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The perils of waiting

Early determination of coverage issues can be essential, appeal court ruling shows

Nina Bombier and Jaclyn Greenberg co-authored an article that appeared in the May 8, 2015 issue of the *Lawyers Weekly* published by Lexis Nexis Canada Inc. This article discusses the decision in *Mallory v Werkmann Estate*, which reinforces how the duty of loyalty and good faith owed by defence counsel to the insured client must trump the interests of the insurer that appoints and pays for counsel.

"It is common practice for an insurer to appoint counsel to defend an insured in litigation, and simultaneously reserve its right to dispute coverage later. The Court of Appeal's decision in *Mallory v. Werkmann Estate* [2015] O.J. No. 462, underscores that addressing coverage issues cannot always wait.

The Feb. 2 decision serves as a strong reminder to counsel to consider early the extent to which findings in the underlying litigation could impact the question of coverage. In some circumstances, coverage issues cannot await the outcome of such litigation, and some form of participation is required, even if it is just to ensure that the issues are properly delineated..."

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