

FSCO A02-001734 / FSCO A03-000161  
FSCO A02-001733, FSCO A03-000512

**BETWEEN:**

**CORNELIA ANANG and GEORGINA AMPOMAH and AGNES QUARSHIE**

**Applicants**

**and**

**GUARANTEE COMPANY OF NORTH AMERICA**

**Insurer**

## **DECISION ON PRELIMINARY ISSUES**

**Before:** Beth Allen

**Heard:** December 15, 2003 at the offices of the Financial Services Commission of Ontario in Toronto.

**Appearances:** Brent Vickar for Ms. Anang, Ms. Ampomah and Ms. Quarshie  
Terry Shillington for Guarantee Company of North America

**Issues:**

The Applicants, Ms. Cornelia Anang, Ms. Georgina Ampomah and Ms. Agnes Quarshie, claim they were injured in a motor vehicle accident on July 15, 2002. Ms. Anang claims she was injured in a second accident on July 30, 2002. The Applicants claim accident benefits under the *Schedule*.<sup>1</sup> Guarantee Company of North America (“Guarantee”) alleges that the Applicants were not involved in accidents within the meaning of section 2(1) of the *Schedule*. The parties were unable to resolve their disputes through mediation, and applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

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<sup>1</sup> *The Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996*, Ontario Regulation 403/96, as amended by Ontario Regulations 462/96, 505/96, 551/96, 303/98, 114/00 and 482/01.

The preliminary issues are:

1. Were the Applicants, Ms. Anang, Ms. Ampomah and Ms. Quarshie, injured in an accident on July 15, 2002 as defined by subsection 2(1) of the *Schedule*?
2. Was Ms. Anang injured in an accident on July 30, 2002 as defined by subsection 2(1) of the *Schedule*?
3. The parties did not speak to expenses. I encourage them to resolve this issue, but failing that, I may be spoken to.

**Result:**

1. Ms. Anang, Ms. Ampomah and Ms. Quarshie were not injured in an accident on July 15, 2002.
2. Ms. Anang was not injured in an accident on July 30, 2002.

**EVIDENCE AND ANALYSIS:**

**The Law and Overview:**

In order to avail themselves of benefits offered under the statutory accident benefit scheme, insured persons must first establish that they were involved in an accident within the meaning of the *Schedule* in which they sustained impairments. Subsection 2(1) of the *Schedule* provides:

“accident” means an incident in which the use or operation of an automobile directly causes an impairment or directly causes damage to any prescription eyewear, denture, hearing aid, prosthesis or other medical or dental device.

Guarantee argues that Ms. Anang, Ms. Ampomah and Ms. Quarshie did not sustain impairments as a result of being involved in accidents and are accordingly precluded from proceeding to arbitration in respect of their accident benefit claims. Specifically, Guarantee alleges that the damage to Ms. Anang's van, alleged to be the result of the July 15, 2002 accident, was not caused by the accident as described by the Applicants, and the damage to the Toyota rented by Ms. Anang on July 30, 2002 did not result from an accident as described by Ms. Anang and her friend, Ms. Nantwi.

Ms. Anang, Ms. Ampomah and Ms. Quarshie contend that the July 15, 2002 accident, and Ms. Anang claims that the July 30, 2002 accident, occurred as they reported. They submit that they sustained injuries as a result of the accidents and are therefore entitled to proceed to arbitration with respect to their claims.

### **The July 15, 2002 Incident:**

#### *The Applicants' Testimony:*

According to the Applicants, the alleged accident occurred at about 10:00 p.m. on July 15, 2002, when Ms. Anang was driving her van, with Ms. Quarshie in the front passenger seat and Ms. Ampomah in the right rear passenger seat.

Ms. Anang testified that she was travelling southbound along Blackstone Avenue. She stopped at a stop sign at the corner of Blackstone and Lawrence Avenue and then proceeded to make a right turn onto Lawrence. According to Ms. Anang, the Ford was travelling northbound on Blackstone and proceeding to make a left turn onto Lawrence. As the Ford was travelling westbound on Lawrence, after making the left turn, according to Ms. Anang, it struck her van on the front driver's side. Ms. Anang testified that when the incident occurred, she was travelling about 15 to 20 km/hr. The Origin and Cause Incorporated ("Origin") engineering report, dated May 15, 2003, commissioned by

Guarantee, notes a slightly lesser speed, from 5 to 10 km/hr. It records that the Ford was travelling at 55 km/hr. Ms. Anang stated that when she saw the Ford approaching on her left, and following close along side her as she was making her right turn onto Lawrence, she hit her brake to stop her van and the Ford struck her van. She testified that when her van came to rest, its front was on Lawrence and its rear was on Blackstone. Ms. Anang stated that she drove her van home and reported the incident to the Collision Reporting Centre (CRC) the next evening.

Ms. Anang testified that the Ford damaged her van by scraping along the left side, along the sliding door over the gas tank, across the front left door handle and side mirror, up to the left front bumper and headlight. She testified that there was some pre-existing damage to her van on the left side near the hood where rust spots appear in the photographs of her van attached to investigation reports by T.S.I. Solutions Inc. (T.S.I.) dated November 4 and September 9, 2002, commissioned by Guarantee (discussed below).

Guarantee cross-examined Ms. Anang about how the Ford came to collide with her van – in particular, how the Ford caught up with her van in order to hit her front left side and headlight, while Ms. Anang was making a right turn. Ms. Anang stated that she did not know how this happened. Ms. Anang then attempted to explain how the collision took place, but I found her explanation was not comprehensible. She stated, “He started from the back. I was turning right. My vehicle was on an angle from Blackstone to Lawrence.” She indicated that she did not know how fast the other car was travelling.

All three Applicants denied that the scraping damage to the left side and front of Ms. Anang’s van happened elsewhere in another incident. Ms. Anang provided the greater part of the evidence about the incident. Ms. Quarshie testified that she only heard a noise, but did not see the alleged accident occur because she was looking to her right. Ms. Quarshie indicated, however, that she knew the other car, a Ford, hit the left side of Ms. Anang’s van as Ms. Anang was turning right. Ms. Ampomah testified that she was sitting in the rear right seat with her eyes closed listening to her “Walkman”, so she only heard

a noise and felt a “shake up” at the moment of impact. Both Ms. Quarshie and Ms. Ampomah testified that they did not closely inspect the damage to Ms. Anang’s car after the accident and that they did not know whether Ms. Anang’s van had pre-existing damage. All three Applicants denied knowing the driver of the Ford.

*Evidence of Damage to the Ford:*

Contrary to Ms. Anang’s and the other Applicants’ accounts, the CRC self-report by the other driver indicates that Ms. Anang’s van, which according to the other driver was travelling southbound on Blackstone, hit the passenger side of his vehicle at a 90 degree angle on the front door of his vehicle while he was proceeding westbound on Lawrence across the intersection of Blackstone and Lawrence. The photographs attached to the T.S.I. report, dated September 9, 2002, depict damage in the form of dents to the right side of the Ford most pronounced on the back door and extending to the bottom rear of the front door. The B-pillar between the front and rear doors is bent at the level of the rocker panel.

*Guarantee’s Accident Reconstruction Evidence:*

Guarantee called as witnesses two investigators from T.S.I. and an engineer from Origin to comment on and analyse the descriptions offered by the Applicants of both of the alleged accidents. The Applicants called no accident reconstruction experts.

Mr. Richard Hawkyard, a former police officer and investigator for an insurance company, stated that he has conducted over 4,000 collision investigations, about 150 since he has been employed by T.S.I. He co-authored a report dated September 9, 2002. Mr. Hawkyard testified that he has given opinions in previous Commission and court proceedings as an expert in motor vehicle accident claims. The Applicant did not challenge the qualifications of Mr. Hawkyard as an expert witness. I accept Mr. Hawkyard as an accident reconstruction expert. He testified that he attended at the scene of the

accident at a later date. He took pictures of the damage to the vehicles and the area surrounding the alleged accident scene. Mr. Hawkyard reviewed the police report and the CRC self-reports given by Ms. Anang and the driver of the Ford.

Regarding the July 15, 2002 incident, Mr. Hawkyard noted that Ms. Anang and the driver of the Ford gave contradictory descriptions of the alleged accident; and that the damage to the vehicles, as depicted in photographs appended to the T.S.I. report, is inconsistent with the accounts of the Applicants and the driver of the Ford.

Mr. Hawkyard observed, among other things, that the scratch on the left side of Ms. Anang's vehicle, goes along the left side of the van from the front to the rear. He testified that this conclusion is based on his observation that there is more damage at the leading edge of the scratch at the front of the van than at the end of the scratch at the rear of the van. Mr. Hawkyard added, looking at an exhibit of a life-size photograph of the damaged left door handle on Ms. Anang's van, that whatever made contact with Ms. Anang's van was plowing forward because the paint rolls up at the right edge of the contact mark. Mr. Hawkyard concluded that either the contact object was stationary and Ms. Anang's van was moving, or the contact object was moving and Ms. Anang's van was stationary.

Mr. Hawkyard's opinion was that neither Ms. Anang's nor the other driver's descriptions of the accident is consistent with the nature of the damage to the van and the Ford. According to Mr. Hawkyard, with an accident as described by Ms. Anang, where her van was alleged to be executing a right turn as the Ford was overtaking her on the driver's side, the scratches would be from the rear to the front of the van instead of the front to the rear. Further, if the Ford struck Ms. Anang's van on the passenger's side door, there would be heavy crushing of the passenger door instead of scratching. And further, according to Mr. Hawkyard, the damage to the Ford would be on its front rather than on its right side.

It was Mr. Hawkyard's opinion that there was no damage that is consistent with Ms. Anang's van and the Ford coming into contact. Mr. Hawkyard was asked in chief what kind of contact could cause the kind of damage reflected on Ms. Anang's van. He responded that the damage to Ms. Anang's car is not the result of a collision because the horizontal scratches on the left side of her van are indicative of two objects coming into contact in a sliding motion producing abrasions. The surface into which Ms. Anang's van came into contact, according to Mr. Hawkyard, was rough. He observed that there is nothing with a rough texture on the right side of the Ford at the level of the scratches on the van that could create the horizontal marks.

Mr. Sam Kodsi is a mechanical engineer. He has been the head of the Motor Vehicle Reconstruction Unit at Origin for three years and involved in the accident reconstruction field for about eight years. He testified that he has been the lead investigator in about 700 cases and involved in about 1,000 technical investigations. He stated that he is qualified to give expert evidence in several levels of court including the Ontario Superior Court of Justice. The Applicant did not challenge the qualifications of Mr. Kodsi as an expert witness. I accept Mr. Kodsi as an accident reconstruction expert.

Mr. Kodsi prepared the May 15, 2003 Origin report where he reviewed the July 15 and July 30, 2002 accidents. He testified that in arriving at his conclusions in the report, he relied on the police reports of the accident, the CRC self-reports, the T.S.I. reports, witness statements, damage appraisals, photographs of the collision scenes and of the damage sustained by the two vehicles involved in the first accident and the single vehicle involved in the second accident. I will discuss below Mr. Kodsi's assessment of the July 30, 2002 accident. Mr. Kodsi testified that he did not inspect the actual vehicles.

With respect to the July 15, 2002 incident, Mr. Kodsi observed that there are sharp scratches, scuff marks and gouges on the left front of Ms. Anang's van, but no paint transfer or scuff marks on the right side of the Ford. He therefore concluded that the damage sustained to Ms. Anang's van and the Ford could not have occurred as described in the CRC self-reports. It was Mr. Kodsi's view that the

damage to Ms. Anang's van was consistent with it being driven into a rough masonry surface and was not car-to-car damage. Looking at the photographs of the Ford, Mr. Kodsi testified that, while there was vehicle contact with the Ford, the damage to the Ford was consistent with another vehicle driving into its right side at a 90 degree angle while it was stationary, contrary to Ms. Anang's and the other driver's accounts.

### **The July 30, 2002 Incident:**

#### *Ms. Anang's and Ms. Nantwi's Testimony:*

Ms. Anang testified that at about 3:15 p.m on July 30, 2002, she was involved in a second accident with a Toyota she had rented. At the time of the alleged accident, Ms. Anang was in the front passenger seat and a friend, Ms. Comfort Nantwi, was driving. They were the only occupants in the car.

Ms. Anang and Ms. Nantwi testified that earlier that day Ms. Anang had been driving the Toyota, but Ms. Nantwi took over when Ms. Anang became dizzy. When the alleged accident occurred, the Toyota had been travelling eastbound on Highway 401 in the far right collector lane and had entered the Highway 400 ramp. Ms. Anang testified, and Ms. Nantwi confirmed, that as the Toyota was entering the northbound Highway 400 ramp, the Toyota suddenly spun out and hit the cement guard rail at the left of the car. Both Ms. Anang and Ms. Nantwi estimated the speed of the Toyota to be about 30 to 45 km/hr. Ms. Nantwi explained that she was not driving fast because there were vehicles in front of and behind her. Both confirmed no other vehicles were involved in the alleged accident.

Ms. Nantwi testified that it was not raining and the weather was clear when the alleged accident occurred. The September 9, 2002 T.S.I. report indicates that Ms. Nantwi said she did not brake before the car spun out, but her report to the police indicates that she did brake before she lost control

of the car. Ms. Nantwi stated to T.S.I. that she had just rounded a curve on the ramp and was entering a straight area of the road when the car spun out to the left and struck its front on the guard rail. When it was suggested to Ms. Nantwi on cross-examination that the damage to the Toyota was more consistent with it striking a post, Ms. Nantwi denied this. Both Ms. Anang and Ms. Nantwi testified that they could not explain how the incident occurred. They testified that before the police arrived at the scene, construction workers working nearby moved the car aside. Ms. Anang stated there was no pre-existing damage to the Toyota until the collision with the guard rail and Ms. Nantwi testified that she did not inspect the vehicle before driving it. Two ambulances arrived and took Ms. Anang and Ms. Nantwi to Humber River Memorial Hospital.

*Guarantee's Accident Reconstruction Evidence:*

Mr. Robert Seaton, an investigator with T.S.I., testified on behalf of Guarantee about the July 30, 2002 incident. He co-authored a report dated November 4, 2002. He reviewed the CRC self-report of Ms. Nantwi, the police report and statements by Ms. Nantwi and Ms. Anang. Mr. Seaton stated that he does collision reconstruction work for T.S.I. and also operates his own accident reconstruction consulting firm conducting collision reconstruction for civil and criminal litigation. He testified that he received motor vehicle accident training while an officer with the Ontario Provincial Police ("OPP"), completing the highest level courses, and coordinated OPP training in the mathematics and physics of motor vehicle reconstruction analysis. Mr. Seaton served nine years with the Toronto Metropolitan Police Service and 13 years with the OPP. He testified that he has been directly involved in over 1,000 reconstruction investigations and is qualified to give opinions on accident reconstruction in Ontario courts. The Applicant did not challenge the qualifications of Mr. Seaton as an expert witness. I accept Mr. Seaton as an accident reconstruction expert.

It was Mr. Seaton's opinion that the alleged accident could not have occurred as described by Ms. Nantwi. He reported and testified that the damage to the front bumper of the Toyota was not consistent

with it striking or being struck by a narrow object or edge, but rather the result of a rectangular object impacting the bumper left of centre. According to Mr. Seaton, this is evidenced by the vertical crease to the left of the rectangular imprint on the bumper as depicted in photographs 1 to 4 attached to his report. Mr. Seaton reported that there are no rectangular projections or objects exposed to traffic on the left side of the exit ramp from the 401 collector lanes where the collision is alleged to have occurred. He explained that the Jersey barriers are smooth-surfaced and the barrier sections are installed edge-to-edge. Mr. Seaton referred to the barriers on the left side of the highway, which the Toyota is alleged to have struck, as Jersey barriers, the same structures Ms. Anang and Ms. Nantwi called guard rails.

Regarding the mechanics of the July 30, 2002 accident, Mr. Seaton noted from the background information that the Toyota was alleged to have been travelling at between 30 and 45 km/hr., which is below the advisory speed of 70 km/hr. He further noted that the Toyota was alleged to have just completed the left curved portion of the ramp and had reached the straight area of the ramp when the Toyota was alleged to have turned and hit the Jersey barrier. Mr. Seaton testified that at the speed the Toyota was travelling on a left curve it would not have driven off the road because the lateral sideway forces would be greater than the forward forces and would have prevented this from happening.

Mr. Seaton also noted there is no evidence of any human or mechanical factor that might have caused the Toyota to go out of control. There were no skid marks on the road or other evidence of breaking; no evidence of uneven wear on the tires which would suggest balance joint problems or a steering deficiency. The air bags did not deploy, which according to Mr. Seaton, can occur at speeds of 12 to 19 km/hr. with frontal or near frontal impact.

Mr. Seaton concluded that the damage to the Toyota is inconsistent with Ms. Nantwi's and Ms. Anang's descriptions of how the damage occurred.

Mr. Kodsi of Origin also gave evidence about the July 30, 2002 incident. He reviewed the T.S.I. and police reports and the statements of Ms. Nantwi and Ms. Anang. He noted that, were the alleged accident to have occurred as described by Ms. Nantwi and Ms. Anang, one would expect a shallow angle contact of from 15 to 45 degrees between the Toyota and the Jersey barrier with impact, making front end damage to the car unlikely. In Mr. Kodsi's opinion, the damage to the Toyota would have to have occurred at a 90 degree angle. Mr. Kodsi corroborated Mr. Seaton's view that the localized damage to the front bumper and the top of the hood is inconsistent with the Toyota hitting a Jersey barrier and more consistent with it hitting a pole. He further explained that if Ms. Nantwi had lost control of the Toyota as she described, the car would have side swiped the barrier, and it would have been impossible for the Toyota to hit the barrier at a right angle under the circumstances.

### **Reasons for Decision:**

I find the evidence presented by the Applicants in respect of both incidents to be unreliable and generally implausible.

Regarding the July 15, 2002 incident, I do not accept the description by the three Applicants of the circumstances surrounding the alleged collision. I found their evidence lacked the ring of truth that characterizes credible evidence. Neither Ms. Quarshie nor Ms. Ampomah had much to say about the incident, except to say that they felt the impact. Ms. Quarshie was looking in another direction at the time of impact and Ms. Quarshie had her eyes closed listening to her "Walkman." Ms. Anang had the most to say about what allegedly happened and how the damage to her van occurred, but even her evidence was scant and what she did offer, I find, did not seem reasonable. On cross-examination Ms. Anang conceded that she could not explain how the accident happened. She could not explain to my satisfaction how the Ford, which was travelling northbound on Blackstone and turning left (westbound) onto Lawrence, could hit her van along the driver's side after she had travelled southbound on Blackstone and was in the process of executing a right turn (westbound) onto Lawrence.

Adding to the confusion is the fact that the driver of the Ford, who the Applicants say they did not know, described the alleged accident in an entirely different way. He said that Ms. Anang's van hit his car at a 90 degree angle on its right side while his Ford was travelling westbound on Lawrence.

Mr. Hawkyard's and Mr. Kodsi's evidence echo my concerns about the plausibility of Ms. Anang's and the other Applicants' accounts of the alleged accident. Both experts conclude, among other things, that the nature of the damage to Ms. Anang's van and the Ford is inconsistent with Ms. Anang's account, and inconsistent with the Ford driver's report. Guarantee's expert witnesses concur that the horizontal scrape marks and other damage to the left side of Ms. Anang's van is consistent with contact with a rough surface and inconsistent with Ms. Anang's account of the incident. Ms. Anang, Ms. Quarshie and Ms. Ampomah deny contact by the van with a rough surface. The damage to Ms. Anang's van is also inconsistent with the front of the van hitting the right side of the westbound Ford at right angles. The account in the Ford driver's report does not explain the damage to the left side of the van.

I therefore conclude in these circumstances that Ms. Anang, Ms. Quarshie and Ms. Ampomah were not injured in an accident on July 15, 2002 within the meaning of subsection 2(1) of the *Schedule* and are therefore precluded from proceeding to arbitration.

I turn next to the July 30, 2002 alleged accident. Again, Ms. Anang, who was a passenger in the Toyota, and Ms. Nantwi, the driver, provided little information about the alleged incident. They could not explain to my satisfaction how the Toyota, which was travelling 30 to 45 km/hr. on the highway ramp, spun out and collided with the left roadside barrier under circumstances where the weather was clear and there is no evidence of human or mechanical failure. Ms. Anang and Ms. Nantwi conceded that they could not explain what happened to cause the Toyota to leave the road.

Again, I find the evidence about the alleged accident on July 30, 2002 lacks credibility and plausibility. I am fortified in this view by the evidence of Mr. Seaton and Mr. Kodsi who concur that the damage to the Toyota is inconsistent with Ms. Nantwi's and Ms. Anang's accounts of the Toyota hitting the barrier. Both expert witnesses testified that the damage to the front bumper and top of the hood is localized and appears to be the result of a collision with an object like a pole at a 90 degree angle and is therefore inconsistent with the Toyota hitting a highway barrier. If the collision were to happen as described by Ms. Anang and Ms. Nantwi, according to Mr. Kodsi, it would be expected that the impact with the barrier would have been at a narrower angle. Mr. Seaton and Mr. Kodsi further concluded, and I accept as reasonable, that it is not likely that the Toyota, travelling at 30 to 45 km/hr. on the ramp, would go out of control and collide with the barrier at right angles. It would more likely side swipe the barrier. Mr. Seaton also testified, and I find persuasive, that at the speed the Toyota was travelling, the strength of the lateral sideways forces would have likely prevented the car from leaving the road at all.

I therefore conclude that Ms. Anang was not injured in an accident on July 30, 2002 as required by subsection 2(1) of the *Schedule* and is therefore precluded from proceeding to arbitration.

**EXPENSES:**

The parties made no submissions as to expenses and I invite them to settle this matter among themselves, failing which they can request an assessment of expenses hearing.

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Beth Allen  
Arbitrator

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March 11, 2004

Date

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**BETWEEN:**

**CORNELIA ANANG and GEORGINA AMPOMAH and AGNES QUARSHIE**

**Applicants**

**and**

**GUARANTEE COMPANY OF NORTH AMERICA**

**Insurer**

### **ARBITRATION ORDER**

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Ms. Anang, Ms. Ampomah and Ms. Quarshie were not injured in an accident on July 15, 2002 within the meaning of subsection 2(1) of the *Schedule*.
2. Ms. Anang was not injured in an accident on July 30, 2002 within the meaning of subsection 2(1) of the *Schedule*.

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Beth Allen  
Arbitrator

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March 11, 2004

Date