Ontario court concedes jurisdiction to LAT in proposed class action

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In *Dorman v. Economical Mutual Insurance Company*, Justice Belobaba determined that the Ontario Superior Court of Justice lacked jurisdiction over proposed class actions arising in the context of statutory accident benefits (SABS), deferring such claims to the License Appeal Tribunal (LAT).

Background and decision

The plaintiffs filed proposed class actions against 15 auto insurers and the insurers' government regulator, the Financial Services Commission of Ontario (FSCO), alleging the insurers were improperly deducting HST from their SABS.

Following the initial filings, two of the insurers entered into pre-certification settlement agreements. The remaining insurers and FSCO (the Defendants), brought the within motion pursuant to Rule 21 of Ontario's *Rules of Civil Procedure*, for a legal determination that the LAT has exclusive jurisdiction over all SABS disputes.

In support of their motion, the Defendants argued that s. 280 of the *Insurance Act*, in conjunction with the recent Ontario Court of Appeal decision in *Stegenga v. Economical*, made it clear that the proposed class actions ought to be stayed or dismissed.

Although Justice Belobaba recognized the general nature of the proposed claims made them ideal to proceed as class actions, the Court must defer to the governing legislation for the SABS.

In coming to this conclusion, His Honour provided a brief summary of the recent amendments to Ontario's *Insurance Act* and creation of the LAT, following the release of the Cunningham Report. Justice Belobaba noted that amendments to s. 280 of the *Insurance Act* made it 'plain and obvious' that SABS disputes fall under LAT jurisdiction. Justice Belobaba dismissed all but one of the proposed class actions and did not approve the proposed settlements, all due to a lack of jurisdiction.

The remaining class action against FSCO and its current and former superintendents was allowed to proceed. The allegations in the remaining action dealt with whether FSCO failed to investigate various insurers after receiving written complaints.

His Honour found that the allegations of regulatory negligence, bad faith and misfeasance of public office fell outside the scope of s. 280 of the *Insurance Act*. As such, the claims were allowed to proceed as a class action.

Takeaways

This case represents a cautionary tale about the scope of class actions. While it may seem suitable, on its face, to bring a class action, plaintiffs must first look at whether any governing legislation speaks to jurisdiction. In situations where such legislation creates another avenue for disputes, as the *Insurance Act* did in this case, the Courts will defer its jurisdiction in such matters.

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