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CASE SUMMARY: THE INSURED'S CLAIM WAS DISMISSED AS THE EVIDENCE DID NOT SUPPORT HIS CLAIM THAT THE MOTOR VEHICLE ACCIDENT WAS CAUSED BY AN UNKNOWN VEHICLE

Insurance law – Automobile insurance – Unidentified motorist – Evidence – Practice – Summary judgments

Gardner v. John Doe Driver, [2018] O.J. No. 4128, 2018 ONSC 4639, Ontario Superior Court of Justice, August 2, 2018, P.M. Perell J.

The insured was involved in a motor vehicle accident and sued the insurer pursuant to s. 265(1) of the *Ontario Insurance Act* on the basis that an unknown vehicle was the sole cause of the accident. The insurer applied to dismiss the action summarily.

The insured alleged an unknown vehicle cut into his lane, struck the front side of his vehicle, and caused it to slide across the highway and collide with the other driver's vehicle. A third vehicle then struck the second vehicle. The driver of the second vehicle claimed the insured struck him and his vehicle was then struck by the third vehicle.

The court found that the other driver's version was accurate and more likely. There was no physical evidence to support the insured's account and it did not make temporal or spatial sense. The investigating officer's reconstruction of the accident, which did not involve the unknown vehicle, was far more plausible. Although the officer admitted the insured's account was possible, the court noted that possibility and probability are not the same.

The insurer's motion was granted and the claim was dismissed.

This case was digested by [Paul R. Saunders](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Paul R. Saunders at psaunders@harpergrey.com.