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Insurers Fight to Avoid Paying Accident Benefits: Ontario Car Accident

The Issue: If you are riding in a friend's car and are hurt in a car accident, then do you apply to your friend's car insurer for Accident Benefits or do you apply to your own insurer?

Why This Matters: No one likes to make a claim against their own insurance company, as everyone generally is concerned about their car insurance premiums increasing.

So if your car is sitting at home and your friend gives you a ride, if you are hurt, whose insurance company will pay your Accident Benefits?

What if you apply to your friend's insurance company for Accident Benefits? Can that insurer, in turn, make a claim to your own insurer for reimbursement?

Background Information

In Ontario, when you are involved in a [motor vehicle accident](#), you are entitled to receive Accident Benefits - a minimal level of benefits - from your own insurer unless you fall into a specified exemption.

You receive these Accident Benefits regardless of who is 'at fault' for the accident - the driver who caused the accident qualifies for the same entitlement of Accident Benefits as the innocent driver.

Usually you apply to your own insurer for Accident Benefits. If you don't have a car and have no access to car insurance, then you apply to someone else's insurance company for Accident Benefits, depending on how the motor vehicle accident occurred. Pedestrian knockdowns, riding as a passenger in your friend's vehicle, being a passenger on a Greyhound bus - they all have different possibilities as to which insurer will be your Accident Benefits provider.

This is part of Ontario's system of allowing private insurers to offer car insurance for profit, but having the responsibility to over what is in essence a universal Accident Benefits regime, for anyone being hurt in an accident involving a vehicle. As part of the system, companies can try to shift obligations to pay upon one another, without negatively affecting the injured person.

The Case Review - Waterloo Ins v. Wawanesa Mutual

In the case of *Waterloo Insurance v. Wawanesa Mutual, CanLII - 2014 ONSC 533 (CanLII)*, the dispute was over a motor vehicle accident which happened in 2006, in which the injured plaintiff was a passenger in his friend's vehicle. Thus, the plaintiff made an application for Accident Benefits to his friend's insurance company, Waterloo Insurance, and started receiving benefits.

Waterloo Insurance diligently asked and noted that the plaintiff's wife apparently had a vehicle which was actively being driven at the time of the accident - but despite this, did not obtain particulars of the wife or her car or insurance company in a timely manner.

This is important, as insurers have a 90 day window to diligently investigate whether they can 'pass on' the responsibility for paying Accident Benefits - which is a priority dispute - to another insurer. The first insurer has to make timely efforts to locate the other possible insurer and send over a notice, indicating that the request to transfer over responsibility for payment of Accident Benefits is being made, within 90 days.

The problem for Waterloo Insurance was that they waited approximately 150 days from this accident, and approximately 115-120 days after receiving what was arguably a 'completed application', to make this Loss Transfer application request - i.e. thereby waiting longer than the stipulated 90 day period.

So Waterloo Insurance argued, in the Arbitration dealing with this inter-insurer dispute, that they did not receive a 'completed application' for a few months, thereby delaying the start of the 90 day period to make the loss transfer application - i.e. so they were compliant with this requirement.

In this case, this dispute between insurers went to an experienced Arbitrator, whose decision was appealed to this Court.



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Justice Chiappetta overturned the Arbitrator's decision on this appeal, finding that Waterloo had early notice of the potential existence of another insurer (i.e. Wawanesa), to whom they could pass on the responsibility for paying the Accident Benefits claim, but did not investigate nor make a claim in time.

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