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**** HIGHLIGHTS ****

* A Justice of the British Columbia Supreme Court has concluded that a marijuana growing operation in a private residence did not fall within the "farming" exclusion under the homeowner's insurance policy. The grow op was conducted by either the homeowner or his wife. The exclusion in the policy for the unlawful cultivation of marijuana did not apply because the house was not destroyed as a result of the grow op, but as a result of arson. The insurer was required to pay the loss. (Davidson v. Wawanesa Insurance Co., CALN/2015-019, [2015] B.C.J. No. 1701, Supreme Court of British Columbia)

**** NEW CASE LAW ****

Davidson v. Wawanesa Insurance Co.; CALN/2015-019, Full text: [2015] B.C.J. No. 1701; 2015 BCSC 1383, Supreme Court of British Columbia, S.C. Fitzpatrick J., August 10, 2015.

Insurance -- Exclusion for "Farming" -- Whether Marijuana Growing Operations are "Farming".

The Plaintiff, Steven Davidson ("Davidson"), sued Wawanesa Insurance Company ("Wawanesa") to recover the value of his Kamloops, British Columbia residence and its contents which were destroyed by fire in April of 2010.

The house was destroyed as a result of arson. The arson occurred the day after a police raid of the house revealed a marijuana grow operation and what the police described as a substantial amount of stolen property and illegal firearms.

Davidson claimed he had no knowledge of the illegal grow op.

Wawanesa denied coverage under the policy on a number of grounds, including the ground that coverage was excluded because the house was being used for "farming" purposes.

The Wawanesa policy provided, in part:

SECTION I

LOSS OR DAMAGE NOT INSURED

"We" do not insure:

...

(4) loss or damage to structures or buildings used in whole or in part for "business" or "farming" purposes;

...

(10) any loss or damage resulting from any illegal activity:

(a) of the "Insured";

(b) of any tenant of the "Insured"; or

(c) the relatives or "residence employees" of either;

arising directly or indirectly from the growing, cultivating, harvesting, processing, manufacture, distribution, or sale of any drug, including but not limited to cannabis,...whether or not "you" have any knowledge of such activity or are unable to control such illegal activity...

The policy defined "business" and "farming" as follows:

"Business" means a trade, profession or occupation. Business does not include "farming".

"Farming" means the ownership, maintenance or use of premises for the production of crops or the raising or care of livestock, including all necessary operations.

Wawanesa argued that marijuana is a "crop", and that, consequently, the house was used for farming.

Decision: Fitzpatrick, J. awarded Davidson judgment against Wawanesa in the sum of $215,000.00 plus costs [at para. 208 and 209].

With respect to the farming exclusion, Fitzpatrick, J. observed [at para. 671] that there can be little doubt that marijuana is a "cultivated plant" and that the number of plants discovered by the RCMP was "consistent with the production of marijuana".

However, Fitzpatrick, J. observed that the objective of interpreting contracts is to discover and give effect to the parties' true intentions [at para. 72] having regard to the entire contract and the surrounding circumstances, except where to do so would result in commercial absurdity or create some inconsistency with the rest of the contract [at para. 73].

Fitzpatrick, J. observed [at para. 75], referring to the evidence of one of Wawanesa's witnesses, that the importance of the use of a property and an insurer considers whether or not will insure a risk is that coverages differ in relation to the risk insured, and that the amount will vary accordingly.

Fitzpatrick, J. then concluded [at para. 76 to 78]:

> [76] I accept that a property being used for a business or farming purpose has other and higher risk factors that would be considered by any prudent insurer. However, in this residential-dwelling policy, in my view, it cannot be reasonably interpreted that the parties intended to exclude a grow operation by use of the word "farming". Put another way, I fail to see how the parties could have intended that an illegal grow operation, in a residential house, fit within that term.
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> [77] Rather, consistent with the experience of the insurance industry in relation to grow operations, the Policy contained a specific provision, exclusion clause (1), dealing with the potential for this situation. That provision clearly refers to the "growing, cultivating, harvesting" of cannabis". If the growing of cannabis was included within the definition of "farming", then there was no need for this separate provision.
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> [78] This interpretation makes imminent sense when comparing the two separate provisions. If the cultivation of marijuana is an excluded risk as "farming", then why later limit the exclusion to only loss or damage "resulting from" the illegal activity? Wawanesa's assertion that this is "farming" results in two separate exclusions which operate differently depending on the factual circumstances. Where the loss does not result from the activity, then it would be covered under exclusion clause (10), but excluded under exclusion clause (4) above. Such an interpretation results in an inconsistency within the Policy. This inconsistency is resolved by applying only exclusion clause (10) to situations where a grow operation is being conducted on the premises.

Fitzpatrick, J. concluded that the only exclusion which would apply the marijuana grow operation is clause (10), which specifically related to the illegal cultivation of marijuana, and that the grower operation either belonged to Davidson or his wife such that it arose from the activities of either the "insured" or the relative of the "insured". However there was no evidence to establish on a balance of probabilities that the loss or damages "result[ed] from" illegal activity [at para. 81 to 85].

** CREDITS **

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