



Contacts:

JoAnne Barnum, Associate

DIRECT: 604 895 2826

jbarnum@harpergrey.com

April 20, 2017

Arbitrator's finding that ATV was covered for SABS benefits under a commercial umbrella liability policy is upheld

Harper Grey Lawyers: JoAnne Barnum

Administrative law - Decisions reviewed - Arbitration Board; Judicial review - Standard of review - Reasonableness; Motor vehicle accidents*Farmers' Mutual Insurance Co. (Lindsay) v. Ontario (Minister of Finance)*

Arbitrator's findings regarding the interpretation of a commercial umbrella liability policy was found to be unreasonable, but was upheld on the basis that the arbitrator nonetheless reached the correct disposition.

[2017] O.J. No. 1072

2017 ONSC 1192

Ontario Superior Court of Justice

March 2, 2017

D.G. Stinson J.

Farmers insured an ATV under a motor vehicle liability policy. The ATV was reported stolen to Farmers. In exchange for payment, the rights to the ATV were transferred to Farmers and Farmers registered its ownership of the ATV. Two days later, an 11-year-old suffered a significant injury while on the ATV. The child was living with his mother and his grandparents, and his grandfather had car insurance through Dominion of Canada General Insurance Company. As a result, a claim for no-fault benefits under the Statutory Accident Benefits Schedule ("SABS") was filed on his behalf with Dominion.

Priority disputes arose between Dominion, the Minister of Finance (for Motor Vehicle Accident Claims Fund payment), and Farmers regarding payment of the claim. The priority disputes ultimately proceeded to arbitration. Subsequent to the commencement of the arbitration, it was agreed Dominion was not the priority insurer, and the matter proceeded to a hearing involving only the Fund and Farmers.

In the circumstances, Farmers was both the insurer and insured under its own policies. At the time, Farmers had a program of insurance on vehicles it operated in the course of its business and also on other liability risks associated with any business that carries on commercial operations. It had: (1) a standard Ontario Automobile Policy ("OAP") providing coverage for defined or described vehicles; (2) a commercial general liability insurance policy providing coverage mostly for liability not associated with the use or operation of automobiles but which included an extension for liability arising out of the operation of non-owned vehicles; and (3) a commercial umbrella liability policy that provided an additional access layer of liability coverage above the limits of either of the other two policies. At the time of the accident, Farmers had not taken any steps to add the ATV to the OAP policy because it was not Farmers' practice to do so for vehicles it came to own as a result of payment of theft claims. Therefore, at the time of the accident, the ATV was not expressly listed as an insured vehicle under any of the three policies.

The arbitrator concluded that the ATV was covered for SABS benefits under the commercial umbrella liability policy issued by Farmers, and that Farmers was the priority insurer responsible for payment of SABS benefits to the child. Pursuant to the right of appeal contained in the parties' arbitration agreement, Farmers brought an appeal to the Ontario Superior Court of Justice, with the primary issue being that the arbitrator erred when he found the ATV was an automobile defined in the umbrella policy.

On appeal, the court confirmed that the standard of reasonableness applied in the circumstances. The court agreed with Farmers' submission that the arbitrator fundamentally erred when determining that the ATV fell within the concept of an automobile as defined in the umbrella policy. The definition within the umbrella policy for automobile was (1) that the vehicle was principally designed for transportation and public roads, and (2) the vehicle was being used for transportation and public roads. The court agreed that, if this were the applicable definition, the decision of the arbitrator would be unreasonable.

However, the court held that the appropriate definition for consideration was not found in the umbrella policy, but rather was found in the language of the standard underlying OAP policy. The court noted that it would make no commercial sense to insure an automobile in an underlying OAP policy and to purchase umbrella coverage that would not apply to the same vehicle. Because the ATV was not expressly covered under the OAP policy, the question was whether the ATV fell within the scope of the Newly Acquired Automobile coverage. The court reviewed Endorsement No. 4 in the umbrella policy and determined that the excess coverage provided by the umbrella policy applied despite the failure of the insured (Farmers) to maintain the underlying policy. As a result, the Newly Acquired Automobile provision of the OAP policy was operative and the ATV fell within it, meaning that the provisions of the OAP policy, including the SABS benefits coverage, applied to the ATV when the accident occurred. Therefore, Farmers was the priority insurer.

This case was digested by JoAnne G. Barnum of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact her directly at jbarnum@harpergrey.com or review her biography at <http://www.harpergrey.com>.

Harper Grey LLP

3200 - 650 West Georgia Street
Vancouver, British Columbia, V6B 4P7
Canada

TEL: 604 687 0411
FAX: 604 669 9385
Contact Us



© Harper Grey LLP 2017, All Rights Reserved
[Disclaimer](#) | [Privacy Policy](#) | [Unsubscribe](#)



[Our Firm](#)

[Approach](#)

[Community](#)

[Notable Cases](#)

[Legal Services](#)

[Our People](#)

[Management](#)

[Paralegals](#)

[Media](#)

[News & Events](#)

[News](#)

[Events](#)

[Articles](#)

[Newsletters](#)

[Remote Login](#)