

UNIDENTIFIED MOTORIST PROTECTION: INSURERS BE WARY OF PARKED CARS AND HIDDEN LEPRECHAUNS

For those of us who plan on staying around the house this St. Patrick's Day, perhaps preoccupied with an unrelenting list of chores and stressors associated with the pending spring, we can now at least go about our never-ending tasks a little more briskly given the Court of Appeal's recent decision in Lewis v. Economical Insurance Group, [2010] O.J. No. 3158 (C.A.).



@counsel

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*"If you're lucky enough to be Irish, then
you're lucky enough."
- unknown author*

Bonnie Lewis, a pedestrian, sought coverage from her automobile policy with Economical Insurance Group after walking into a steel pole protruding from a truck parked the wrong way on the street in front of a convenience store. Ms. Lewis' claim against Economical was dismissed on a summary judgment motion, but was subsequently resurrected by the appellate court.

Since the truck could not be identified, Ms. Lewis sued her own insurance company for damages flowing from her serious head injury. Both her automobile policy and the OPCF Family Protection Endorsement, which she had purchased, provided coverage for personal injuries resulting from an accident involving an unidentified or uninsured automobile. Since Ms. Lewis was not an occupant of the parked truck when she was injured, she was entitled to coverage only if she was "struck by" or "hit by" the unidentified automobile.

In a unanimous decision delivered by Justice Laskin, the Court of Appeal found that Justice Eberhard had too narrowly interpreted the coverage provisions, contained in section 265(2)(c)(iii)(B) of the Insurance Act, section 5.3.1 of the O.A.P. 1 and section 1.6(a)(iii) of the OPCF 44R Family Protection Endorsement. The Court stated that Ms. Lewis may be able to recover if she could prove that the unidentified owner or driver of the truck was negligent. On this basis, the Court of Appeal overturned the dismissal and reinstated Ms. Lewis' action.

In his reasons for judgment, Laskin J.A. held that Ms. Lewis' entitlement to damages depended upon whether she was able to prove that the unidentified owner or driver of the parked truck was negligent. Laskin J.A., ultimately determined that the words "struck by" or "hit by" should be interpreted broadly, which would entitle Ms. Lewis to coverage for her injuries. He interpreted the law in this way for the following reasons:

First, the words "struck by" or "hit by" must be viewed in the context of a dominant purpose of this type of coverage in order to compensate victims injured as a result of an accident involving an unidentified automobile. Economical implicitly accepted, by virtue of paying Ms. Lewis statutory accident benefits, that she was involved in an incident where the use or operation of an automobile directly caused her injuries.

Second, in ordinary parlance, the words "struck by" or "hit by" generally connote "coming into contact with" and do not specifically attribute movement to either object involved. Accordingly, there is no difference between stating that "Ms. Lewis was struck by the pole" or "Ms. Lewis struck her head on a pole."

cont'd on page 2, see Unidentified

Other topics

- Limitation Period Applied to Crossclaims
- Deduction of collateral benefits
- Catastrophic Impairment