

Insurance

“For claims that address wrongdoing and damages spanning an extended time period, it is important to ensure that all applicable insurers are put on notice and potentially named in any coverage suit.”

What was the most interesting development of 2024, and why?

Two significant decisions released by the Ontario Court of Appeal in 2024 demonstrate that the court will give effect to the contractual bargain between the insurer and the insured, as well as the stipulated conditions and terms for coverage.

[Loblaw Companies Limited v Royal & Sun Alliance Insurance Company of Canada](#) addressed insurers' responsibilities in defending long-term claims related to the opioid crisis, which span several decades and involve multiple liability policies. In its decision, the Court rejected the idea that a single insurer could be responsible for all defense costs, regardless of the policy's time limits. Instead, the Court confirmed that

defense costs should be shared among successive insurers based on the duration each insurer was on risk. The decision underscores the importance of adhering to the specific terms agreed upon between insurers and the insured.

This case clarifies how defense costs should be allocated among insurers in long-term claims, ensuring that each insurer only pays for the period they were on risk.

Lenczner Slaght represented the appellant, AIG Insurance Company Canada, in this matter.

In [Furtado v Lloyd's Underwriters](#), an insured individual did not inform their insurer about a mandatory interview with a securities regulator. Initially, the law prohibited the insured from disclosing the investigation, and the insurance policy excused them from notifying the insurer under such circumstances.

However, the law was later amended to allow disclosure to insurers, but the insured still did not provide notice. The Court ruled that the insured failed to give timely notice. Since notifying the insurer was a condition required for coverage, the insured could not be excused from this requirement.

This case highlights the importance of staying updated on legal changes and ensuring timely communication with your insurer to maintain coverage.

What's the primary takeaway for businesses from the past year?

These decisions demonstrate the importance of being familiar with and complying with any terms and conditions in insurance policies. Regardless

of sympathetic circumstances, insurance is a contractual bargain which courts will enforce. Providing timely notice of a claim is essential and typically required for coverage. For claims that address wrongdoing and damages spanning an extended time period, it is important to ensure that all applicable insurers are put on notice, and potentially named in any coverage suit.

What's one trend you are expecting in 2025?

In [Gagne v Harrison](#), a decision favouring the insured's interests, the Court overturned a motion judge's finding that an insurer could never owe a duty to an insured to assess an individual's needs regarding the appropriateness of an insurance product. While the ultimate issue is yet to be litigated, the door remains open to assert such a duty and for claims of this nature.

At the same time, like all industries, insurance providers are turning to generative AI to assist with creating efficiencies in their business models, including in the underwriting process. As this expands, there will be less human consideration of any individual issues that may arise. For example, outside the insurance industry, in [Moffatt v Air Canada](#), a Civil Resolution Tribunal decision from February 2024, Air Canada was held liable for negligent misrepresentations made by its AI Chatbot to a consumer about the availability of refunds for bereavement fare. Similar concerns could easily arise in the context of underwriting coverage and/or responding to claims made in the future as these technologies become more sophisticated and are



Nina Bombier

PRACTICE GROUP LEADER
416-865-3052
nbombier@litigate.com



Drew Black

ASSOCIATE
416-238-7459
dblack@litigate.com

OUR INSURANCE EXPERTISE

We cover all facets of insurance litigation. Our lawyers draw on extensive trial and appellate experience to advise clients on the spectrum of policy, coverage, and defence matters. With over three decades of experience, Lenczner Slaght has a proven record in litigating coverage cases among and against insurers involving issues including trigger of coverage, allocation of defence and indemnity, covered/excluded claims, obligations among primary and excess insurers, reinsurance, drop-down matters and run-off coverage.