

Don't Hope for the Contractual Interpretation Stars to Align (and Ensure Your Fleet Reporting is in Order Instead)

Litigation | Litigation & Dispute Resolution | Transportation and Logistics

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The decision of *West York Sales and Leasing Inc. v. The Dominion of Canada General Insurance Company*, 2025 ONSC 3845 is a recent interesting case in the Superior Court of Ontario dealing with coverage under fleet insurance policies.[1] This case should be of concern to carriers who may have equipment interchange agreements with other trucking companies or leased equipment from various sources. The decision underscores the importance of a carrier knowing which vehicles are covered by which policy of insurance and ensuring that they are in compliance with their reporting requirements at every stage.

A vehicle leasing company, West York Sales and Leasing Inc. ("**West York**"), brought an application seeking a declaration that it was entitled to a defence and indemnity for a personal injury action pursuant to an O.A.P. 1 Automobile Liability Insurance Policy (the "**Policy**") issued by The Dominion of Canada General Insurance Company, d.b.a. Travelers Canada ("**Travelers**").

The action involved a pedestrian struck by a vehicle (the "**Vehicle**") on 25 August 2020. The Vehicle was owned by West York and leased to 8182485 Canada Inc. o/a Platinum Car and Truck Rental ("**Platinum**") who in turn rented the Vehicle to an individual. At the time of the accident, that individual had loaned the Vehicle to a second individual who was driving at the time the pedestrian was struck. As is often the case, the incident in question occurred within weeks of the end date of the Policy. Platinum did not notify Travelers of the accident after it occurred.

The Policy included West York and Platinum as insureds for one year commencing on 15 September 2019. It was placed through Platinum's broker Baird MacGregor ("**Baird**") and a certificate of insurance ("**COI**") was issued to West York by Baird.

Familiar to any company involved in the trucking industry, the Policy covered "all vehicles owned by, licensed or leased to the insured, as per attached OPCF 21A Monthly Reporting Basis Fleet". The terms of that OCFC 21A form provided that on or before the fifteenth day of each month during the policy period, the insured should provide to the insurer a statement of the actual vehicles for the preceding month after which the premiums would be calculated (the "**Monthly List**").

Since Platinum first obtained the Policy in 2012, it forwarded a Monthly List for the Policy to Baird. Baird would take the Monthly List, calculate the premium, and send the same to Travelers. Baird then retained each Monthly List to produce on request by Travelers. The Vehicle was part of the Monthly List as of 2017, when it was acquired by Platinum. It then disappeared from the June 2019 Monthly List, and reappeared on the Monthly List for August 2020, indicating it as having been "received" on 15 August 2020.

The Monthly List for August 2020 was received by Baird on 29 September 2020, two weeks after the deadline for that Report. The action was commenced on 17 August 2022, with West York being served on 19 August 2022, and Platinum on 21 August 2022. Travelers was only made aware of the accident on 10 July 2023, almost three years later, when West York's insurer Aviva contacted them.

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In October of 2023, Travelers denied coverage for the accident because the Vehicle was not added to the Policy until after the accident date. The letter was sent to Platinum and copied to Baird, but no letter denying coverage was sent to West York and no premiums paid for the Vehicle were ever refunded.

According to section 1.1 of the Policy, the contract of insurance was comprised of the Policy itself, the certificate of insurance, and the application for insurance. There was no application in this case and the Court determined that the Monthly Lists submitted by Platinum therefore did not form a part of the Policy. As with standard fleet policies, the Policy allowed for automobiles that were part of the fleet to be put on or off the policy on a monthly basis.

The COI stated that the Policy covered “all vehicles owned by, licensed or leased to the insured” as per the Monthly Lists. The Court determined that the decision hinged on paragraph (c) of the Policy’s attached OCFC 21A form, which stated “it is agreed” that the Policy shall provide insurance with respect to all automobiles that are owned by and licensed in the name of the insured and leased from “all lessors” for a period in excess of 30 days for which the insured is required to provide insurance. The Court accordingly determined that the Vehicle was owned by West York and leased to Platinum and was therefore captured by the Policy.

Travelers argued that West York and Platinum had an obligation to advise Travelers that they were not listing the Vehicle in the Monthly Lists. The Court found that the Policy required monthly reporting after the month the automobile was in use and that it placed no other obligations on West York or Platinum in that respect.

The Court did note that the COI issued to West York appeared to require a monthly report whereby coverage would apply with respect to the vehicles designated. However, it also found that the COI set no timelines or deadlines for this monthly reporting obligation. In any event, West York ultimately had no involvement, as it was Platinum which reported to Baird. The Court found that so long as a Monthly List was made in which designated vehicles were included, West York would be covered on the face of the Policy.

One wrinkle in the proceeding was the delay in payment of the premiums for the month in which the accident occurred. On this point, the Court determined that that the delayed payment of the premium did not have a significant impact on Travelers, as Platinum had paid a premium deposit at the commencement of the Policy to cover such an eventuality.

Statutory conditions for the Policy required Platinum, among other things, to (1) promptly notify the insurer, or its agent, of any change in the risk material to the contract and within the insured’s knowledge; (2) provide written notice of any accident involving loss or damage to persons or property and any claim made as a result; (3) if there was loss or damage to an automobile that was covered, provide the insurer with notice in writing of the loss or damage within 90 days; and (4) obtain prior written consent of the insurer before performing any physical repairs. As discussed above, Platinum did not report the accident to Travelers, and it also had the Vehicle repaired afterwards.

In the Court’s view, in order for the failure to report in accordance with the statutory conditions above to impact coverage, Travelers would need to show a change in risk material to the contract which arose from that failure. Here, the Court found that there was no material change in risk, as the Policy was a fleet policy for rental vehicles. As such, there was no change in risk occasioned by one of those vehicles being involved in an accident.

Further, West York only received notice of the accident through Aviva, and never received a formal denial of coverage from Travelers. The Court found that West York, having no knowledge of the accident, could not have breached the reporting requirements under the statutory conditions. Therefore, Travelers could not deny coverage on those grounds.

Importance of the Decision to Fleet Policy Holders

A combination of the wording on the certificate of insurance, the Policy itself, and the circumstances of the loss and its reporting ultimately operated to provide coverage for West York. That said, litigation is expensive and preparation is preferable to luck every time. A carrier should not hope that a complex court proceeding and contractual interpretation principles will provide the coverage that it has paid for. A carrier needs to know its fleet policy and what is required of it by its broker and insurer, and should ensure that brokers and underwriters are informed of changes in a timely fashion.

If a carrier is involved in equipment interchange agreements, or is leasing vehicles to or from other carriers, they should ensure that whatever agreements are in place have included them as an insured under the relevant policy, and should endeavour to obtain copies of the relevant policy documents. It is dangerous for any carrier to assume that they are covered under another company’s insurance policies and such carriers will find a court unsympathetic if they failed to verify coverage. A carrier may find itself facing a claim for events in which it had no involvement and for vehicles it believed were covered by another party’s insurance. A carrier could easily find itself on the hook not only for the expense of defence counsel but possibly a sizeable award if liability is found. A PDF version is available for download [here](#).



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[1] The author concedes that individual definitions of “interesting” will vary.

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