The Canadian Abridgment eDigests -- Insurance

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INS.III.11.a

Subject Title: Insurance

Classification Number: III.11.a

Contracts of insurance -- Assignment of contract -- General principles

Fire occurred at hotel that was insured by defendant insurer -- Owner of hotel retained plaintiff, firm of insurance adjusters, to document its loss and advance its claim under insurance policy, in exchange for 6 per cent of all amounts that were recovered -- Plaintiff and owner entered into service agreement that provided that owner agreed to pay and irrevocably assigned 6 per cent on all amounts recovered from insurer to plaintiff for its services -- Plaintiff quantified and prepared required proofs of loss and began negotiating claim with insurer -- Negotiations broke down, umpire was appointed and issued award of $671,160 -- Six per cent of award was $40,269.60 and plaintiff sent account to owner -- Owner made assignment in bankruptcy -- Plaintiff commenced this action -- Trial judge ruled that assignment of insurance proceeds was not security interest but unconditional assignment and insurance proceeds were declared not to be part of bankrupt's estate and could not be claimed by trustee in bankruptcy -- Trial judge held that since proceeds were not property of bankrupt, stay against creditors' claims imposed under s. 69.3(1) of Bankruptcy and Insolvency Act (BIA) did not apply to bar plaintiff's claim and plaintiff was awarded $40,269.60 -- Trustee in bankruptcy appealed -- Appeal dismissed -- Agreement completely and irrevocably assigned to plaintiff 6 per cent of all proceeds received from insurer in respect of loss and owner retained no interest in proceeds -- Trial judge did not err in concluding that agreement effected complete assignment of part of insurance proceeds to plaintiff and did not create security interest for purpose of BIA or otherwise -- It was not necessary for plaintiff to apply for leave under s. 69.4 of BIA since its claim was not provable in bankruptcy because it was in respect of property that was no longer property of owner.

Pythe Navis Adjusters Corp. v. Columbus Hotel Co. (1991) Ltd. (2014), 2014 CarswellBC 1880, 2014 BCCA 262, Groberman J.A., Harris J.A., Newbury J.A. (B.C. C.A.); affirming (2013), 25 C.C.L.I. (5th) 323, 2013 CarswellBC 2719, 2013 BCSC 1660, D.W. Thompson J. (B.C. S.C.) [British Columbia]

INS.IV.5

Subject Title: Insurance

Classification Number: IV.5

Principles of interpretation and construction -- Exclusion of risk clauses

Insureds owned commercial building -- In March 2005, oil leaked from second floor furnace causing damage to building -- Insurer insured building but denied coverage initially on basis of pollution exclusion and later on other provisions of insurance policy -- Insureds commenced action against insurer for damages -- Action was allowed -- Insurer claimed that trial judge should have dismissed action for failure of insureds to provide proof

of loss -- Insurer also claimed that trial judge failed to apply mechanical breakdown and pollution exclusions -- Insurer appealed from judgment -- Appeal dismissed -- Pollution exclusion was found not to apply to contaminants that were cause of leak, but rather environmental pollution -- Any ambiguity in exclusion was to be applied in favour of insured -- Trial judge properly interpreted policy as "all-risks" policy that covered insureds.

O'Byrne v. Farmers' Mutual Insurance Co. (2014), 2014 CarswellOnt 9412, 2014 ONCA 543, Gloria Epstein J.A., K. van Rensburg J.A., S.E. Pepall J.A. (Ont. C.A.); affirming (2012), 10 C.C.L.I. (5th) 103, 2012 CarswellOnt 5694, 2012 ONSC 468, [2012] I.L.R. I-5285, Sproat J. (Ont. S.C.J.) [Ontario]

INS.IV.7

Subject Title: Insurance

Classification Number: IV.7

Principles of interpretation and construction -- Miscellaneous

Plaintiffs advanced claim against defendant insurer for indemnity for excess insurance coverage under $65 million excess liability insurance policy -- Claim arose out of pipeline rupture -- Insurer denied claim -- There was dispute between parties as to which form set out terms of insurance policy and whether or not policy contained arbitration clause -- Insurer submitted that relevant form required disputes relating to policy to be decided by arbitration in London -- Plaintiffs maintained that relevant form contained no arbitration clause -- Insurer applied to stay action with respect to policy on basis that question of whether dispute was subject to arbitration was preliminary matter that should be decided by arbitration panel -- Application allowed -- Issue of which policy wording applied did not qualify as either pure question of law or question of mixed fact and law that required only superficial consideration of documentary record for its determination -- Both parties advanced reasonable arguments that applicable form of policy contained or did not contain arbitration clause and it was not plain and obvious which policy wording governed -- There was patent ambiguity in governing document -- Additional evidence was needed to resolve patent ambiguity as to which policy form governed and to determine whether or not policy disputes were subject to arbitration clause -- Resolution of issue involved mixed questions of fact and law that required more than superficial consideration of documentary record -- Action was stayed in relation to $65 million coverage pending determination by arbitral tribunal of whether or not they had jurisdiction to determine disputes.

Enbridge Inc. v. Chartis Insurance Co. of Canada (2014), 2014 CarswellAlta 1030, Strekaf J. (Alta. Q.B.); additional reasons at (2014), 2014 CarswellAlta 1028, Strekaf J. (Alta. Q.B.) [Alberta]

INS.VI.3.c

Subject Title: Insurance

Classification Number: VI.3.c

Contract of indemnity -- Contribution among insurers -- Miscellaneous

Sink-hole was discovered during construction of residential condominium project by defendants -- Owners of neighbouring condominium project brought actions against defendants -- Applicant insurer insured one defendant under wrap-up policy which contained "other insurance" provision -- Respondent insurers I and Z issued policies providing liability coverage to other defendants -- Applicant filed originating application alleging that respondent insurers had duty to defend claims, and sought contribution -- Respondent insurers brought motion to dismiss originating application on basis that application was not proper procedure to resolve coverage dispute -- Motion dismissed -- Rule 3.2(2) of Alberta Rules of Court states that statement of claim must be used to start action unless there is no substantial factual dispute -- There were no substantial facts in dispute, only legal issues -- Application was proper process -- Defendants' request to strike affidavits in support of application was refused, as was request to strike insureds as respondents -- Insureds were properly named as respondents, as it was important for them to know process being followed by insurers on their behalf.

Northbridge Indemnity Insurance Corp. v. Intact Insurance Co. (2014), 2014 ABQB 345, 2014 CarswellAlta 941, W.P. Sullivan J. (Alta. Q.B.) [Alberta]

INS.VII.7.e.i.B

Subject Title: Insurance

Classification Number: VII.7.e.i.B

Extent of risk (exclusions) -- Fire insurance -- Fraud or negligence of insured -- Arson -- Whether act criminal or wilful

Store was damaged by incendiary fire -- Building and contents were essentially a total loss -- Both business and building in which it was located were insured by CNS -- CNS denied insurance coverage because it believed that either insureds caused fire -- Insureds brought action to force CNS to provide denied insurance coverage -- Action dismissed -- Having come to conclusion that either insureds must have caused fire, claim must be dismissed -- Insureds breached insurance policy provisions which prohibit recovery where loss occurred through wilful act of insured.

Rolston v. Canadian Northern Shield Insurance Co. (2014), 2014 BCSC 1275, 2014 CarswellBC 1997, S.D. Dley J. (B.C. S.C.) [British Columbia]

INS.VII.11

Subject Title: Insurance

Classification Number: VII.11

Extent of risk (exclusions) -- Miscellaneous

Insureds owned commercial building -- In March 2005, oil leaked from second floor furnace causing damage to building -- Insurer insured building but denied coverage initially on basis of pollution exclusion and later on other provisions of insurance policy -- Insureds commenced action against insurer for damages -- Action was allowed -- Insurer claimed that trial judge should have dismissed action for failure of insureds to provide proof of loss -- Insurer also claimed that trial judge failed to apply mechanical breakdown and pollution exclusions --

Insurer appealed from judgment -- Appeal dismissed -- Actions of independent adjuster who dealt with insurer constituted waiver of proof of loss -- Insurer did not subsequently advise insured that proof of loss was needed -- Although waiver was not pleaded by insured, it was properly raised throughout trial process -- Trial judge would have granted leave to plead waiver as there would have been no prejudice to insurer -- Cause of oil leak was properly found by trial judge to be external interference of tenant, rather than mechanical failure which was excluded in policy.

O'Byrne v. Farmers' Mutual Insurance Co. (2014), 2014 CarswellOnt 9412, 2014 ONCA 543, Gloria Epstein J.A., K. van Rensburg J.A., S.E. Pepall J.A. (Ont. C.A.); affirming (2012), 10 C.C.L.I. (5th) 103, 2012 CarswellOnt 5694, 2012 ONSC 468, [2012] I.L.R. I-5285, Sproat J. (Ont. S.C.J.) [Ontario]

INS.IX.3.a.ii.A

Subject Title: Insurance

Classification Number: IX.3.a.ii.A

Claims -- Notice and proof of loss -- General principles -- Waiver -- Requirement to supply notice and proof of loss

Insureds owned commercial building -- In March 2005, oil leaked from second floor furnace causing damage to building -- Insurer insured building but denied coverage initially on basis of pollution exclusion and later on other provisions of insurance policy -- Insureds commenced action against insurer for damages -- Action was allowed -- Insurer claimed that trial judge should have dismissed action for failure of insureds to provide proof of loss -- Insurer also claimed that trial judge failed to apply mechanical breakdown and pollution exclusions -- Insurer appealed from judgment -- Appeal dismissed -- Actions of independent adjuster who dealt with insurer constituted waiver of proof of loss -- Insurer did not subsequently advise insured that proof of loss was needed -- Although waiver was not pleaded by insured, it was properly raised throughout trial process -- Trial judge would have granted leave to plead waiver as there would have been no prejudice to insurer.

O'Byrne v. Farmers' Mutual Insurance Co. (2014), 2014 CarswellOnt 9412, 2014 ONCA 543, Gloria Epstein J.A., K. van Rensburg J.A., S.E. Pepall J.A. (Ont. C.A.); affirming (2012), 10 C.C.L.I. (5th) 103, 2012 CarswellOnt 5694, 2012 ONSC 468, [2012] I.L.R. I-5285, Sproat J. (Ont. S.C.J.) [Ontario]

INS.X.2.g

Subject Title: Insurance

Classification Number: X.2.g

Actions on policies -- Practice and procedure -- Summary judgment

Plaintiff was injured in motor vehicle accident in 1997 -- Plaintiff's claim for long-term disability benefits from insurer under policy provided through his employment was denied in 1998 -- In January 2008, plaintiff brought action against insurer, but originating notice and statement of claim were never served -- In July 2012, plaintiff filed amended pleading erroneously naming defendant, R General Insurance Co., as successor to original disability insurer -- In July 2013, defendant filed defence stating that it was not proper defendant as R Life

Insurance Co. was party that had assumed responsibility for employer's disability benefits; in alternative, defendant pleaded expiry of limitation period -- Defendant brought motion for summary judgment to dismiss plaintiff's claim -- Plaintiff brought motion to renew 2008 notice of action and statement of claim, and to amend them to name R Life Insurance Co. as defendant -- Plaintiff's motion dismissed on other grounds; defendant's motion granted -- As plaintiff's motions to renew and amend statement of claim had been dismissed, plaintiff was left with claim against R General Insurance Co. which had no connection with disability insurance policy issued to employees of employer -- In circumstances, defendant's motion for summary judgment was granted and proceeding was dismissed.

Thornton v. RBC General Insurance Company/Compagnie d'Assurance Generale RBC (2014), 2014 CarswellNS 483, 2014 NSSC 215, Michael J. Wood J. (N.S. S.C.) [Nova Scotia]

INS.X.2.j

Subject Title: Insurance

Classification Number: X.2.j

Actions on policies -- Practice and procedure -- Limitation of actions

Plaintiff was injured in motor vehicle accident in 1997 -- Plaintiff's claim for long-term disability benefits from insurer under policy provided through his employment was denied in 1998 -- In January 2008, plaintiff brought action against insurer, but originating notice and statement of claim were never served -- In July 2012, plaintiff filed amended pleading erroneously naming defendant, R General Insurance Co., as successor to original disability insurer -- In July 2013, defendant filed defence stating that it was not proper defendant as R Life Insurance Co. was party that had assumed responsibility for employer's disability benefits; in alternative, defendant pleaded expiry of limitation period -- Defendant brought motion for summary judgment to dismiss plaintiff's claim -- Plaintiff brought motion to renew 2008 notice of action and statement of claim, and to amend them to name R Life Insurance Co. as defendant -- Plaintiff's motion dismissed; defendant's motion granted -- Language of policy provided to plaintiff through his employment did not create rolling limitation -- Plaintiff's request for disability benefits was clearly denied in 1998 -- Three-year limitation period began at that time -- Even taking into account 180-day elimination period, proceedings had to be started by no later than early 2002 -- Applicable limitation period and any potential extension expired prior to commencement of proceedings -- Because plaintiff's motion was dismissed, plaintiff was only left with claim against defendant -- As that claim had no connection to disability policy issued to employees, proceeding dismissed.

Thornton v. RBC General Insurance Company/Compagnie d'Assurance Generale RBC (2014), 2014 CarswellNS 483, 2014 NSSC 215, Michael J. Wood J. (N.S. S.C.) [Nova Scotia]

INS.X.2.m

Subject Title: Insurance

Classification Number: X.2.m

Actions on policies -- Practice and procedure -- Miscellaneous

Plaintiff owned tractor which was insured by defendant insurance company -- Plaintiff's tractor was reported missing -- Plaintiff completed Proof of Loss Form which was submitted to insurance company -- Insurance company conducted own investigation and concluded that claim would be denied -- Results of investigation indicated that tractor required significant repairs at the time of reported theft -- Plaintiff brought action against defendant for damages based on entitlement to claim for loss -- Action dismissed -- Claims examiner explained what she did to investigate and assessed plaintiff's claim -- Her denial of coverage following full and fair investigation, which was done in accordance with insurance company's standard theft investigation practice, did not constitute bad faith -- Information she received from investigators more than supported conclusion to deny claim.

2068286 Ontario Inc. v. Jevco Insurance Co. (2014), 2014 ONSC 3929, 2014 CarswellOnt 8930, Fragomeni J. (Ont. S.C.J.) [Ontario]

INS.XII.5.c.ii

Subject Title: Insurance

Classification Number: XII.5.c.ii

Automobile insurance -- No-fault benefits -- Medical and rehabilitation benefits -- Housekeeping expenses

Applicant was injured in motor vehicle accident, and after insurance company denied her application for statutory accident benefits, she applied for arbitration on issue -- Applicant was 20, full-time student who lived with her mother and siblings, and claimed that her injuries from accident prevented her from returning to school and from performing household duties as she had done prior -- Applicant brought motion for interim order for non-earner benefits and for payment of housekeeping and home maintenance services -- Motion dismissed -- Section 12 of Statutory Accident Benefits Schedule states that insurer is not required to pay non-earner benefits for first 26 weeks after onset of complete inability to carry on normal life, and applicant's medical reports showed that applicant had inability to carry on normal life for 9 to 12 weeks after injury -- Applicant was not able to meet 26-week requirement to be entitled to non-earner benefits, and issue of interim relief was frivolous -- Any claim beyond applicant's $500 payment to service provider for housekeeping and home benefit was frivolous -- Entire notion of paying full benefits on interim application is fanciful and defeats very nature of "interim order" -- There was no evidence presented that she would suffer any irrevocable harm to her health or well-being if she was not granted monetary interim relief; nor was there any evidence demonstrating that she was in need of money for medical treatment or to pay for food or shelter -- Balance of convenience did not require or favour granting interim relief, as there was no demonstrable evidence about damages or harm applicant might suffer prior to decision on merits -- There were compelling public interests to refuse relief sought, as other litigants who found themselves in similar situations or who wished to circumvent high test to receive non-earner benefits, may seek interim relief.

Ali v. State Farm Mutual Automobile Insurance Co. (2014), 2014 CarswellOnt 7191, Patricia E. DeGuire Member (F.S.C.O. Arb.) [Ontario]

INS.XII.5.g.i

Subject Title: Insurance

Classification Number: XII.5.g.i

Automobile insurance -- No-fault benefits -- Other benefits -- Non-earner benefits

Applicant was injured in motor vehicle accident, and after insurance company denied her application for statutory accident benefits, she applied for arbitration on issue -- Applicant was 20, full-time student who lived with her mother and siblings, and claimed that her injuries from accident prevented her from returning to school and from performing household duties as she had done prior -- Applicant brought motion for interim order for non-earner benefits and for payment of housekeeping and home maintenance services -- Motion dismissed -- Section 12 of Statutory Accident Benefits Schedule states that insurer is not required to pay non-earner benefits for first 26 weeks after onset of complete inability to carry on normal life, and applicant's medical reports showed that applicant had inability to carry on normal life for 9 or 12 weeks after injury -- Applicant was not able to meet 26-week requirement to be entitled to non-earner benefits, and issue of interim relief was frivolous -- Any claim beyond applicant's $500 payment to service provider for housekeeping and home benefit was frivolous -- Entire notion of paying full benefits on interim application is fanciful and defeats very nature of "interim order" -- There was no evidence presented that she would suffer any irrevocable harm to her health or well-being if she was not granted monetory interim relief, nor was there any evidence demonstrating that she was in need of money for medical treatment or to pay for food or shelter -- Balance of convenience did not require or favour granting interim relief, as there was no demonstrable evidence about damages or harm applicant might suffer prior to decision on merits -- There were compelling public interests to refuse relief sought, as other litigants who found themselves in similar situations or who wished to circumvent high test to receive non-earner benefits, may seek interim relief.

Ali v. State Farm Mutual Automobile Insurance Co. (2014), 2014 CarswellOnt 7191, Patricia E. DeGuire Member (F.S.C.O. Arb.) [Ontario]

INS.XII.5.i.ix

Subject Title: Insurance

Classification Number: XII.5.i.ix

Automobile insurance -- No-fault benefits -- Practice and procedure on claim for benefits -- Miscellaneous

Interim relief -- Applicant was injured in motor vehicle accident, and after insurance company denied her application for statutory accident benefits, she applied for arbitration on issue -- Applicant was 20, full-time student who lived with her mother and siblings, and claimed that her injuries from accident prevented her from returning to school and from performing household duties as she had done prior -- Applicant brought motion for interim order for non-earner benefits and for payment of housekeeping and home maintenance services -- Motion dismissed -- Section 12 of Statutory Accident Benefits Schedule states that insurer is not required to pay non-earner benefits for first 26 weeks after onset of complete inability to carry on normal life, and applicant's medical reports showed that applicant had inability to carry on normal life for 9 to 12 weeks after injury --

Applicant was not able to meet 26-week requirement to be entitled to non-earner benefits, and issue of interim relief was frivolous -- Any claim beyond applicant's $500 payment to service provider for housekeeping and home benefit was frivolous -- Entire notion of paying full benefits on interim application is fanciful and defeats very nature of "interim order" -- There was no evidence presented that she would suffer any irrevocable harm to her health or well-being if she was not granted monetary interim relief; nor was there any evidence demonstrating that she was in need of money for medical treatment or to pay for food or shelter -- Balance of convenience did not require or favour granting interim relief, as there was no demonstrable evidence about damages or harm applicant might suffer prior to decision on merits -- There were compelling public interests to refuse relief sought, as other litigants who found themselves in similar situations or who wished to circumvent high test to receive non-earner benefits, may seek interim relief.

Ali v. State Farm Mutual Automobile Insurance Co. (2014), 2014 CarswellOnt 7191, Patricia E. DeGuire Member (F.S.C.O. Arb.) [Ontario]

INS.XV

Subject Title: Insurance

Classification Number: XV

Miscellaneous

Accused, charged with careless driving and failure to remain at scene of accident, applied for exclusion of all evidence flowing from execution of search warrant -- Deceased had stopped to help two individuals who were having vehicle difficulty and parked on shoulder of road -- Deceased was struck and killed by passing motor vehicle which did not stop -- Next morning accused spoke with lawyer about incident -- Lawyer advised accused that he had right to remain silent but was required to make collision statement to police pursuant to Traffic Safety Act (TSA) -- Lawyer subsequently spoke with officer, telling him his client needed to make accident report under TSA -- Officer asked what role client had in relation to file, and lawyer replied that his client was driver -- They agreed to meet at police headquarters for purpose of his client providing compelled TSA statement -- Accused handed officer TSA statement and officer placed accused under arrest -- Affiant failed to mention when applying for warrant that accused's identity had been obtained through TSA statement -- Warrant was obtained and accused's vehicle seized -- In recorded phone conversation with insurance brokerage employee accused provided some information about collision, but declined to answer some questions and omitted to tell employee that someone had been killed in accident -- In written statement that insurance adjustor obtained from accused (after explicit assurances it would not end up in hands of police) he indicated that he was involved in collision, and that alcohol was not factor -- Affiant learned that accused had provided statements to his insurance company, swore ITO and obtained production order to seize written statement -- Application granted; evidence excluded -- Real possibility of imprisonment was sufficient to engage s. 7 of Canadian Charter of Rights and Freedoms -- Evidence was clear that only reason accused contacted police through his lawyer and agreed to meet with police was in order to provide required TSA statement -- Information provided to police by accused and his lawyer for purpose of TSA statement and vehicle inspection was inadmissible for purpose of proving his identity as driver -- Accused was told that failure to provide statement could result in denial of coverage -- There was no logical basis upon which to distinguish use of compelled statement at trial from its inclusion in ITO -- Breach was serious and police conduct concerning evidence which officers knew was inadmissible at trial was deliberately used in support of authorizations, and authorizing judge was not advised of this fact.

R. v. Porter (2014), [2014] A.J. No. 617, 2014 ABQB 359, 2014 CarswellAlta 943, D.L. Shelley J. (Alta. Q.B.) [Alberta]
