

Gore Mutual Insurance Co. v 1443249 Ontario Ltd. (2004), 70 O.R. (3d) 404 (Ont. S.C.J.); appeal dismissed (2005), 75 O.R. (3d) 477 (C.A.)

Proposition of Law:

Driver was involved in a motor vehicle accident while operating vehicle listed on insurance policy issued to insured – Insurer refused to defend legal action commenced against insured and driver and applied for declaration that unsigned “OPCF 28A Excluded Driver Endorsement” issued by insurer was valid and effective to exclude coverage while driver was operating vehicle – Applications judge found that endorsement did not operate to amend contract of insurance because insured had not agreed to changes to policy in writing, as required by s. 124(1) and (2) of *Insurance Act* – Applications judge held that insurer was not relieved of its obligations to provide insurance coverage – Insurer appealed – Appealed dismissed – Agreement must exist between insurer and insured that contract of insurance be amended in order to exclude coverage for driver who was otherwise driving with consent of insured since exclusion changed terms of contract of insurance – Ample evidence existed upon which application judge could find that in absence of signed form, insured had not agreed to such amendment.