

ACCIDENT BENEFIT REPORTER

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ONTARIO INSURER LIABLE FOR BENEFITS IN THE VIRGIN ISLANDS



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Background

In the winter of 2012, Mrs. Baughan, like many other Ontarians, sought to escape the Canadian winter. She booked a Caribbean cruise with day excursions on various islands. The last thing on her mind was insurance coverage in the event of a car accident.

On January 27, 2012, Mrs. Baughan found herself on a day tour of the Island of St. Thomas, part of the United States Virgin Islands. While on the tour, the open air safari taxi in which Mrs. Baughan was a passenger crashed. Mrs. Baughan suffered a serious leg fracture, putting an abrupt end to her trip.

I met with Mrs. Baughan shortly following her return to Ontario. I soon learned that the insurance limits for the taxi was a meagre \$10,000.00 USD. To provide some context, in Ontario, cars must be insured with *at minimum* \$200,000.00 limits (most policies carry \$1 million).

Some of the benefits of being insured in Ontario include access to accident benefits (i.e. no fault benefits) and access to underinsured, uninsured, and unidentified coverage. Underinsurance coverage arises when the at-fault vehicle's insurance limits are: a) insufficient to respond to the injured party's claims; and b) less than the injured party's own Ontario insurance limits.

I was retained by Mrs. Baughan to advance her accident benefits and underinsurance claims against her own insurer, TD General Insurance Company ("the Insurer").

The Issue

I knew taking on the case that we would likely face a dispute with Mrs. Baughan's insurer arising from the fact that, in Ontario, all automobile insurance policies and laws restrict coverage to accidents occurring in Canada, the United States of America, or on a vessel plying between the two countries.

The issue was: does the term "United States of America" include the United States Virgin Islands for purposes of accident benefits and underinsured, uninsured, and unidentified coverage under an Ontario automobile policy?

The Court Battle

As expected, the Insurer sought a declaration from the Court that there was no coverage under the policy for car accidents that occur in the United States Virgin Islands.

The Application was heard in November 2012. It rested on the following considerations:

1. The Court considered whether the term "United States of America" was provided a definition anywhere in the relevant legislation, policy, or endorsement. *The Court agreed there was no express definition.*
2. The Court considered whether the "United States of America", in its plain and ordinary meaning, could include the United States Virgin Islands. The Insurer argued that the term "United States of America" could only include the 50 states. In response, I pointed out that the District of Columbia is not a State and that it would be nonsensical to suggest that the President of the United States did not live in the United States of America. *The Court accepted my submission that the term "United States of America" was inherently ambiguous.*

3. The Court considered the objective of the accident benefits and underinsurance provisions. *The Court accepted my submission that these insurance provisions were designed for consumer protection.*
4. The Court considered whether it was possible to determine whether the Ontario Legislature had intended for the term "United States of America" to include or exclude the United States Virgin Islands for purposes of insurance law. I pointed out to the Court several other provincial and federal laws in which the term "United States of America" had been defined to explicitly include or exclude the United States Virgin Islands. I also pointed that there appeared to be no consistency amongst these laws. *The Court accepted my submission that it was impossible to determine the Legislature's intent.*
5. The Court considered what the appropriate approach would be when faced with an ambiguous term upon which the Insurer attempted to rely to deny coverage. *The Court accepted my submission that the ambiguity ought to be resolved in the favour of our client, the insured.*



In her decision dated March 8, 2013, the Honourable Madame Justice Ellen Macdonald declared that the term "United States of America" includes the United States Virgin Islands for purposes of automobile insurance coverage under Ontario insurance policies.

The Significance of the Decision

There are several important implications arising from the Court's decision.

1. For the first time, Ontario residents injured in a car accident in the United States Virgin Islands (St. Thomas, St. Croix, or St. John) are entitled to insurance coverage under their own Ontario automobile policy. *Note that there are circumstances where you may be covered, notwithstanding not owning your own policy, but this topic is outside the scope of this article.*
2. The door may now be opened to claiming insurance coverage for car accidents that occur in other territories of the United States of America; for example, Puerto Rico.
3. Ontario travellers are reminded of the importance of considering the "worst case scenario" when selecting a holiday destination. It may now be "safe" (quo insurance coverage) to rent a car or take a taxi in the United States Virgin Islands, but the same cannot be said of most other Caribbean islands.
4. The trend to interpret ambiguities and exclusions contained in Ontario automobile legislation, policies, and endorsements in favour of the insured continues.

In conclusion, it is important for people to be aware that your Ontario automobile insurance policy does not cover you for accidents that occur anywhere in the world; there are limits. Those limits, however, can sometimes be tested and pushed. If you are injured in a car accident outside of Canada or one of the 50 United States, make sure you contact a personal injury lawyer before simply assuming (or relying upon the insurer's argument) that you do not have insurance coverage to compensate for your losses.

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