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INSURANCE LAW BULLETIN

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DOES A TAXI DRIVER OWE A DUTY OF CARE TO INTOXICATED PASSENGERS TO ENSURE SEATBELTS ARE WORN DURING FARES?

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In the case of *Stewart v. Douro-Dummer (Township)*, 2018 O.J. No. 3481, the Plaintiff, Mr. Stewart, sought to hold his taxi driver, Mr. Yaxley and the cab owner (Liftlock Coach Lines Ltd.) jointly and severally liable for the damages he sustained as a result of a car accident.

Mr. Stewart and three others attended a party at a restaurant/bar. While all four consumed considerable amounts of alcohol, Mr. Stewart consumed the most and was visibly intoxicated. Mr. Stewart, along with his three friends, were picked up by Mr. Yaxley. Upon departure, Mr. Stewart was wearing his seatbelt. However, at some point during the fare (but before the accident), Mr. Stewart's seatbelt was released. Through no fault of the taxi driver, the vehicle was involved in a collision with another vehicle. It was admitted by both parties that Mr. Stewart's injuries were more severe as a result of no seatbelt being worn at the time of the accident.

The sole issue to be determined at trial was whether there was any liability on Mr. Yaxley or the owner of the taxi for Mr. Stewart's failure to wear a seatbelt throughout the taxi fare. The determination of this issue was dependent on whether the taxi driver or service owed Mr. Stewart a duty of care to ensure he buckled his seatbelt during the trip. If there was such a duty, it must be determined whether the taxi driver, in the circumstances, met the appropriate standard of care.

| LEGAL RULES AND PRINCIPLES |

Justice Richetti first considered the *Highway Traffic Act* and noted that there is only a positive duty to act with regards to ensuring individuals under the age of 16 wear their seatbelts. Counsel for Mr. Stewart argued that Mr. Yaxley owed him a duty of care because it was apparent to Mr. Yaxley that he was intoxicated and thus was a vulnerable person unable to take care of himself. The alleged duty was to ensure Mr. Stewart was and remained restrained throughout the fare.

Counsel for Mr. Yaxley submitted no duty of care was owed to Mr. Stewart or any other adult passenger despite intoxication.

Both parties conceded that there was no authority on whether a duty of care exists from taxi drivers to intoxicated adult passengers. Thus, an *Anns/Cooper* analysis was conducted. An *Anns/Cooper* analysis uses three criteria to determine whether a novel duty should be created: **reasonable foreseeability**, **proximity** and whether there are **policy considerations which negate the creation of a new duty**.

| APPLICATION OF RULES & PRINCIPLES /

Reasonable Foreseeability

The question at this step was whether the injuries which Mr. Stewart suffered were a reasonably foreseeable consequence of not wearing a seatbelt. While the answer to this question is certainly “yes”, there are only three situations in which the courts have imposed such a positive duty. These three situations are:

1. Where a defendant intentionally attracts and invites third parties to an inherent and obvious risk that he or she created or controls;
2. Where a paternalistic relationship of supervision or control exists, such as the teacher-student relationship; or
3. Where a defendant exercises a public function or engages in a commercial enterprise that includes implied responsibilities to the public at large.

Justice Richetti deemed the third situation applicable. However, he also stated that there are limits to the responsibilities of a taxi driver. Justice Richetti stated to impose a positive duty under situation three would be an “unnecessary and unprincipled extension of the scope of any duty which a taxi driver owes to adult intoxicated passengers.”

Proximity

Assessing “proximity” entails asking whether the parties are in such a close and direct relationship that it would be just and fair, having regard to that relationship, to impose a duty of care in law. The proximity inquiry considers the “expectations, representations, reliance, and the property or other interests involved” as between the parties. Justice Richetti concluded that no such relationships could be found:

- There were no expectations on behalf of the plaintiff or his friends that the taxi driver would ensure he was buckled during the trip;
- There was no evidence of any representation given by the taxi driver or company that it would ensure the passengers remained buckled throughout the trip;
- There was no evidence of reasonable reliance that the plaintiff or his friends had that the taxi driver would ensure seatbelts were buckled throughout the trip; and
- The adult passenger’s autonomy is to be considered at the proximity stage when determining whether a new duty ought to be created.

Policy Considerations

Finally, the Court concluded that overwhelmingly, policy considerations leaned against the creation of a novel duty:

- There is a common sense inconsistency that passengers who are contributorily negligent for not buckling their seat belt can nevertheless point to the driver for not ensuring that they buckle their seatbelt.
- Imposing a duty of care on the taxi driver would amount to a unilateral transfer of the adult passenger's statutory and common law duties to take care to buckle their seatbelt to the taxi driver. Worse yet, this transfer of responsibility would arise as a result of the individual's self-intoxication.
- An imposition of such a duty would require taxi drivers to lose focus on their primary obligation: to drive safely.

As such, there is now unequivocal caselaw in Canada which states that barring some extraordinary reliance or expectations created by the taxi driver, intoxicated individuals are responsible for ensuring they remain buckled throughout the fare.