

SHILLINGTONS^{LLP} | LAWYERS

1500 – 148 Fullarton Street
London, ON N6A 5P3
www.shillingtons.ca

INSURANCE LAW BULLETIN

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Court of Appeal rules that the Bar on Litigating Insurance Issues Outside the LAT also Applies to Claims of Bad Faith

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OVERVIEW

In *Stegenga v Economical Mutual Insurance Company*,¹ the Court interpreted s. 280 of the *Insurance Act* as this section relates to the administration of Statutory Accident Benefits under the Licence Appeal Tribunal. In this case, the appellant was seriously injured in a motor vehicle accident and commenced a claim, alleging that the insurance company acted in bad faith when administering the policy. The motion judge struck the claim and found that the dispute fell under the jurisdiction of the Licence Appeal Tribunal, and statute barred in the Ontario courts. The Ontario Court of Appeal interpreted the Act in the same manner and dismissed the appeal.

FACTS

In 2011, Ms. Stegenga was involved in a motor vehicle accident and suffered major injuries, including long-term cognitive dysfunction. In 2012, she applied to her insurer, Economical, for Statutory Accident Benefits. For about three years, Economical did not advise Ms. Stegenga that her injuries could classify as ‘catastrophic impairments’ which would provide her with advanced benefits. In 2015, Economical advised Ms. Stegenga that her injuries were catastrophic impairments but continued to only provide non-catastrophic benefits. Ms. Stegenga filed a statement of claim alleging bad faith and claimed punitive and exemplary damages.

Economical brought a motion to strike the statement of claim on the basis that s. 280 of the *Insurance Act* provides exclusive jurisdiction to the LAT to resolve certain disputes and prohibits bringing proceedings in respect of those disputes in court. The motion judge found the claim fell within s. 280(1) because it was a dispute “in respect of an

¹ 2019 ONCA 615.

insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled."

Ms. Stegenga appealed the decision and argued that an insurer's duty of good faith is independent of and in addition to its duty to pay the benefits to which an insured person is entitled. She further argued that a breach of the duty of good faith gives rise to a standalone action for bad faith where aggravated, exemplary and punitive damages are available. The Court of Appeal rejected this argument and held that section 280 specifically confers powers for disputes relating to the administration of the claim.

Ms. Stegenga also argued that since the LAT does not have the ability to award punitive damages, it cannot hear claims for bad faith since *Whiten v Pilot Insurance Co*,² makes actions for breach of a duty of good faith subject to punitive damages. The Court of Appeal also rejected this argument, as the *Insurance Act* gives the LAT power to award special awards when benefits were unreasonably withheld or delayed.

The section in dispute³ uses expansive language which implies the broadest possible connection between two subject matters. "In respect of" is used in s. 280 to connect dispute and entitlement, both of which are very broad terms on their own. Combining these considerations leads to a very broad jurisdiction for the LAT to exclusively hear these disputes.

The amendments to the Act that created s. 280 were enacted to reduce insurance rates and insurance fraud, and to speed up dispute resolution. This purpose would not be achieved by overlapping jurisdiction with the LAT and the courts. The legislature must be taken to have considered the importance of its objectives of efficiency and cost reduction to outweigh the loss of an insured individuals' access to the courts along with the full range of remedies available there.

The Court's decision in *Stegenga* identifies the importance of reducing insurance rates, insurance fraud, and speeding up the dispute resolution process by recognizing the LAT is an efficient, fair and accessible mechanism equipped to deal with claims of bad faith.

² 2002 SCC 18.

³ This section applies with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled [emphasis added].