

Legal update

Supreme Court of Canada reaffirms common sense approach to interpreting insurance policies

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Insurance

Hot on the heels of its recent decision in *Ledcor Construction Ltd v Northbridge Indemnity Insurance Co*,¹ the Supreme Court of Canada has again emphasized the need to take a common sense approach to interpreting standard form insurance policies in *Sabean v Portage La Prairie Mutual Insurance Co*.²

Background

The insured was injured in a car accident. The insured sued the other driver and the court awarded \$465,000 in damages. After the other driver's insurer only paid \$382,000, the insured was left with a shortfall of \$83,000. The insured claimed this amount from his auto insurer under the provisions of his SEF 44 Endorsement. The endorsement is an optional standard form policy that indemnifies an insured for the shortfall in the payment of a judgment from an underinsured driver, subject to certain deductions. Importantly for this case, an insurer is entitled to deduct any amounts recoverable under "any policy of insurance providing disability benefits" from the shortfall when calculating the amount payable to the insured.

The insured was entitled to receive future Canada Pension Plan disability benefits. The insurer took the position that the insured's future CPP disability benefits were amounts recoverable under a "policy of insurance." The insured disagreed and the issue went to court. Such CPP benefits, the trial judge held, were not benefits recoverable under a "policy of insurance." The Nova Scotia Court of Appeal reversed the trial judge's decision.

Supreme Court of Canada

The Supreme Court of Canada began its analysis by reaffirming the principles of interpretation for standard form insurance policies as set out in *Ledcor*:

- Where the language of the disputed clause is unambiguous, reading the contract as a whole, effect should be given to that clear language.
- Only where the disputed language in the policy is found to be ambiguous should general rules of contract construction be employed to resolve that ambiguity.
- If these general rules of construction fail to resolve the ambiguity, courts will construe the contract *contra proferentem*, and interpret coverage provisions broadly and exclusion clauses narrowly.

At the first step of the analysis, the court stressed that the words in the policy must be given their ordinary meaning “as they would be understood by the average person applying for insurance, and not as they might be perceived by persons versed in the niceties of insurance law.”

Considering the facts at hand, the court held that the ordinary meaning of the words “policy of insurance” clearly referred to private contracts of insurance and did not include obligatory legislated schemes such as CPP. If the insurer wanted to deduct CPP benefits, it could have said so explicitly in the endorsement. The court accordingly found that the insurer was not entitled to deduct CPP benefits from the amount payable under the endorsement. In the absence of any ambiguity, there was no need to move on to the second step of the analysis.

In coming to this conclusion, the court rejected the insurer’s reliance on the judicial interpretation of similar provisions in provincial legislation, the tort law principle against double recovery and the history and intention of the insurance industry when drafting the endorsement. The court found that these sources did not assist it in interpreting a standard form insurance policy because the “average person” applying for coverage “is not someone with the specialized knowledge of related jurisprudence or of the objectives of the insurance industry.” An insurer cannot use “its specialized knowledge of the jurisprudence to advance an interpretation that goes beyond the clear words of the policy.”

Conclusion

The decision in *Sabeau* furthers the court’s common sense approach to interpreting standard form insurance contracts set out in *Ledcor*. Insurers should review their standard form insurance policies to ensure their desired interpretations do not depend on the “niceties of insurance law.”

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Footnotes

¹ *Ledcor Construction Ltd v Northbridge Indemnity Insurance Co*, 2016 SCC 37 (SCC).

² *Sabeau v Portage La Prairie Mutual Insurance Co*, 2017 SCC 7, 274 ACWS (3d) 619.

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