The Canadian Abridgment eDigests -- Insurance

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INS.II.6.d

Subject Title: Insurance

Classification Number: II.6.d

Agents, brokers and adjusters -- Insurance brokers -- Miscellaneous issues

Insurer cancelled its contract with insurance broker -- Committee of Registered Insurance Brokers of Ontario informed broker that it no longer met requirements for registration as registered insurance broker under s. 6(1)(a)(i) of Regulation 991 of Registered Insurance Brokers Act since it concluded that s. 6(1)(a)(i) required registered broker to maintain active contracts with at least two standard insurance markets -- Broker failed to request hearing on cancellation of registration, despite committee informing broker of right -- Committee made order to revoke broker's certificate of registration without hearing -- Broker's appeal was dismissed -- Trial judge found committee had requisite jurisdiction to make order and did not misapprehend scope of complaint -- Trial judge found committee had exclusive authority under Act to determine eligibility of registration, qualifications of registered brokers and what other businesses brokers were entitled to conduct -- Trial judge found that by implication, committee had authority to revoke broker's registration and revocation was not ultra vires -- Trial judge found committee had discretion to determine what constituted business of broker under s. 6(1)(a)(i) of Regulations and its interpretation was not in error -- Trial judge found committee was entitled to revoke registration without hearing since broker was informed of right to request hearing and broker did not request hearing -- Broker appealed -- Appeal dismissed -- Requirement to have two contracted markets was reasonable interpretation of Regulations -- Committee's determination did not change definition of broker under Act, but interpreted definition of phrase "business carried on by".

Jaguar Insurance Brokers Inc. v. Registered Insurance Brokers of Ontario (2006), 2006 CarswellOnt 8094, J. Simmons J.A., K.M. Weiler J.A., S.T. Goudge J.A. (Ont. C.A.) [Ontario]; affirming (2005), 33 C.C.L.I. (4th) 116, 205 O.A.C. 207, 2005 CarswellOnt 6833, Cunningham A.C.J., Lane J., Molloy J. (Ont. Div. Ct.)

INS.IV.6

Subject Title: Insurance

Classification Number: IV.6

Principles of interpretation and construction -- Miscellaneous issues

Parties' true intent -- Insured refined and manufactured components for motor oil and gasoline, including methyl tertiary butyl ether ("MTBE") made from butane -- Insured purchased some of its butane from TCM and K, both of which obtained butane from T plant, until plant was damaged in explosion on January 27, 1999 and did not produce butane for approximately one year -- TCM and K reduced supply of butane to insured, which in turn reduced production of MTBE and ultimately shut down its plant for approximately ten days -- Insured sought recovery under its insurance policy for contingent business interruption and for contingent extra expenses -- Insurer opined that because TCM had ownership interest in T plant, whereas K did not, TCM was supplier as contemplated by policy, but K was not -- Insured brought action on policy -- Action allowed -- Insured was entitled to coverage for contingent business interruption as result of disruption of supply of butane from both TCM and K for period of loss commencing March 2, 1999 and including both period of curtailment and shutdown, totalling $2,355,673.25 -- Wording of policy was not negotiated between parties and no inquiries were made by insurer of insured as to who supplied it with butane -- Therefore, policy was interpreted in accordance with true intent of parties at time contract was entered into -- Risk foreseen by insured was loss sustained as result of interruption of its own business caused by interruption in flow of goods or services -- Nature of insured's business was known to insurer -- Proprietary interests of entities that delivered butane to insured were not in control of insured -- Result advocated by insurer would lead to absurd result -- Policy was interpreted to covered butane supplied by both TCM and K.

Neste Canada Inc. v. Allianz Insurance Co. of Canada (2006), 2006 ABQB 922, 2006 CarswellAlta 1756, P.A. Rowbotham J. (Alta. Q.B.) [Alberta]

INS.VII.7.b

Subject Title: Insurance

Classification Number: VII.7.b

Extent of risk (exclusions) -- Fire insurance -- Goods or property at specified premises

Plaintiff business serviced and repaired various types of farm equipment -- Plaintiff contracted with defendant insurer for business policy -- Fire on plaintiff's premises destroyed various property belonging to plaintiff's customers -- Defendant refused payment of plaintiff's submitted proof of loss of $134,364.38 for destroyed property of customers -- Plaintiff paid customers out of own pocket for losses -- Plaintiff brought action for coverage of loss via stated case -- Action dismissed -- Exclusion clause in policy clearly precluded demand for coverage -- Clause explicitly stated that policy did not apply to damage to property under plaintiff's care, control or custody -- Other clause in policy contained exception which provided some basis for providing coverage for compensatory damages via contract or agreement -- However, such exception was not as applicable to situation as main exclusion clause -- Exception to exclusion clause could be trumped by another exclusion clause -- Coverage for loss or damage to customers' equipment could have been provided by another policy or by amendment to present policy, if required by plaintiff.

Bremner Farms Ltd. v. Economical Mutual Insurance Co. (2006), 2006 CarswellNB 686, 2006 NBQB 419, [2007] I.L.R. I-4561, G.S. Rideout J. (N.B. Q.B.) [New Brunswick]

INS.VII.11

Subject Title: Insurance

Classification Number: VII.11

Extent of risk (exclusions) -- Miscellaneous types of insurance

Contingent business interruption -- Insured refined and manufactured components for motor oil and gasoline, including methyl tertiary butyl ether ("MTBE") made from butane -- Insured purchased some of its butane from TCM and K, both of which obtained butane from T plant, until plant was damaged in explosion on January 27, 1999 and did not produce butane for approximately one year -- TCM and K reduced supply of butane to insured, which in turn reduced production of MTBE and ultimately shut down its plant for approximately ten days -- Insured sought recovery under its insurance policy for contingent business interruption and for contingent extra expenses -- Insurer opined that because TCM had ownership interest in T plant, whereas K did not, TCM was supplier as contemplated by policy, but K was not -- Insured brought action on policy -- Action allowed -- Insured was entitled to coverage for contingent business interruption as result of disruption of supply of butane from both TCM and K for

period of loss commencing March 2, 1999 and including both period of curtailment and shutdown, totalling $2,355,673.25 -- Fifteen-day waiting period under policy commenced on day production was curtailed, not on date of explosion, and damages should therefore be calculated from March 2, 1999 -- Insured's decision to curtail production was reasonable and supported by evidence -- While shut down provided opportunity for insured to perform maintenance work, insurer failed to establish that resulted in enhanced production, and therefore, there was no deduction for increased production after shutdown -- Higher cost of butane was not sole cause of explosion, and therefore insured failed to establish that it was entitled to damages for extra expenses -- Insured was entitled to professional fees paid to provide insurer with details to backup insured's claim, but fees after report were more properly claimed as costs for expert reports -- Insured was entitled to prejudgment interest from July 1, 1999.

Neste Canada Inc. v. Allianz Insurance Co. of Canada (2006), 2006 ABQB 922, 2006 CarswellAlta 1756, P.A. Rowbotham J. (Alta. Q.B.) [Alberta]

INS.IX.8.c.iii

Subject Title: Insurance

Classification Number: IX.8.c.iii

Claims -- Payment of insurance proceeds -- Entitlement to interest -- Pre-judgment interest

Insured refined and manufactured components for motor oil and gasoline, including methyl tertiary butyl ether ("MTBE") made from butane -- Insured purchased some of its butane from TCM and K, both of which obtained butane from T plant, until plant was damaged in explosion on January 27, 1999 and did not produce butane for approximately one year -- TCM and K reduced supply of butane to insured, which in turn reduced production of MTBE and ultimately shut down its plant for approximately ten days -- Insured sought recovery under its insurance policy for contingent business interruption and for contingent extra expenses -- Insurer opined that because TCM had ownership interest in T plant, whereas K did not, TCM was supplier as contemplated by policy, but K was not -- Insured brought action on policy -- Action allowed -- Insured was entitled to coverage for contingent business interruption as result of disruption of supply of butane from both TCM and K for period of loss commencing March 2, 1999 and including both period of curtailment and shutdown, totalling $2,355,673.25 -- There was no provision for payment of prejudgment interest either in policy or Insurance Act -- Where insured immediately reported loss, parties exchanged information about amount of loss as early as summer of 1999, and where calculation of loss was complex, it would be unfair to conclude that "cause of action" did not arise until several years later -- Therefore, insured was entitled to

prejudgment interest from July 1, 1999.

Neste Canada Inc. v. Allianz Insurance Co. of Canada (2006), 2006 ABQB 922, 2006 CarswellAlta 1756, P.A. Rowbotham J. (Alta. Q.B.) [Alberta]

INS.IX.8.d.i

Subject Title: Insurance

Classification Number: IX.8.d.i

Claims -- Payment of insurance proceeds -- Entitlement to proceeds -- General principles

Insured refined and manufactured components for motor oil and gasoline, including methyl tertiary butyl ether ("MTBE") made from butane -- Insured purchased some of its butane from TCM and K, both of which obtained butane from T plant, until plant was damaged in explosion on January 27, 1999 and did not produce butane for approximately one year -- TCM and K reduced supply of butane to insured, which in turn reduced production of MTBE and ultimately shut down its plant for approximately ten days -- Insured sought recovery under its insurance policy for contingent business interruption and for contingent extra expenses -- Insurer opined that because TCM had ownership interest in T plant, whereas K did not, TCM was supplier as contemplated by policy, but K was not -- Insured brought action on policy -- Action allowed -- Insured was entitled to coverage for contingent business interruption as result of disruption of supply of butane from both TCM and K for period of loss commencing March 2, 1999 and including both period of curtailment and shutdown, totalling $2,355,673.25 -- Insured's decision to curtail production was reasonable and supported by evidence -- While shut down provided opportunity for insured to perform maintenance work, main reason for shutdown was butane supply -- There should be no deduction for increased production after shutdown.

Neste Canada Inc. v. Allianz Insurance Co. of Canada (2006), 2006 ABQB 922, 2006 CarswellAlta 1756, P.A. Rowbotham J. (Alta. Q.B.) [Alberta]

INS.IX.8.f

Subject Title: Insurance

Classification Number: IX.8.f

Claims -- Payment of insurance proceeds -- Deductible

Waiting period -- Insured refined and manufactured components for motor oil and gasoline, including methyl tertiary butyl ether ("MTBE") made from butane -- Insured purchased some of its butane from TCM and K, both of which obtained butane from T plant, until plant was damaged in explosion on January 27, 1999 and did not produce butane for approximately one year -- TCM and K reduced supply of butane to insured, which in turn reduced production of MTBE and ultimately shut down its plant for approximately ten days -- Insured sought recovery under its insurance policy for contingent business interruption and for contingent extra expenses -- Insurer opined that because TCM had ownership interest in T plant, whereas K did not, TCM was supplier as contemplated by policy, but K was not -- Insured brought action on policy -- Action allowed -- Insured was entitled to coverage for contingent business interruption as result of disruption of supply of butane from both TCM and K for period of loss commencing March 2, 1999 and including both period of curtailment and shutdown, totalling $2,355,673.25 -- Insured's decision to curtail production was reasonable and supported by evidence -- Waiting period operates in same manner as deductible, wherein insured absorbs loss for specified waiting period -- Insured suffered no business interruption until it curtailed production on February 15, 1999 -- Fifteen-day waiting period under policy commenced on day production was curtailed, not on date of explosion, and damages should therefore be calculated from March 2, 1999.

Neste Canada Inc. v. Allianz Insurance Co. of Canada (2006), 2006 ABQB 922, 2006 CarswellAlta 1756, P.A. Rowbotham J. (Alta. Q.B.) [Alberta]

INS.IX.8.i

Subject Title: Insurance

Classification Number: IX.8.i

Claims -- Payment of insurance proceeds -- Recovery of expenses

Insured refined and manufactured components for motor oil and gasoline, including methyl tertiary butyl

ether ("MTBE") made from butane -- Insured purchased some of its butane from TCM and K, both of which obtained butane from T plant, until plant was damaged in explosion on January 27, 1999 and did not produce butane for approximately one year -- TCM and K reduced supply of butane to insured, which in turn reduced production of MTBE and ultimately shut down its plant for approximately ten days -- Insured sought recovery under its insurance policy for contingent business interruption and for contingent extra expenses -- Insurer opined that because TCM had ownership interest in T plant, whereas K did not, TCM was supplier as contemplated by policy, but K was not -- Insured brought action on policy -- Action allowed -- Insured was entitled to coverage for contingent business interruption as result of disruption of supply of butane from both TCM and K for period of loss commencing March 2, 1999 and including both period of curtailment and shutdown, totalling $2,355,673.25 -- Insured's decision to curtail production was reasonable and supported by evidence -- While shut down provided opportunity for insured to perform maintenance work, main reason for shutdown was butane supply -- Insurer failed to establish that work performed during shutdown was cause of enhanced production, and therefore, there should be no deduction for increased production after shutdown -- Higher cost of butane was not sole cause of explosion, and therefore insured failed to establish that it was entitled to damages for extra expenses -- Insured was entitled to $60,842.47 in professional fees paid to provide insurer with details to backup insured's claim -- Fees paid after April 30, 2001 report were more properly claimed as costs for expert reports.

Neste Canada Inc. v. Allianz Insurance Co. of Canada (2006), 2006 ABQB 922, 2006 CarswellAlta 1756, P.A. Rowbotham J. (Alta. Q.B.) [Alberta]

INS.X.1.d.ii.A

Subject Title: Insurance

Classification Number: X.1.d.ii.A

Actions on policies -- Commencement of proceedings -- Obligations of insurer -- To defend -- General principles

Defendant real estate agent was representing plaintiffs in sale of home -- Defendant arranged to hold open house for plaintiffs -- Plaintiffs left home to allow for better access to potential purchasers and put key in lock box to allow defendant to enter -- After entering home, defendant started fire in fireplace which resulted in significant smoke damage to interior of home -- Defendant had personal home owner's policy issued by insurer -- Policy allowed for coverage in instances where defendant was involved in work for someone else as sales representative -- Plaintiffs brought action against defendant for damage

to home -- Chambers judge held that insurer was liable under policy to defend against plaintiffs' claim -- Insurer brought appeal from chambers' judge's decision -- Appeal allowed -- Activities of defendant which allegedly caused fire were not subject to coverage under policy -- Defendant was in care, control and custody of house at time of fire -- Defendant had authority of plaintiffs to admit third parties to home and corollary authority to exclude others -- Defendant had far greater level of dominion over home while plaintiffs were away than any other individual -- Issue of potential access of other agents via lock box was of peripheral importance due to fact that defendant arrived at home before anyone else.

Fialkow v. Personal Insurance Co. (2006), 2006 CarswellAlta 1625, 2006 ABCA 383, [2007] I.L.R. I-4559, F. Slatter J.A., J. Watson J.A., P. Martin J.A. (Alta. C.A.) [Alberta]

INS.X.6

Subject Title: Insurance

Classification Number: X.6

Actions on policies -- Miscellaneous issues

Plaintiff and defendants were involved in motor vehicle accident -- Defendants admitted liability for accident -- Plaintiff complained of ongoing headaches and pain and limitation of movement to neck, shoulder and upper back -- Plaintiff brought claim for general damages, loss of housekeeping and future loss of income -- Defence conducted video surveillance of plaintiff over four-day period which was presented at trial -- Plaintiff was awarded $20,000 in general damages and $20,000 in future housekeeping care by jury -- Defendants brought motion for order that plaintiff had not met threshold for non-pecuniary loss -- Motion granted -- On balance of probabilities, plaintiff had not sustained permanent impairment caused by continuing injury that was physical in nature -- Jury found as fact that plaintiff's physical injuries from accident had healed substantially by end of 6 months to year -- Jury further found that any complaints thereafter were emotionally or psychologically based -- Plaintiff exhibited no pain behaviour or any limitation of movement throughout four days captured by video surveillance -- Any symptoms which may have persisted did not interfere substantially with plaintiff's employment or housekeeping and maintenance duties.

Dennie v. Hamilton (2006), 2006 CarswellOnt 6505, W.L. Whalen J. (Ont. S.C.J.) [Ontario]

INS.XII.3.a.iii

Subject Title: Insurance

Classification Number: XII.3.a.iii

Automobile insurance -- Extent of risk -- Terms of art -- "Motor vehicle" or "automobile"

Insured and son were operating go-karts at amusement park when accident occurred in which son suffered injuries -- Actions arising out of accident alleged that insured caused or contributed to son's injuries by negligent operation of go-kart -- Insurer had issued automobile insurance policy to insured -- Insured brought third party claim against insurer claiming indemnification and defence -- Insurer brought motion under R. 21 of Rules of Civil Procedure to have determined before trial question of whether go-kart was "automobile" for purposes of policy -- Go-kart was determined to be automobile under policy -- Section 224(1) of Insurance Act defined automobile as motor vehicle required to be insured under motor vehicle liability policy -- Go-kart met definition of motor vehicle in Compulsory Automobile Insurance Act and Highway Traffic Act as it was "any other vehicle propelled or driven otherwise than by muscular power" -- If operated on highway, go-kart would have to be insured.

Adams v. Pineland Amusements Ltd. (2006), 2006 CarswellOnt 8322, R.J. Kealey J. (Ont. S.C.J.) [Ontario]

INS.XII.3.d.ii

Subject Title: Insurance

Classification Number: XII.3.d.ii

Automobile insurance -- Extent of risk -- Restricted use of vehicle -- Pleasure or business use

Plaintiffs resided on hobby farm -- Plaintiffs purchased truck for $47,000 and sought insurance policy from defendant -- Plaintiffs insured truck for farm and pleasure use and designated plaintiff wife as principal driver -- Plaintiff husband was employed off farm and used truck to drive to work sometimes -- Truck was stolen after three years of use and plaintiffs entered claim for loss for $50,000 -- Defendant

refused to pay claim on grounds that plaintiffs had used truck for purposes outside ambit of policy and made false statements and claims to defendant -- Plaintiffs claimed that defendant's broker had represented that incidental use of truck to drive to work was covered by policy -- Plaintiffs brought action for payment of policy -- Action dismissed -- Plaintiffs forfeited right to benefits and insurance money -- Plaintiffs were in clear breach of farm or pleasure use only requirement of policy -- Clear words of policy contradicted plaintiffs' alleged understanding that policy permitted incidental use to and from work -- Regardless, evidence showed that plaintiffs' use of truck for purposes other than pleasure was far more than incidental during policy period -- Plaintiff husband frequently drove truck to or from work in clear violation of policy -- Conduct and statements of plaintiffs showed disregard for interests of defendants who had to rely on them for honest and accurate information -- Plaintiffs continued to insist that plaintiff wife was primary driver of vehicle despite all evidence to contrary -- Plaintiffs signed proof of loss declaring value of vehicle as more than purchase price from three years earlier.

Bolen v. Insurance Corp. of British Columbia (2006), 2006 CarswellBC 2890, 2006 BCSC 1749, [2007] I.L.R. I-4558, B. Fisher J. (B.C. S.C.) [British Columbia]

INS.XII.5.b

Subject Title: Insurance

Classification Number: XII.5.b

Automobile insurance -- No-fault benefits -- Whether "insured"

Insurer AM Co. provided automobile insurance coverage to insured R while insurer AI Co. provided automobile insurance coverage to insured M -- Insured R was standing at trunk of his vehicle while in process of changing flat tire in curb lane when he was struck by vehicle driven by insured M -- Insured R died shortly afterwards -- Insurer AM Co. brought application for determination of which insurer was liable for payment of no-fault death benefits to insured R's family -- Insurer AI Co. was found to be liable for payment of death benefits to insured R's family -- Respective parts of policies dealing with no-fault death benefits defined "insured person" as occupant of described automobile or non-occupant who was struck by described automobile -- Section 645(1) of Insurance Act clearly imposed initial liability on insurer of vehicle in which injured person was occupant or insurer of vehicle that caused injury to pedestrian -- Policies defined "occupant" as person driving, being carried in or upon or entering or getting on to or alighting from automobile -- According to plain reading of definition, insured R was not occupant of described automobile but rather pedestrian who was injured by described automobile -- Zone of connection test based on injured person's proximity to previously-occupied vehicle at time of

accident was rejected -- Insurers could have easily expressed zone of connection test in definition of "occupant" if this was intended test.

Alberta Motor Assn. Insurance Co. v. Allstate Insurance Co. (2006), 2006 CarswellAlta 1729, 2006 ABQB 773, R.E. Nation J. (Alta. Q.B.) [Alberta]

INS.XIII.7.a

Subject Title: Insurance

Classification Number: XIII.7.a

Marine insurance -- Claims -- General principles

Defendant was owner of courier company with vehicle fleet insured under fleet liability policy issued to owner operating as named company -- Plaintiff was designated driver of covered vehicle listed under policy -- Policy contained statutory provision pursuant to s. 265(1) and (2) of Insurance Act insuring insured person in event of injuries arising from uninsured automobile and defining uninsured automobile to exclude automobile owned or registered in name of insured -- Owner had uninsured jeep registered in his name and driver was seriously injured during explosion that occurred when driver was helping owner start jeep -- Driver commenced action for damages against owner -- Pursuant to Motor Vehicle Accident Claims Act, Minister of Finance brought application for declaration that driver was entitled to uninsured motorist coverage under owner's policy -- Minister took position that no amounts were payable pursuant to s. 22(1) of Act from Motor Vehicle Accident Claims Fund -- Owner's insurer took position that driver was not covered as result of exclusionary clause -- Application granted -- Applying appropriate principle of narrowly interpreting exclusionary clause in insurance policy, exclusionary language in policy definition of uninsured automobile did not disentitle driver to uninsured coverage under policy -- Driver was not "the insured" in whose name jeep was registered, and jeep's exclusion from policy coverage as uninsured automobile was not warranted -- Insurer's argument that "the insured" referred to any of insureds was not supported -- Insurer's interpretation had effect of reducing number of persons covered by uninsured automobile provisions of policy and requiring more claimants to apply for compensation from Fund -- Insurer's interpretation ran counter to intent of Act to internalize costs of injuries caused by uninsured automobiles.

Wing v. 1198281 Ontario Ltd. (2006), 2006 CarswellOnt 8082, D. Brown J. (Ont. S.C.J.) [Ontario]