BEARDWINTER LLP
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October 2024

Fraudulent Certificate of Insurance: Maintaining a General Exclusion under the SABS

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OVERVIEW

In *Prasow v. RSA Insurance Company*, 2024 CanLII 72672 (ONLAT), the Licence Appeal Tribunal ("LAT") addressed the applicability of the general exclusion clause found under section 31(1)(a)(i) of the *Statutory Accident Benefits Schedule*.

The Applicant was involved in a motorcycle accident and claimed accident benefits from RSA Insurance. Although the claimant had a passenger vehicle insured with the Respondent, he submitted an Application for Accident Benefits for a motorcycle insurance policy that did not exist. A fraudulent certificate of insurance was later produced.

The Respondent insurer denied payment of Income Replacement Benefits, relying on the general exclusion rule found under section 31(1)(a)(i) of the *SABS*.

The Respondent's position was that it was not liable to pay income replacement benefits because, at the time of the accident, the Applicant knew or ought reasonably to have known that he was operating the automobile while it was not insured under a motor vehicle liability policy.

The Applicant appealed the insurer's determination. Kamil Podleszanski of Beard Winter represented the Respondent insurer before the LAT.

THE APPLICANT'S POSITION

The Applicant argued that he was an innocent victim of fraud and that he genuinely believed that the motorcycle was insured with a valid insurance policy.

He explained that he purchased the certificate of insurance at an informal motorcycle enthusiast meeting. He was new to the community, and others had advised him that he could purchase an insurance policy from an unidentified individual. He paid for the policy in cash, and received the certificate by e-mail.

He argued that the certificate of insurance had been accepted by Service Ontario and the motorcycle dealership for the purpose of registering his motorcycle.

The Applicant's position was that at the time of the accident, he genuinely believed that his insurance certificate was legitimate.

Upon learning that the certificate of insurance was fraudulent, he filed a report with the police.

THE RESPONDENT'S POSITION

The Respondent insurer argued that the Applicant was more sophisticated than an ordinary individual when it came to motorcycles. The Applicant was a 26-year-old man who attended college for one semester in automotive technology. He attended car enthusiast meetings and had an affinity for the car community. He had the experience of insuring a number of vehicles with different insurers, and had been cancelled for the non-payment of premiums in the past.

The Respondent argued that an ordinary rational individual would have known that paying cash to an unidentified individual in a parking lot is not the proper process for securing insurance. The individual in the parking lot did not hold themselves to be a broker or a representative of an insurance company. Moreover, there was no independent evidence of the cash payment for the alleged insurance policy.

The fraudulent insurance card was sent from a Gmail address, and the e-mail contained no text in the body. There was no subsequent correspondence regarding coverage details, a replacement card, nor any other details regarding the motorcycle insurance policy.

The Respondent further argued that the motor vehicle insurance policy was highly suspect at face value. The document was replete with formatting errors and the use of different fonts throughout the document.

Given that the Applicant had a passenger vehicle insured with the Respondent insurer, an ordinary rational individual would have known or ought to have known the proper process for securing insurance, what a valid insurance card would look like, and how it would be

delivered.

PRELIMINARY ISSUE DECISION

The Tribunal distinguished a number of cases relied upon by the Applicant, which were decided by the Financial Services Commission of Ontario.

The Tribunal emphasized that the "contextual objective" test is to be applied to "knew or ought to have known" under S.31(1)(a)(i) of the *SABS*.

That is, the Tribunal must determine what an ordinary rational person, of the age, education, and background of the Applicant, in the circumstances that he encountered that day, ought reasonably to have known about the insurance coverage on the motorcycle. The Tribunal emphasized that an analysis of the Applicant's subjective beliefs about the insurance policy would be an error of law.

The Tribunal sided with the arguments advanced by the Respondent.

The Tribunal found that an ordinary individual with the applicant's age, education, and background would have or should have known that payments in cash to an unidentified individual in a parking lot with no follow up documentation was not the proper method of securing an insurance policy.

Additionally, given that the applicant had a passenger vehicle insured with the respondent, an ordinary rational individual with his age and background would have known or ought to have known the proper process for securing insurance.

Moreover, the supposed motor vehicle insurance card was highly suspect to an ordinary, rational person at face value. An ordinary individual with the applicant's age, education and background would have known or ought to have known that this document was not reflective of a valid insurance policy.

Based on the totality of the evidence, The Tribunal found that the Applicant knew or ought reasonably to have known that he was operating his automobile while it was not insured under a motor vehicle liability policy.

Upon reconsideration, the Tribunal's findings on first instance were upheld. (*Prasow v RSA Insurance Company*, 2024 CanLII 23479)

TAKE AWAY

In applying the general exclusion clause found at section 31(1)(a)(i) of the *SABS*, the Tribunal will consider what a rational person of the same age, education, and background knew or ought to have known under the circumstances.

Given that upholding a general exclusion is a fact intensive exercise that considers the profile of the Applicant, a thorough Examination Under Oath of the claimant is necessary to support the insurer's position.

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