Alberta Courts limit insurers' ability to share information with police

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A recent decision by the Alberta Court of Queen's Bench (the Court or ABQB) affirmed the duty of utmost good faith owed by insurers to their policyholders. In *Barata v Intact Insurance Company*, 2021 ABQB 419 [*Barata]*, the Court stated that there is an implied obligation in every insurance contract that insurers are to deal with claims in good faith and held that disclosure to police by an insurance investigator resulted in a breach of this obligation.

Background

The Plaintiff and her husband were in her vehicle when it struck and killed a third party; however, they fled the scene before the RCMP arrived. Later that day, the RCMP arrested the Plaintiff's husband, on the assumption that he had been the driver, and charged him with impaired driving causing death and other criminal offences. The Plaintiff's vehicle was insured with the Defendant insurer and the insurer assigned the co-Defendant employee to investigate. In the course of investigations, the Plaintiff admitted to the employee that she had been operating the vehicle and the employee volunteered this information to the RCMP. The RCMP later charged the Plaintiff, but both the Plaintiff and her husband were ultimately acquitted.

The Plaintiff brought an action for damages and the key issue before the Court was whether the Defendants' disclosure breached their owed duties of good faith and confidentiality to the Plaintiff and, if so, whether the disclosure was authorized under the *Personal Information Protection Act*, SA 2003, c P-6.5 (PIPA) or otherwise justified in the circumstances.

The Court's analysis

In its analysis, the Court noted that an insurer has a duty to investigate a policyholder's claim in utmost good faith and further noted that disclosure to the police of insureds' statements to their insurers, which is compelled by legislation, undermines both the insurance relationship and the insured's right to remain silent.

In this case, the Plaintiff had expressly advised the insurer that she did not permit the insurer to disclose information to the RCMP. Additionally, the co-Defendant employee's disclosure was gratuitous and not related to advancement of the insurer's investigation. Thus, the Court held that this disclosure was not appropriate, that it constituted a breach of the duty of utmost good faith and was not authorized under PIPA or some other justification. However, as the Plaintiff was arrested based on the information provided by her partner, not the Defendants, the Court deemed that she was not entitled to any damages, since the Defendants' disclosure was not the cause of her loss. The Court additionally declared that the Defendants did *not* owe the Plaintiff a duty of confidentiality with respect to the information she provided them and punitive damages would not awarded, as the Court did not find any evidence of bad faith conduct by the Defendants.

Although the disclosure in this case was not authorized or reasonable, the Court recognized that there could be cases where an insurer would be reasonably justified in disclosing some, or all, of its insured's compelled statement to the police, particularly if it is for the purpose of seeking information to assist the insurer's investigation of a claim. Whether such a disclosure would be reasonable will depend on the facts in each case.

Key considerations

The general principle is that insurers owe their policyholders a duty to investigate claims in utmost good faith. Insurers, and their agents, should take great care in their interactions with the police lest they divulge information that would breach their good faith obligations. Conversely, where such disclosure is necessary to assist with investigation of a claim, it may be reasonably justified, depending on the facts of the case.

Reach out to your trusted advisor at BLG, or one of the key contacts listed below, to discuss how this decision may impact your business operations.

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