

INSURANCE LAW BULLETIN

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The Court of Appeal's Decision in *Bruinsma v Cresswell*
Application of Statutory Conditions to Uninsured Auto Coverage

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***Bruinsma v Cresswell*, 2013 ONCA 111**

In February, the Ontario Court of Appeal upheld the Superior Court of Justice's ruling that the automobile statutory conditions do not apply to s. 265 uninsured automobile coverage.

The Plaintiff, Bruinsma and the Defendant, Cresswell were involved in motor vehicle accident. The Cresswell vehicle was uninsured. Section 265 of the *Insurance Act* requires that all auto insurance policies provide uninsured automobile coverage. In the normal course, the Plaintiff's insurance company, CAA, would be liable to cover any amount that Cresswell was found liable to the Plaintiff, subject to the policy limits. However, CAA denied coverage on the basis that the Plaintiff was driving without a valid license and therefore was in breach of statutory condition 4(1). This condition, found in s 8 of the OAP 1, states:

The insured shall not drive or operate, or permit any other person to drive or operate, the automobile unless the insured or other person is authorized by law to drive or operate it.

CAA also relied on s. 1.4.5 of the OAP 1, which has nearly identical wording. Section 234(3) of the *Act* provides that the statutory conditions do not apply to uninsured auto coverage:

Except as otherwise provided in the contract, the statutory conditions referred to in subsection (1) do not apply to the insurance required by section 265 or 268

However, s. 10 of Ontario Regulation 676 states that:

In so far as applicable, the general provisions, definitions, exclusions and statutory conditions as contained in a motor vehicle liability policy also apply to payments under the contract under subsection 265(1) of the Act

Therein lies the disagreement at issue in the appeal: do the statutory conditions, including the requirement that the driver be authorized by law to operate the vehicle, apply to uninsured

automobile coverage as suggested by s. 10 of Regulation 676 or are they inapplicable pursuant to s. 234(3) of the *Act*?

The Court of Appeal held that the statutory conditions do not apply to uninsured auto coverage and therefore the Plaintiff was not disentitled to coverage. First, the Court found that the provisions relied on by CAA to deny coverage, statutory condition 4(1) and s. 1.4.5 of the OAP 1, are both statutory conditions. As a result, they do not apply to uninsured auto coverage pursuant to s. 234(3). Second, the Court found no conflict between s. 10 of Regulation 676 and s. 234(3). Key to this finding is the wording of s 10, which begins with “in so far as applicable.” This means that this provision is subject to s. 234(3). By enacting s. 234(3), the Legislature was signifying that the statutory conditions are not applicable to uninsured auto coverage unless the contract explicitly “otherwise provides.” The Court held that nothing in the OAP 1 contract “otherwise provides” for the application of the statutory conditions.

Commentary

In light of this decision, an insurer cannot deny uninsured auto coverage to an insured who has breached the auto statutory conditions. Although s. 1.4.5 of the OAP 1 seems to indicate that either operating an automobile or allowing it to be operated when “not authorized by law” may disentitle an insured to coverage under the policy, this does not apply to uninsured auto coverage. It is a statutory condition and therefore does not apply to this coverage, pursuant to s. 234(4) of the *Act*. Additionally, nothing in the OAP 1 provides that the statutory conditions apply to the uninsured auto coverage. As a result, there is currently no argument to deny this type of coverage on the basis the insured was non-compliant with the statutory conditions.