

The Canadian Abridgment eDigests -- Insurance

2012-27
July 02, 2012

INS.X.1.d.ii.D

Subject Title: Insurance

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

Actions on policies -- Commencement of proceedings -- Obligations of insurer -- To defend -- Allegation of insured's policy breach

Plaintiff insured driver was involved in motor vehicle accident when she turned wrong way and into another vehicle -- Insured had consumed two glasses of wine approximately four hours before accident -- Insured pleaded guilty to driving without reasonable consideration for others, while charges of impaired driving and refusal to provide breath sample were stayed before trial -- Driver of other vehicle brought action against insured, insured's mother as lessee of vehicle, and leasing company -- Defendant insurer defended action on behalf of mother and lessor, but not insured -- Action was settled out of court -- Insurer determined insured was in breach of policy due to intoxication, and sought reimbursement of settlement -- Insured brought action for indemnification by insurer and for damages -- Action allowed -- Insurer's misconduct in relation to other driver's action contravened duty of fair dealing and good faith owed to insured -- Insured qualified as insured person throughout litigation by other driver, as decision had not been made at that point that she had breached policy -- However, insurer did not appoint counsel to represent insured's defence interests, even after co-defendants admitted that accident occurred because of insured's negligence -- Interests of insurer and insured did not coincide, so it was not fitting to control defence on usual basis -- Insurer did not advise insured about its decision not to appoint counsel for her or about settlement negotiations -- Insured was deprived of opportunity to meaningfully participate in settlement negotiations with view to protect her personal financial interests.

McDonald v. Insurance

Corp. of British Columbia

[\(2012\)](#),

[\[2012\] I.L.R. I-5253, 2012 BCSC 283, 2012 CarswellBC 652](#), S. Ballance J. (B.C. S.C.) [British Columbia]

INS.X.4.g.ii.B

Subject Title: Insurance

Classification Number: X.4.g.ii.B

Actions on policies -- Third party proceedings -- Principles particular to automobile insurance -- Recovery by insurer from insured -- Where settlement of third party action

Insurer not entitled to recover from insured -- Insurer breached duty -- Insured did not breach duty.

McDonald v. Insurance

Corp. of British Columbia

[\(2012\)](#),

[\[2012\] I.L.R. I-5253](#), [2012 BCSC 283](#), [2012 CarswellBC 652](#), S. Ballance J. (B.C. S.C.) [British Columbia]

INS.XII.1

Subject Title: Insurance

Classification Number: XII.1

Automobile insurance -- General principles

Police officer saw R pedaling motor assisted bicycle along shoulder of highway at higher rate of speed than if he had been pedaling bicycle -- Officer did not see any leg movements -- Officer stopped R and saw that bicycle had gas motor conversion added to it -- R was ticketed for driving motor vehicle on highway without driver's licence, and for driving motor vehicle on highway when vehicle was not insured under liability policy -- Trial of R was held on charges under Motor Vehicle Act -- R was acquitted of both charges -- Legislature chose not to impose requirement of insurance on those operating bicycle, even bicycle powered by low powered electric engine -- Very same bicycle powered by low powered gasoline engine, however, could not be operated on highway -- Because R's gas powered bicycle could not be equipped in all respects in compliance with Motor Vehicle Act and Regulations, it could not be insured for operation on highway -- Provision regarding insurance was not intended by Legislature to apply to that factual circumstance.

R. v. Ryan [\(2012\)](#), [2012 BCPC 67](#), [2012 CarswellBC 669](#), H.W. Gordon Prov. J. (B.C. Prov. Ct.) [British Columbia]

INS.XII.3.g.v

Subject Title: Insurance

Classification Number: XII.3.g.v

Automobile insurance -- Extent of risk -- Driving while impaired -- Proof of impairment

Plaintiff insured driver was involved in motor vehicle accident when she turned wrong way and into another vehicle -- Insured had consumed two glasses of wine approximately four hours before accident -- Insured pleaded guilty to driving without reasonable consideration for others, while charges of impaired driving and refusal to provide breath sample were stayed before trial -- Driver of other vehicle brought action against insured, insured's mother as lessee of vehicle, and leasing company -- Defendant insurer defended action on behalf of mother and lessor, but not insured -- Action was settled out of court -- Insurer determined insured was in breach of policy due to intoxication, and sought reimbursement of settlement -- Insured brought action for indemnification by insurer and for damages -- Action allowed -- Insured's substandard driving was unconnected to her prior alcohol consumption -- Circumstantial evidence relied upon by insurer fell significantly short of establishing that insured was incapacitated by alcohol -- Insured had been pulled over by different police officer one hour before accident, who had not noticed any signs of impairment -- It was more likely that insured could not provide proper breath sample due to chest pain from air bag rather than wilful avoidance -- Officer was of opinion that had insured blown properly, her blood alcohol concentration probably would not have exceeded legal limit -- Any indication of intoxication could also have been result of fatigue, shock from accident, and deployment of air bag -- Insured's mistakes in turning onto wrong off-

ramp were consistent with sober driving blunders.

McDonald v. Insurance

Corp. of British Columbia

(2012),

[2012] I.L.R. I-5253, 2012 BCSC 283, 2012 CarswellBC 652, S. Ballance J. (B.C. S.C.) [British Columbia]

INS.XII.5.e.iv.B

Subject Title: Insurance

Classification Number: XII.5.e.iv.B

Automobile insurance -- No-fault benefits -- Disability benefits (loss of income payments) -- Long term disability -- Miscellaneous

Insured was seriously injured in motor vehicle collision when he was 61 years old -- Insured suffered cognitive deficits including problems with information processing speed, attention and concentration -- Insured received loss of income benefits from insurer -- Insurer ceased payment of benefits after two years on basis that insured was not disabled from engaging in any occupation or employment for which he was suited by education, training or experience -- Insured brought action against insurer -- Action allowed -- On balance of probability, cognitive injury suffered by insured continuously prevented him from engaging in any occupation or employment for which he was suited by education, training or experience -- Insured suffered serious injuries in accident, including traumatic brain injury which resulted in new or exacerbated cognitive defects that he would not have experienced but for accident -- Insured was no longer able to work as skilled technician in orthotics or in fine art photography, which were only occupations he aspired to for past twenty years -- It was established on balance of probability that as result of accident, insured had problems with attention and concentration, particularly when levels had to be sustained or when information was required to be processed quickly.

Hayston v. Wawanesa

Mutual Insurance Co.

of Canada

(2012), [2012] I.L.R. I-5237, 2011 NBOB 381, 2012 CarswellNB 1, Paul

S. Creaghan J. (N.B. Q.B.) [New Brunswick]

INS.XII.9.e.iii

Subject Title: Insurance

Classification Number: XII.9.e.iii

Automobile insurance -- Underinsured motorist endorsement -- Practice and procedure -- Limitation period

In December 2006, insured was injured by motorist -- Insured commenced action against motorist, claiming \$1,000,000 in general damages and \$750,000 in special damages -- Insured had policy with insurer, which provided for coverage against harm caused by inadequately insured motorist -- Policy provided that every action for recovery had to be commenced within 12 months of date that insured knew or ought to

have known that quantum of claims exceeded minimum limits for motor vehicle liability insurance -- Policy also provided that this requirement was not bar to action that was commenced within two years of date of accident -- Insured commenced action against insurer in March 2002 -- Motion judge found that more than two years had passed since insured knew or ought to have known that quantum of his claims exceeded minimum coverage allowed in Ontario -- Insured appealed -- Appeal dismissed -- If limitation period began when insured knew quantum of claim with certainty, phrase "or ought to have known" was left without meaning -- Applying limitation period would not lead to multiplicity of proceedings -- Motion judge noted that insured had medical reports, assessment report and economic loss report going back to June 1998 -- Insured's action against insurer was not brought in time and was properly dismissed.

Roque v. Pilot Insurance

Co. ([2012](#)), [2012 ONCA 311](#), [2012 CarswellOnt 5794](#), G.J. Epstein J.A., H.S. LaForme J.A., R. G. Juriansz J.A. (Ont. C.A.); affirming ([2010](#)), [2010 CarswellOnt 11134](#), J.R. Henderson J. (Ont. S.C.J.) [Ontario]

INS.XII.10.a.ii

Subject Title: Insurance

Classification Number: XII.10.a.ii

Automobile insurance -- Government automobile insurance plans -- Entitlement to coverage -- Miscellaneous

Indemnification for settlement of civil action.

McDonald v. Insurance

Corp. of British Columbia

([2012](#)), [\[2012\] I.L.R. I-5253](#), [2012 BCSC 283](#), [2012 CarswellBC 652](#), S. Ballance J. (B.C. S.C.) [British Columbia]

INS.XII.10.c

Subject Title: Insurance

Classification Number: XII.10.c

Automobile insurance -- Government automobile insurance plans -- Practice and procedure in matters involving government insurers

Plaintiff had been involved in at least ten motor vehicle accidents over time -- Plaintiff claimed to have suffered various injuries -- Government insurer denied she was entitled to receive benefits because of pre-existing injuries or that her psychiatric conditions were not related to or caused by accidents -- Plaintiff's two appeals against defendant insurer with regards to five motor vehicle accidents were dismissed -- Trial judge found appeals could be determined by answering threshold issue of causation -- Trial judge found that based on evidence, plaintiff had not established that any of her medical conditions that disabled her physically or psychiatrically were caused by subject motor vehicle accidents -- Trial judge found plaintiff had provided minimal evidence regarding injuries she sustained in accidents -- Trial judge found there were extensive medical records regarding plaintiff's conditions over last two decades -- Trial judge found uncontradicted

evidence of expert was that plaintiff's psychiatric condition would likely have emerged even in absence of accidents and that cause and effect relationship between conditions and collisions likely did not exist -- Trial judge found evidence did not support accidents having caused traumatic brain injury -- Trial judge found threshold issue of causation had not been established in appeals -- Plaintiff sought to institute appeal -- Plaintiff brought application for extension of time to file appeal -- Application dismissed -- Plaintiff had been ill and delay was justified on medical grounds -- However, plaintiff had not presented errors by trial judge and merely sought to relitigate case -- Plaintiff did not grasp that issue was not extent of injuries but causation.

K. (I.) v.

Saskatchewan

Government Insurance

[\(2012\), 2012 SKCA 12,](#)

[2012 CarswellSask 165](#), Lane J.A. (Sask. C.A. [In Chambers]); refusing leave to appeal [\(2011\), 1 C.C.L.I. \(5th\)](#)

[202, 2011 CarswellSask 343, 2011 SKQB 187](#), M.L. Dovell J. (Sask. Q.B.) [Saskatchewan]

CARSWELL®



THOMSON REUTERS

© Thomson Reuters Canada Limited. All Rights Reserved.