**CITATION:** Ayr Farmers Mutual Insurance Company v. Wright, 2015 ONSC 6219
**COURT FILE NO.:** C-500-15
**DATE:** 2015-10-07

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

| | |
|---|---|
| **B E T W E E N:** | |
| Ayr Farmers Mutual Insurance Company | Daniel Strigberger, for the Applicant |
| Applicant | |
| **- and -** | |
| Scott Wright | Anna Szczurko, for the Respondent |
| Respondent | |
| | **HEARD at Kitchener, Ontario:** September 11, 2015 |

The Honourable Justice P. R. Sweeny

**ENDORSEMENT**

**Introduction**

[1] The applicant, Ayr Farmers Mutual Insurance Company ("the Insurer") seeks a determination as to whether the respondent, Scott Wright ("the Insured") was involved in an "accident" pursuant to s.3(1) of the *Statutory Accident Benefits Schedule – Effective*

# FAX TRANSMISSION



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FROM: Leslie Morellato
A/Judicial Secretary

DATE: October 7, 2015

NO. OF PAGES (INCLUDING THIS SHEET) Nine

COMMENTS:

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*September 1, 2010,* O. Reg 34/10 ("the *SABS*") in relation to an incident that occurred on October 21, 2014. The incident is described as follows:

> "Moved vehilce (sic) out of garage and then got out of my vehilce (sic) to close the garage door. When I touched the garage door the spring gave way and the door fell on to the back of my head and neck."

[2] The Insurer says that it was not an accident as defined in the s.3(1) of the *SABS* and that the respondent is not entitled to benefits.

**Background**

[3] In this case, the Insured submitted an application for accident benefits to the Insurer. The Insurer denied the application disputing that the injuries were sustained as a result of an "accident" as defined under the *SABS*. The Insurer's letter set out the process for challenging the Insurer's decision. The Insured made an application for mediation, and mediation was scheduled. The Insurer refused to attend the mediation and instead issued the within application to seek to determine the issue.

[4] I am advised that this is the first case to specifically address this issue. There are decisions which have been made in similar circumstances to this case: that is, the insurer brought an application and the matter was decided. However, I note in those cases the issue of jurisdiction was not raised. In those cases, the matter proceeded on an agreed statement of facts or the factual issues were not in dispute.

[5] The Insurer says that the dispute resolution process only applies once it has been determined that an insured person is involved in an accident. Therefore, the only procedure to make this determination is by application.

[6] The *Insurance Act* is remedial legislation. It has been referred to as consumer protection legislation (see *Smith v. Co-operators General Insurance Co.*, 2000 CanLII 4138 (Ont. C.A)). The legislature has set out a dispute resolution process dealing with motor vehicle accident cases. The procedure for accessing *SABS* benefits places obligations on the Insured and the Insurer. The Insured initiates the mediation process. The Insurer argues that the definition of "insured person" in ss.279 to 283 of the *Insurance Act* must be the same as the definition of "insured person" in the regulations and, accordingly, "insured person" is defined in the regulation as follows:

> "[I]nsured person" means, in respect of a particular motor vehicle liability policy,
>
> (a) the named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and a dependant of the named insured or of his or her spouse,
>
> (i) if the named insured, specified driver, spouse or dependant is involved in an accident in or outside Ontario that involves the automobile or another automobile, or
>
> (ii) if the named insured, specified driver, spouse or dependant is not involved in an accident but suffers psychological or mental injury as a result of an accident in or outside Ontario that results in a physical injury to his or her spouse, child, grandchild, parent, grandparent, brother, sister, dependant or spouse's dependant,
>
> (b) a person who is involved in an accident involving the insured automobile, if the accident occurs in Ontario, or
>
> (c) a person who is an occupant of the insured automobile and who is a resident of Ontario or was a resident of Ontario at any time during the 60 days before the accident, if the accident occurs outside Ontario; ...

[7] The Insurer says that "insured person" must be a person who is involved in an accident. "Accident" is defined in 3.1 as follows:

> "[A]ccident" means an incident in which the use or operation of an automobile directly causes an impairment or directly causes damage to any prescription eyewear, denture, hearing aid, prosthesis or other medical or dental devise;

[8] The Insurer submits this matter must be determined by a court and the Insurer is entitled to commence a proceeding for such a determination. The Insurer commenced this application.

[9] The Insured objects to the process on two bases:

> The dispute resolution process of the *Act* applies to the determination of whether or not the respondent was involved in an accident and that process is to be followed, and that is the only process which can apply.
>
> In any event, there are material facts in dispute and an application is not the appropriate method to determine this issue, and the application should be dismissed on that basis alone; and

**Analysis**

[10] The *Insurance Act* and Regulations are remedial legislation. They have been drafted as a result of a process of negotiation with stakeholders. The Financial Service Commission of Ontario ("FSCO") was set up to deal with a dispute resolution process. In *Chisholm v. Liberty Mutual Group* (2002), 60 O.R. (3d) 776, Laskin J.A. refers to the Financial Service Commission of Ontario as a specialized body of arbitrators who routinely adjudicate claims for accident benefits. He notes that there are a number of decisions dealing with the definition of "accident" determined by FSCO (para. 21).

[11] In my view, once a dispute resolution process is set up, the legislature must have intended for that process to be used in disputes with respect to insurance issues and *SABS*. The entitlement to benefits, on a plain reading would include whether or not the person is in an accident.

[12] The word "insured person" in the dispute resolution process should not be interpreted in such a manner so as to exclude an insured such as the respondent from the dispute resolution process set out in the *Act*.

[13] The Insurer specifically notes in its factum that "in interpreting a statute, it is presumed that constituent elements of a legislative scheme are meant to work together, each contributing to the achievement of a legislature's goals without contradictions or inconsistencies among the constituent elements." In my view, the dispute resolution process was created to strike a balance between the rights of insurers and insured. The process by which the Insured seeks to access *SABS* is specifically delineated. The Insured applies for mediation. If a mediation is unsuccessful, the Insured is entitled to determine the process whether arbitration or the court proceeding. If a court proceeding is chosen, the statement of claim will define the issues. The Insurer defends the action and the matter proceeds for determination in the Superior Court. If arbitration is chosen, the procedure set out is followed. The dispute resolution process is designed with unrepresented insured persons in mind. The mediation process allows for an opportunity for an exchange of positions and for the Insurer to advise the Insured of its position with respect to issues. If the Insurer is entitled to simply issue an application in the Superior Court, the Insured is exposed to potential cost consequences which upsets the delicate balance struck by the legislature.

[14] In my view, any interpretation of the *Act* which would allow the Insurer the right to move unilaterally for determination of an insured person's rights would be inconsistent with the principles behind the *Act* and regulations. Accordingly, the dispute resolution

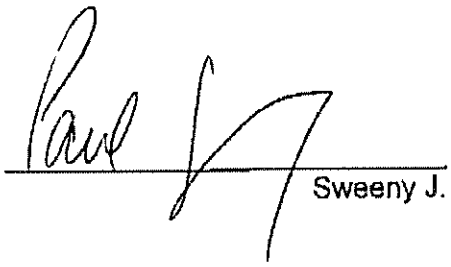
process must be used for determination of whether the Insured was involved in an incident in which "the use or operation of a motor vehicle directly caused an impairment."

[15] My determination that the dispute resolution process is the only method by which this matter can be resolved is strengthened by the Insured's position that the application is not an appropriate procedure to make this determination. An application is available in limited circumstances. The circumstances in which it is available are set out in Rule 14.05. An application may be used only under specific circumstances which include determination of rights depending on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution (Rule 14.05(d)), or (h) in respect of any matter where it is unlikely that there will be any material facts in dispute.

[16] In this case, the application was brought to determine whether the plaintiff was involved in an accident. There was no agreed statement of facts in this case. There was no sworn evidence from the respondent with respect to his actions. The only material before the court was a brief line of a description taken from an application made by the Insured for accident benefits. The determination of whether the incident was an accident requires an examination of all the surrounding circumstances. An application is not the appropriate procedure. While I acknowledge this issue has been determined on applications, in those cases there were no material facts in dispute or there was an agreed statement of fact.

[17] Therefore, even if the Insurer was entitled to determine the issue of whether the Insured was in an accident, in the circumstances, an application is not the appropriate proceeding. The application is dismissed.

[18] If the parties are unable to agree on costs, I will receive submissions limited to three pages, with a bill of costs, from the respondent within two weeks, and reply from the applicant within two weeks. The submissions should be addressed to me at my chambers in Welland.



Sweeny J.

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P.R. Sweeny

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