Only Insurers Barred From Subrogation



Section 570 of Alberta's Insurance Act eliminates the right of insurers providing income continuation or replacement benefits to subrogate against automobile insurers. In Hammond v DeWolfe,[1] the Court of Appeal determined that the statutory bar on subrogation only applies to insurers and does not apply to employers who provide similar income replacement benefits programs.

Facts

Richard Hammond was employed by Syncrude Canada Ltd. After being injured in a car accident, Hammond received $38,668 in income benefits from Syncrude under a temporary disability plan (the Plan). The Plan provided that Syncrude had a right of subrogation with respect to the payment of disability benefits and consequently Syncrude claimed recovery of the income benefits from the tortfeasor.

The Court of Appeal determined that the legislative intent of Section 570 of the Insurance Act was to reduce motor vehicle insurance premiums and prevent double recovery. When a plaintiff has coverage through a disability program, the automobile insurer is responsible only for topping up income replacement over and above what has already been received from the disability provider. The disability provider is unable to recover payments from the tortfeasor. This method of decreasing damage awards allows automobile insurers to keep insurance premiums low.[2]

The legislation also prevents double recovery, a situation in which the plaintiff receives benefits from his insurer, as well as the tortfeasor.

The Court of Appeal held that the specific wording of Section 570(6) removes the right of subrogation from an individual who makes payments to the insured and not to those providing benefits under a contract of employment.

Consequently, the statutory bar on subrogation only applies between insurers and does not eliminate an employer's right to subrogate under a similar income replacement scheme.

Conclusion

This decision has adverse consequences for automobile insurers insofar as the type of income replacement scheme has a material effect on the automobile insurer's exposure—especially in the context of catastrophic accidents. To properly set reserves, adjusters need to make early inquiries into the nature of an income replace

scheme that a plaintiff is receiving and whether that scheme is being provided by an insurer.

From an employment standpoint, employers offering these plans should ensure they take steps to protect their right of subrogation to recover income replacement benefits.

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