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CASE SUMMARY: OUT-OF-PROVINCE INSURER LIABLE FOR STATUTORY ACCIDENT BENEFITS FOR AN ACCIDENT IN ONTARIO

An out-of-province insurer who is a PAU signatory, and whose policy covered an insured involved in a motor vehicle accident in Ontario, is bound by the priority provisions under s. 268 of the Ontario *Insurance Act*.

Insurance law – Automobile insurance – Statutory Accident Benefits Schedule – Priority coverage – Arbitration

Coseco Insurance Co. v. Liberty Mutual General Insurance Co., [2019] O.J. No. 4322, 2019 ONSC 4918, Ontario Superior Court of Justice, August 22, 2019, S.S. Nakatsuru J.

The insured was a New York resident with a New York motor vehicle policy from GMAC Insurance Company (“GMAC”), who was a passenger in a motor vehicle accident in Ontario. GMAC was not licensed to sell insurance in Ontario, but was a signatory to the Power of Attorney and Undertaking (“PAU”). The car in which the insured was a passenger was insured by Coseco Insurance Company (“Coseco”), an Ontario insurer. Liberty Mutual Insurance Company (“Liberty”) insured the spouse of the insured with a New York policy. The insured applied to Coseco for statutory accident benefits under the Statutory Accident Benefits Schedule, O. Reg. 34/10. After accepting the application and paying benefits, Coseco commenced an arbitration to determine priority. The arbitrator held that the priority provision under s. 268 of the *Insurance Act*, R.S.O. 1990, c. I-8 (the “*Insurance Act*”) applied to an out-of-province insurer for an accident that took place in Ontario. GMAC appealed the arbitrator’s decision. Both Liberty and Coseco took the position that the arbitrator’s decision should be upheld.

The Court upheld the arbitrator’s decision on appeal. In doing so, the Court rejected Coseco’s position that the standard of review was correctness because it involved a constitutional question of law of central importance to the legal system. The Court held that the arbitrator’s decision that an out-of-province insurer who is a PAU signatory, and whose policy covered an insured involved in a motor vehicle accident in Ontario, is bound by s. 268 of the *Insurance Act* was both reasonable and, in any event, correct.

This case was digested by [Michael J. Robinson](#), 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 Michael J. Robinson at mrobinson@harpergrey.com.