

Primum Insurance Company v. Allstate Insurance Company

[Indexed as: Primum Insurance Co. v. Allstate Insurance
Co.]

107 O.R. (3d) 159

2010 ONCA 756

Court of Appeal for Ontario,
Rosenberg, MacPherson and LaForme JJ.A.

November 10, 2010*

* This judgment was recently brought to the attention of the editors.

Insurance -- Automobile insurance -- Arbitration -- Ontario resident injured in car accident in North Carolina caused by driver insured by Allstate under policy issued in North Carolina -- Section 275 of Insurance Act applying to loss transfer dispute between Allstate and Ontario resident's insurer -- Insurance Act, R.S.O. 1990, c. I.8, s. 275.

An Ontario resident insured by the respondent was injured in a car accident in North Carolina caused by a driver insured by the appellant under a policy issued in North Carolina. The respondent paid its insured's statutory accident benefits and served the appellant with a notice to participate, a demand for arbitration and a notice to submit to arbitration. The appellant took the position that Ontario's loss transfer scheme did not apply to it. The application judge disagreed. The appellant appealed.

Held, the appeal should be dismissed.

The appellant was an Ontario insurer. The application judge

did not err in finding that s. 275 of the Insurance Act applied.

Cases referred to
Unifund Assurance Co. of Canada v. Insurance Corp. of British Columbia, [2003] 2 S.C.R. 63, [2003] S.C.J. No. 39, 2003 SCC 40, 227 D.L.R. (4th) 402, 306 N.R. 201, [2003] 9 W.W.R. 1, J.E. 2003-1355, 16 B.C.L.R. (4th) 1, 176 O.A.C. 1, [2003] I.L.R. I-4209, 124 A.C.W.S. (3d) 61, apld
Statutes referred to
Insurance Act, R.S.O. 1990, c. I.8, s. 275 [as am.]

APPEAL from the order of D. Cameron J. (2010), 100 O.R. (3d) 788, [2010] O.J. No. 600 (S.C.J.) that the appellant was required to arbitrate the claim.

Todd J. McCarthy, for appellant.

Gerald S. George and Krista M. Groen, for respondent.

[1] Endorsement BY THE COURT: -- The appellant, Allstate Insurance Company, appeals the judgment of Cameron J. of the Superior Court of Justice dated February 11, 2010 in which he ordered the appointment of Scott Densem as arbitrator in respect of a loss transfer dispute between Primmum Insurance Co. [page160] and Allstate pursuant to s. 275 of the Insurance Act, R.S.O. 1990, c. I.8.

[2] A resident of Ontario was injured in a car accident while driving in North Carolina. Primmum Insurance Company, an Ontario insurer, paid his statutory accident benefits as required under the standard Ontario insurance policy. The other driver was at fault and was insured by Allstate under a policy issued in North Carolina.

[3] Allstate was served with a notice to participate and a demand for arbitration. It was also served with a notice to submit to arbitration. Allstate refused to comply with the notices on the ground that it was not an Ontario insurer and

the accident did not occur in Ontario. Accordingly, it contends, Ontario's loss transfer scheme does not apply to it.

[4] The application judge disagreed with Allstate and held that Ontario's loss transfer scheme did apply to it. Allstate appeals and essentially restates the arguments that were advanced and considered by the application judge.

[5] The appellant contends that the trial judge erred in concluding that s. 275 of the Insurance Act can affect contracts between parties not resident in Canada in respect of losses occurring outside of Canada.

[6] We do not accept this submission. We agree with the application judge that the issue here is resolved by the decision of the Supreme Court of Canada in *Unifund Assurance Co. of Canada v. Insurance Corp. of British Columbia*, [2003] 2 S.C.R. 63, [2003] S.C.J. No. 39, at para. 12, where Binnie J. said:

Section 275(4) of the Ontario Act provides that disputes about indemnification are to be resolved by arbitration, pursuant to the Ontario Arbitration Act, 1991, S.O. 1991, c. 17. There is no doubt that if the appellant were an Ontario insurer, it would be required to arbitrate Unifund's claim.

[7] Allstate is an Ontario insurer. Accordingly, it must arbitrate Primmum's claim.

[8] The appeal is dismissed.

Appeal dismissed.