

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of February 8 to 12, 2010

Sometimes a dirt bike is an automobile, and sometimes it's just a dirt bike.

***Rougoor v. Co-Operators General Insurance Co.* [2010] O.J. No. 266 (C.A.); January 25, 2010; Sharpe, McFarland and Watt JJ.A.**

Appeal of dismissal of insured's application for declaration of entitlement to accident benefits. Policy insured several family-owned vehicles including 2 off-road dirt bikes. Insured seriously injured in Florida while riding another dirt bike owned by a friend. Friend had no insurance on Florida dirt bike as it was not required there. Insurer denied claim for accident benefits. Issue was whether the Florida dirt bike was an "automobile" within the meaning of the insured's policy.

Test is that set out in *Adams v. Pineland Amusements Ltd.* (2007), 88 O.R. (3d) 321:

1. Is the vehicle an "automobile" in ordinary parlance?

If not, then,

2. Is the vehicle defined as an automobile in the wording of the insurance policy?

If not, then

3. Does the vehicle fall within any enlarged definition of "automobile" in any relevant statute?

Insured conceded the Florida dirt bike was not an "automobile" in common parlance under the first branch of the test. However, Court of Appeal held that it was under the second branch. The policy, which covered automobiles driven in both U.S.A. and Canada, defined "automobile" as follows:

In this policy, there is a difference between a described automobile and the automobile. When we refer to an automobile as described, we mean any automobile specifically shown on the Certificate of Automobile Insurance. When we refer to the automobile, we mean:

- a described automobile,
- a newly acquired automobile,
- a temporary substitute automobile,
- other automobile driven by you, or driven by your spouse who lives with you, or
- trailers, in certain circumstances.

Court held it was clear that insured's own dirt bike was covered as an automobile under the policy, and that the word "automobile" used in the policy must be given a consistent meaning. As such, the Florida dirt biked was also

considered to be an automobile for the purpose of coverage under the policy. The policy provided coverage by treating the dirt bike as an "automobile" and extending coverage for any other "automobile" driven by insured.

Implications

The specific coverage of the dirt bikes in the policy allowed for the extension of the definition of automobile in this case. It is important to review the policy in every case where there may be issues of coverage. Although standard automobile policies are used in Ontario, specific endorsements may alter entitlement, and should not be overlooked.

Accessing Arbitration Decisions

If you would like to read the arbitration decisions for yourself, they can be found at <http://www.fSCO.ca/english/insurance/auto/drs/decisions/default.asp>.

Please contact FSCO at 1-800-517-2332 ext. 7202 to obtain a password to gain access to the site.

If you have questions or comments about this edition of the newsletter, contact Joni Dobson at Legate & Associates: jdobson@legate.ca.