

## Court clarifies uninsured motorist coverage

### Brief: Personal Injury Law

The Ontario Superior Court has found that insurance companies shouldn't be required to pay claims in connection with uninsured motorist coverage, sending claimants back to the "payer of last resort," the Motor Vehicle Accident Claims Fund (MVACF).

The decision of Justice Roland J. Haines in *McArdle v. Bugler et al*, handed down on Aug. 31, found that the wording in the standard automobile policy when this accident occurred was materially different from the wording of the standard automobile policy that was used to determine the Ontario Court of Appeal's decision in 2001's *Taggart v. Simmons*.

"Insurance companies have been picking up the tab for claims that should be paid by the MVACF," says Ted Charney, counsel for the defendant insurer, Cosesco Insurance Company.

"Since 2001 with *Taggart*, the [MVACF] had been sending the bill to the insurance industry because they managed to convince the Court of Appeal in *Taggart* that they shouldn't be paying in certain cases, because of the wording of the policy at the time," he says.

In *Taggart*, John Taggart suffered a brain injury and was rendered a quadriplegic in a motor vehicle accident. At the time, Taggart was living with Thomas Tessier in "close to a child-parent relationship."

Taggart sought indemnification from Pilot Insurance Company under a policy issued to Tessier. The Court of Appeal relied upon s. 224(11) of the Insurance Act to define "insured" under s. 265 and found that Taggart would be entitled to uninsured coverage, as he came within the definition of a "person insured under the contract" if he could prove he was a dependent of Tessier.

When approaching the meaning of "relative," the Court of Appeal's approach was that an endorsement was to be interpreted liberally or broadly in favour of the insured. There was nothing in the endorsement to limit the class of insured persons to those linked by marriage, blood, or adoption.

The coverage had been sold to Tessier as "family protection coverage" and Tessier thought of Taggart as family. Coverage extended to a person the insured had a de facto parent-child relationship with. If Taggart could prove dependency, he would be also entitled to underinsured coverage.

"Prior to 2001, it was commonly understood in the industry that the fund should pay and that decision changed what had been the law for the last 30, 40 years, since the fund was created," says Charney.

"Prior to *Taggart*, the only people who were entitled to uninsured motorist coverage were the people named in the policy, their dependants, and people in their car. In every other province in Canada except Quebec, uninsured motorist coverage is restricted to the named insureds, the dependant relatives and occupants of the vehicle," he says.

The decision in *McArdle* involves the plaintiff Maureen McArdle, who was a passenger in a car owned and operated by Brian Bugler on Sept. 3, 1999. McArdle was injured when Bugler's car collided with a car driven by Ronald Emmons and owned by Christopher Emmons. Bugler was not insured, and Cosesco was the insurer of Emmons' car.

Coseco paid accident benefits to McArdle as an insured pursuant to s. 224(1) of the Insurance Act but the plaintiff claimed she was also entitled to uninsured motorist coverage under the Cosesco policy. She submitted that *Taggart* stands for the proposition that anyone who qualifies as an insured for statutory benefits is also insured for uninsured motorist coverage and that s. 270 of the Insurance Act also provides for uninsured motorist coverage.

Haines ruled that provision gives a person who is entitled to indemnity but not named in the policy the right to pursue recovery as if they were named, but "in the circumstances of this case, I do not see that s. 270 assists the plaintiff because it is not demonstrated that she is entitled to the uninsured motorist coverage she is claiming. As a result, she is not, for uninsured motorist coverage purposes, a 'person insured by not named in a contract' of insurance," wrote Haines.

Coseco argued that Taggart is distinguishable because the definition of "insured" in the standard policy of insurance was materially different when the accident occurred in Taggart (1995) and when the accident occurred in McArdle (1999).

Haines agreed and found that McArdle didn't fit the definition of a person designated as eligible for uninsured motorist coverage.

This now sends the bill back to MVACF, operated under the Financial Services Commission of Ontario, which provides compensation to people injured in automobile accidents when no automobile insurance exists or those involved in hit-and-run accidents.

"Each insurance company only gets one or two of these claims a year, but for the fund, there's probably 30, 40, 50 claims a year that they're going to have to pick up now," says Charney.

According to MVACF's most recent financial statement dated March 31, 2005, the amount paid out of the fund for accident benefits claims in structured settlements was about \$11.4 million.