurance Ltd., 2025 SKKB 83](#)

### Background

Kushniruk (the Plaintiff) operated an apiary in Saskatchewan where he raised leafcutter bees for pollination and larvae production. He obtained insurance through the Defendant, an insurance agent, in 2017 and again in 2021, believing the coverage extended to both bees placed in the field and larvae produced during the season. Following a windstorm in 2021 that caused significant losses, his claim was denied based on a loss adjustment clause. The Plaintiff alleged breach of contract and negligence, asserting that O'Reilly Insurance Ltd. (the Defendant) failed to secure the requested coverage.

The Plaintiff argued that the Defendant breached both contract and duty of care by failing to obtain the same insurance coverage as in 2017, which he believed included protection against weather-related losses of both bees and larvae. He sought damages of \$118,100.00 for his losses. The Defendant denied liability, maintaining that no contract existed between the parties, as the Defendant acted solely as an agent for the insurer. The Defendant further argued that the Plaintiff failed to establish negligence, causation, or that the desired coverage was available elsewhere.

### Analysis

Case law generally holds that liability between an insurance agent and an insured arises in negligence rather than contract, reflecting the agent's intermediary role between insured and insurer. Importantly, there is a distinction between an insurance broker (acting for the insured) and an insurance agent (acting for the insurer). In this case, the contract of insurance was between the Plaintiff and the Co-operators. The Defendant, acted as Co-operators' exclusive agent and had no authority to

issue policies beyond those offered by Co-operators and no decision-making power regarding coverage. The evidence showed that the Defendant's role was to receive information from applicants, input it into the Co-operators' online application system, and communicate back Co-operators' offer of insurance. The Court found no contract existed between the Plaintiff and the Defendant.

Despite the Plaintiff's belief that the Defendant acted as his personal agent, the evidence confirmed O'Reilly was Co-operators' agent. The Defendant owed the Plaintiff a duty of care to provide accurate information and advice. The Defendant breached this duty by failing to inform the Plaintiff that the requested coverage was unavailable. This misrepresentation constituted negligence. The Plaintiff failed to prove causation or the quantum of damages. There was no evidence that the desired insurance coverage was available elsewhere or that the Plaintiff's claimed losses were accurately quantified. The Court awarded \$963.00, representing the premium paid for the misrepresented coverage, to restore the Plaintiff to his pre-negligence position.

---

### Key takeaway

An insurance agent owes the insured a duty of care, even where the agent's contract is solely with the insurer. That said, an insured must still prove their quantum of damages, or their premium will simply be returned to them.

By: [Brianne Wheat](#), [Raphael Jacob](#)



## British Columbia Supreme Court finds insurer undervalued business income loss of insured: [1048977 B.C. Ltd. v. Aviva Insurance Company of Canada, 2025 BCSC 1532](#)

### Background

In *1048977 B.C. Ltd. v. Aviva Insurance Company of Canada, 2025 BCSC 1532*, the plaintiff brought a claim against its insurer alleging that it had underpaid the insured for business losses owed under an insurance contract between the parties. The plaintiff also alleged that the defendant breached its duty of good faith contractual performance, both in the administration of the plaintiff's insurance claim, and in its conduct throughout the court proceedings.

The plaintiff's insurance claim arose from a significant land subsidence in Aug. 2016, which impacted the plaintiff's ability to open a restaurant and special event business in South Surrey. The plaintiff's property experienced further unfortunate events after the land subsidence, including a hydrogen sulphide gas escape, and a flood. The business never opened, and the plaintiff sold the property in Dec. 2017.

The insurer paid out more than \$1 million in loss of business income, but the plaintiff alleged that the insurer failed to sufficiently compensate it for business income loss, and that it breached its duty of good faith contractual performance in the administration of the claim, in part because it failed to take into consideration the valuation that had been prepared by the plaintiff's accountant. The plaintiff also alleged that the period of indemnity should have extended for twelve months after the flood, which would have extended the coverage period by several months.

### Analysis

The court found that the insurer did fail to compensate the plaintiff adequately for business income loss in accordance with the policy because it failed to compensate the insured for the full 12-month indemnity period following the flood, and instead cancelled the policy when the insured accepted a cash settlement for repairs rather than proceeding with the repairs. The court found however that the insurer was aware that the insured was considering accepting a cash settlement for certain outstanding repairs rather than

proceeding with the indemnified repairs, and did not warn the insured that it had an internal policy that insurance policies would be cancelled if this occurred. The court found that the insurer was either bound to tell the insured of its own policy to cancel insurance policies where a cash settlement was chosen, or bound not to exercise its discretionary power to cancel the policy.

The court also found that the insurer breached its duty of good faith because it undervalued the reasonably anticipated revenue of the business. The court noted that the plaintiff had provided a detailed report from its own accountant and offered to produce confidential, unredacted data from comparable local businesses to assist with the analysis, but the insurer did not consider this evidence in its analysis. The court found that the insurer's failure to consider the evidence of business loss submitted by the plaintiff in favour of the estimates of loss provided by the accountant that it hired breached the insurer's duty of good faith contractual performance. The insurer rejected this evidence in favour of a report prepared by its own accountant, which the court found did not meet the standard of a balanced investigation.

The court ordered the defendant to pay an additional \$2,278,000 to the plaintiff in unpaid business loss under the terms of the policy but dismissed the requested award for consequential damages for the breach of the duty of good faith. While the court found that the insurer had breached its duty of good faith contractual performance, it was not persuaded that this led to losses compensable in damages. The court found that a declaration that the insurer breached its duty of good faith contractual performance was warranted, but concluded that the defendant's conduct did not warrant an award of punitive damages.

---

### Key takeaway

An insurer is obligated to handle claims diligently, transparently and fairly, and the duty of good faith also requires conducting balanced investigations that do not unilaterally favour the evidence of the insurer.

By: [Emily Pitre](#)

# How we can help

BLG commands Canada's largest and most experienced business insurance law practice. Working with multi-disciplinary teams, our insurance lawyers serve as strategic advisors to a variety of clients that include many of the largest national and global insurers, reinsurers, reciprocals, brokerage firms, captives, financial institutions, and regulatory bodies. We resolve every category of insurance claim, from complex class actions to high-volume subrogation, and spanning all major liability areas. We are proven leaders in negotiation, mediation, and arbitration, with a record of success at all trial and appellate courts, including the Supreme Court of Canada. BLG's insurance law practitioners are routinely recognized by *Chambers*, *Benchmark*, *Lexpert*, and *The Best Lawyers in Canada*.



**Rebecca Bush**  
National Business Leader,  
Insurance and Tort Liability  
T 416.367.6162  
RBush@blg.com



**Larry Elliot**  
Partner  
T 613.787.3537  
LElliot@blg.com



**Patrick Heinsen**  
Partner  
T 403.232.9794  
PHeinsen@blg.com



**Gilbert Hourani**  
Partner  
T 514.954.3101  
GHourani@blg.com



**Allison Foord**  
Partner  
T 604.640.4079  
AFoord@blg.com



**David Elman**  
Partner  
T 416.367.6031  
DElman@blg.com

---

## Insurance Firm of the Year

2022, 2023 and 2024

*Benchmark Litigation*

“Their pragmatic approach to matters results in reasonable settlements and resolutions. They can parachute colleagues from any of their multi-disciplinary teams on short notice.”

---

[blg.com/InsuranceClaimDefence](https://blg.com/InsuranceClaimDefence)