

## AUTO INSURANCE EXCLUSION CLAUSE NARROWED

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In *Aviva Canada Inc. v. ACE INA Insurance*, the Ontario Court of Appeal recently dismissed an appeal from the Ontario Superior Court which upheld an arbitrator's decision narrowing the interpretation of an exclusion clause in an automobile insurance policy. With its decision, the Court of Appeal affirmed the arbitrator's decision that a clause excluding coverage for damage resulting from the "ownership, use or operation" of machinery attached to the automobile did not apply. An application for leave to appeal to the Supreme Court of Canada was also recently dismissed.

The background to the case involved a serious injury to a worker who, following a collision, was thrown out of a bucket attached to the end of a hydraulic ladder mounted to the rear of the named insured's truck while parked. The injured man was employed by the named insured of an automobile policy provided by ACE INA Insurance (ACE). The named insured also had a general liability policy provided by the respondent Aviva Canada Inc. (Aviva).

The sole issue before the arbitrator was whether the endorsement to the ACE auto policy excluded coverage for "statutory accident benefits" (SABS) in the circumstance of the accident. The relevant provision stated that coverage would not be provided for "loss or damage resulting from the ownership, use or operation [of machinery or apparatus] mounted on or attached to the automobile while at the site of the use or operation of the machinery or apparatus." The arbitrator concluded that, in its simplest form, this case involved a car accident that caused the worker's injuries. Accordingly, the exclusion did not apply and the ACE auto policy, rather than Aviva's general liability policy, should pay the benefits.

On appeal to the Superior Court, ACE submitted that the arbitrator should not have interpreted the phrase, "resulting from", in the exclusion clause to require that the main cause of the injuries was the ownership, use or operation of the machinery. On the contrary, these words should have been interpreted consistently with the coverage language in the policy which stated that coverage applied to damage "as a result of owning, using, or operating the automobile."

The Superior Court, however, agreed with the arbitrator who had concluded that, whether the worker was in the bucket or sitting in the front seat of the truck, did not affect the fact that his

injuries resulted from a car accident, not the use or operation of the machinery. The Superior Court found that while the injured man's presence in the bucket may have aggravated or increased the severity of his injuries, there was no evidentiary basis for finding that the bucket caused the injuries. Accordingly, the accident was attributable to the automobile collision and not to the use of any equipment.

The Superior Court also dismissed ACE's alternative submission that the accident resulted from multiple causes, one of which was the ownership, use or operation of the machinery—thereby still engaging the endorsement. The Superior Court found that there was simply no causal relationship between Mr. Reynolds' injuries and the ownership, use or operation of the machinery.