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Recent Caselaw

1st Case

At issue in our first case this month is whether a defendant can add a Plaintiff's Section B insurer as a Third Party to an action for damages arising out of a motor vehicle accident by invoking unlawful breach of contract or the tort of unlawful interference with economic interests.

2nd Case

The second case this month deals with the wording of the accidental death benefits clause in a life insurance policy, and confirms the importance of well defined policy terms.



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Leavitt v. Hooper (Aviva Canada Inc., Third Party), 2012 NBQB 074

1st
Case

This was a decision involving two motions. One was brought by the defendant's insurer, seeking to amend the defendant's third party claim against the plaintiff's Section B insurer to allow for an economic tort claim of unlawful interference with economic interests. The other was brought by the Section B insurer, seeking summary judgment of the third party claim against it.

The underlying action arose out of a motor vehicle accident which occurred on August 4, 2008, and in which the plaintiff sustained injuries. Following the accident, the plaintiff received Section B weekly indemnity payments for loss of income. These payments terminated on August 3, 2010, after a period of 104 weeks, because the plaintiff's Section B insurer determined that the plaintiff no longer qualified for them. Meanwhile, the plaintiff commenced an action against the defendant on July 15, 2010, claiming for payments for past and future loss of income. The defendant admitted liability for the accident.

The defendant filed a third party claim seeking contribution from the Section B insurer for weekly indemnity benefits from the date of termination of the plaintiff's payments to the date of trial and thereafter, and a declaration for entitlement to weekly indemnity payments for past and future, or, in the alternative, a declaration of release of all weekly indemnity payments made to the plaintiff pursuant to the insuring agreement and section 263 of the Insurance Act.

In support of its motion, the defendant's insurer argued that the Section B insurer stopped making weekly indemnity payments due to the plaintiff's commencing the action against the defendant, in the knowledge that the plaintiff would "have other pockets from which to draw loss of income replacement" and that the "payment for past wage loss was a given as the defendant had admitted liability".

For its part, the third party argued that the third party claim was without merit.

The Court reviewed the elements of a claim for unlawful interference with economic interests. In the context of the case at bar, these included an intent to injure the defendant or her insurer; an unlawful act, that is an act the Section B insurer was not at liberty to commit; and resulting economic loss or related injury to the defendant or her insurer.

The Court found that the Section B insurer did not commit an unlawful act, because it was perfectly at liberty to decide to discontinue the plaintiff's weekly indemnity payments after 104 weeks. Further, the Court held there was no evidence that the Section B insurer's decision was made with intent to injure the defendant or her insurer. Finally, because of the discontinuance, weekly indemnity benefits were not "available" in the legal sense, and so the defendant and her insurer could not possibly have suffered any economic loss or related injury. In the end,

the Court held that a claim against the Section B insurer for unlawful interference with economic interests of the defendant or her insurer was clearly not appropriate pursuant to the facts in the case. The defendant's insurer's motion to amend the third party claim was denied.

As for the Section B insurer's motion for summary judgment, the Court found that the Section B insurer could not be liable to the defendant for all or part of the plaintiff's claim, or for any other relief relating to the subject matter of the main action. The plaintiff had not assigned his right to pursue his Section B insurer to the defendant or to her insurer. After reviewing the case law concerning summary judgment motions, the Court stated that there would be no reason for doubt as to what the Court's judgment would be if the third party claim proceeded to trial. The Section B insurer's case in defence of the third party claim was unanswerable, and the third party claim showed a clear absence of merit. The motion for summary judgment was allowed, and as a consequence the defendant's third party claim against the Section B insurer was dismissed.

McLean v. Canadian Premier Life Insurance Company, 2012 BCSC 163

2nd
Case

The plaintiff's husband was killed in a plane crash. Subsequently, the plaintiff made a claim as beneficiary of a life insurance policy issued by the defendant for an accidental death benefit of \$1,000,000. The accidental death benefit rider in the policy provided coverage if a covered person suffered a loss while riding in a "common carrier."

The policy defined "common carrier" as

...a public conveyance which is

1. Licensed to transport passengers for hire; and
2. Provided and operated (a) for regular passenger service by land, water or air, and (b) on a regular passenger route with a definite regular schedule of departures and arrivals between established and recognized points of departure and arrival; and
3. Provided and operated under a Common Carrier license at the time of the Loss.

The defendant conceded that the carrier in question, Pacific Coastal Airline, met the first and third criteria of a "common carrier." It was the second criterion which was at issue: the defendant's position was that the deceased's flight had been a private charter seaplane to a remote logging location, not a regular passenger service or route, and therefore was not within the policy definition of a "common carrier."

The plaintiff argued that the definition of "common carrier" was ambiguous in that it appeared it could refer both to the airline and to the specific aircraft. If it meant the airline, which did operate on regular passenger routes with a regular schedule, then the definition of "common carrier" was met. The plaintiff submitted that the ambiguity in the policy definition had to be resolved in this way, that is in her favour, according to the legal rule of contra proferentem.

The defendant argued that the terms of the policy were clear and unambiguous and defined "common carrier" as a public conveyance and not a business entity. The defendant submitted that this interpretation was supported by reviewing the policy as a whole.

The Court accepted the defendant's argument, finding that there was no ambiguity in the policy definition and that by the plain meaning of the words, "common carrier" meant the aircraft utilized for the charter flight. Even though that aircraft had been used by the airline at times to provide regular passenger service under a definite schedule of departures and arrivals, operating within the definition of "common carrier" within terms of the accidental death benefit rider, it was not operating within that definition at the time of the accident. Thus, the Court held that the insured's death did not occur within the terms of the accidental death benefit rider.

The action was dismissed.

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