



O.A.P. 1 Automobile Liability Insurance Policy, bearing policy number 1570225, and later changed to policy number 3093243 (“the Policy”) issued by the Respondent, The Dominion of Canada General Insurance Company, d.b.a. Travelers Canada (“Travelers”). In particular, it seeks a defence with respect to claims made against West York in an action commenced in the Superior Court of Justice, bearing file no. CV-22-00002356-0000 (“the Action”).

[2] West York also seeks associated orders that include that Travelers must defend and indemnify West York, that West York can retain and instruct counsel of their choice, and that Travelers indemnify it for all its costs as of July 10, 2023.

**A. Facts**

[3] For the most part, the underlying facts on this Application are uncontested.

[4] At the heart of this application is a claim for coverage in the Action. In the Action, it is alleged that on August 25, 2020, a pedestrian was struck by a 2017 Honda Civic (“the Vehicle”) driven by Orlando Blair (“Blair”). The Vehicle was owned by West York. At the time of the accident though, West York had leased the Vehicle to 8182485 Canada Inc., o/a Platinum Car and Truck Rental (“Platinum”), whose lease commenced in February 2017, for a four-year term. On August 24, 2020, Platinum had rented the car to Sean O’Neil Wright. On

August 25, 2020, Mr. Wright loaned the Vehicle to Blair, and Blair was driving at the time the pedestrian was struck.

[5] At the relevant time, the Policy was in place between Platinum and West York, as insureds, and Travelers as the insurer, for a one-year period commencing on September 15, 2019. It was arranged through Platinum's insurance broker Baird MacGregor ("Baird"). The Policy was subject in all respects to the Ontario Automobile Policy (OAP 1). The Policy covered "all vehicles owned by, licensed or leased to the insured, as per attached OPCF 21A Monthly Reporting Basis Fleet."

[6] The Policy was a particular type of insurance that covered a fleet of rental vehicles. OPCF No. 21A, also called "Monthly Reporting Basis Fleet", addressed the particularities of insuring a fleet. The relevant clauses in OPCF No. 21A are as follows:

It is agreed that:

(a) The Policy shall provide insurance with respect to all automobiles licensed or required to be licensed in Ontario which are:

- (i) owned by and licensed in the name of the insured;
- (ii) leased from the following lessor(s) for a period in excess of 30 days on which the insured as lessee is required to provide insurance under a written lease agreement;

*Lessor(s) Name(s) and Address(es)*

All Lessors

.....

(c) The schedule of automobiles filed with the insurer includes all automobiles, as set out in (a) above, at the effective date of the Policy or renewal.

NO COVERAGE IS PROVIDED BY THIS CHANGE FORM ON ANY AUTOMOBILE OWNED OR LEASED BY THE INSURED PRIOR TO THE EFFECTIVE DATE OF THE POLICY WHICH IS NOT INCLUDED ON THE SCHEDULE OF AUTOMOBILES FILED WITH THE INSURER UNTIL A REQUEST FOR COVERAGE HAS BEEN FILED WITH THE INSURER.

(d) the total premium stated in the Policy is an advance premium only and is due and payable at the effective date of the Policy.

(e) The premium for this Policy is based on the following rates per Automobile Per Month and the estimated total of

...

for the policy period is Based on Fifty One (51) Vehicles Reported Monthly.

(f) On or before the fifteenth day of each month during the policy period the insured shall render to the insurer a statement of the actual amount of Receipts  Mileage  Other  (State the Applicable Basis of Rating) for the preceding month. Upon receipt of this statement (from the insured) the earned for the preceding month. Upon receipt of this statement (from the insured) the earned premium shall be computed monthly by applying the rates specified in paragraph (e) and is due and payable as agreed between the insurer and insured.

[7] In paragraph (e) above, the phrase “based on Fifty One (51) Vehicles Reported Monthly” was identified as the “Applicable Basis of Rating.” In other words, the monthly report was for the vehicles used, not for the amount received, or for the mileage used. Accordingly, paragraph (f) is read to say that on or before the fifteenth day of each month during the policy period, the insured shall render

to the insurer a statement of the actual vehicles for the preceding month. When that statement is sent, the premiums are calculated. This interpretation is also supported in *Lombard Canada Ltd. v. Zurich Insurance Company*, 2010 ONCA 292, 101 O.R. (3d) 371, at para. 41.

[8] As well, there was a Certificate of Insurance addressed to West York, which states:

#### **DESCRIPTION OF OPERATIONS**

This policy is subject to monthly reporting whereby coverage shall apply with respect to vehicles designated on monthly reports submitted to the Insurer by the Policyholder. It is the responsibility of the Lessor/Lienholder to verify accuracy of monthly reports to ensure the Lessor's/Lienholder's interests are properly protected.

[9] This Certificate of Insurance is subject to the Policy.

[10] Throughout the period of the Policy, Platinum followed the practice of forwarding a monthly list of its fleet to Baird, who would take the fleet list, calculate the premium and send the premium on to Travelers. Baird retained the list of vehicles in its records, until and if they were requested by Travelers. This was the practice from 2012 when Platinum first obtained insurance coverage from Travelers.

[11] Baird indicates that they checked their records, and the Vehicle was part of the monthly fleet report as of 2017, when it was acquired by Platinum. I have also received evidence that the Vehicle was listed on the monthly fleet report for May 2019, and was listed as “received” on February 15, 2018. It then disappeared in the June 2019 monthly fleet report. When it reappeared on the August 2020 monthly fleet report, the Vehicle was indicated as “received” on August 15, 2020.

[12] As indicated, Mr. Oliver was driving the vehicle on August 25, 2020, when it was involved in the accident. Travelers was not notified of the accident. The monthly fleet report for August 2020 (“August Report”) was received by Baird on September 29, 2020. The August Report lists the Vehicle and indicates that the Vehicle was “received” on August 15, 2020. A total of 50 vehicles were listed. Baird used this report to calculate the premiums due and owing to Travelers for August 2020, which were \$7,540 that month. The premium for the fleet list which included the Vehicle, were paid. The premiums were not rejected, nor coverage denied at that time, due to the late filing of the August Report.

[13] The Action was commenced on August 17, 2022. West York was served on August 19, 2022, and Platinum was served on August 21, 2022. Travelers was made aware of the accident on July 10, 2023, almost 3 years after

the accident when Travelers was contacted by Aviva Insurance Company (“Aviva”), who was also the insurer for West York. West York (through Aviva) took the position that Travelers had a duty to defend West York in priority to Aviva’s duty to defend. Coverage was denied by Travelers by a letter dated October 17, 2023, addressed to Platinum, and copied to Baird. In that letter, Travelers denied coverage because the Vehicle was not added to the Policy until after the accident. No premiums paid for the Vehicle were ever refunded. No letter denying coverage was ever sent to West York.

**B. Issues**

[14] If I determine that the Vehicle was covered by the Policy, all parties agree that it will trigger Travelers’ duty to defend.

[15] In order to determine whether the Vehicle was covered, I must decide the following questions:

- a) Was the Vehicle part of the Policy on the date of the Accident?
- b) If not, can the Vehicle be added to the Policy by being added to the fleet through the monthly reporting requirement?
- c) Can coverage be denied because the monthly fleet report was 14 days late?

- d) Can the coverage be denied due to breaches of the Statutory Conditions?

**C. Analysis**

[16] The response to these issues rests on the interpretation of the Policy.

[17] According to s. 1.1 of the OAP 1, a contract of insurance is comprised of the policy, the certificate of insurance, and the application for insurance. In the case before me, there is no application. The OPCF 21A is an important part of the policy of insurance in this case.

[18] When interpreting a contract of insurance, I must follow a two-stage process. First, I am to consider the contract itself, and determine if its meaning is plain on its face. If so, I am not to consider any subjective intent of the parties or the surrounding circumstances. Second, if there are two possibly reasonable interpretations of the contract, it is ambiguous. Then I may consider extrinsic evidence, and the applicability of *contra proferentem*. At this second stage, the onus is upon the insured to show that the loss is covered by the policy in question. Once the insured has done so, the burden shifts to the insurer to show otherwise, including by reason of the operation of an exclusion or limitation in the insurance contract. In interpreting a provision, the court will also recognize that coverage

provisions are "construed broadly and exclusion clauses narrowly": *Lombard*, at paras. 33-34 (citations omitted).

[19] Also, when at the second stage, I should adopt the interpretation that gives effect to the reasonable expectations or intentions of the parties: *Onex Corporation v. American Home Assurance Company*, 2013 ONCA 117, 114 O.R. (3d) 161, at para. 108 (citations omitted).

[20] An insurance contract must be considered in light of its purpose. The purpose of fleet insurance is set out in *Lombard*, at para. 36:

...The purpose of fleet insurance is not in dispute. As applicable here, fleet insurance provides coverage to the driver, rental company and lessor for a fleet of cars. By its nature, the rental cars in a fleet change frequently by reasons of addition and attrition. Rather than re-issuing the Certificate of Automobile Insurance on a monthly basis to accommodate such a changeover, a fleet Endorsement substitutes a requirement for the filing of a monthly fleet report with the insurer.

[21] A monthly fleet report itself is not part of the contract. Absent an ambiguity, it cannot be considered part of the interpretative process: *Lombard*, at para. 27.

***Issue 1: Was the Vehicle Covered by the Policy as of the Accident?***

[22] This issue can be determined by the plain meaning of the Policy, on its face.

[23] On the first page of the Certificate of Insurance, it states that it covers “all vehicles owned by, licensed or leased to the insured, as per attached OPCF 21A Monthly Reporting Basis Fleet.”

[24] It is uncontested that at the relevant time, the Vehicle was owned by West York and was leased to Platinum. Accordingly, a review of OPCF No. 21A is required.

[25] Paragraph (a) of the OPCF No. 21A states that “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. Again, it is uncontested that the Vehicle was owned and licensed in the name of the insureds. The Vehicle was also leased for more than 30 days, and insurance was required by West York. Accordingly, the Vehicle is captured in paragraph (a).

[26] Paragraph (b) of OPCF No. 21A then provides what type of coverage they would provide to those automobiles covered in paragraph (a), subject to any deductible.

[27] Then, paragraph (c) becomes critical. It states that “it is agreed” that the schedule of automobiles filed with the insurer *includes* all automobiles, as set out in paragraph (a), at the effective date of the “Policy or renewal” (emphasis mine). This paragraph defines what is in the schedule of automobiles. Accordingly, if the Vehicle was included in paragraph (a), which I have found that it is, and it was as of September 15, 2019, which it was, then by the clear wording of paragraph (c), the Vehicle *is* part of the schedule of automobiles covered by the Policy.

[28] Based on this interpretation of the OPCF No. 21A, the bold wording in paragraph (c) is not relevant. It states that no coverage is provided for any automobile not included in the schedule of automobiles unless a request for coverage is filed. Given that I find that the Vehicle is, as defined by OPCF No. 21A, part of the schedule of automobiles, no request for coverage is required.

[29] I must then consider the Certificate of Insurance issued by Baird. Under “Description of Operations” it states that coverage shall apply with respect to vehicles designated on monthly reports submitted by the Insured to Travelers. The monthly fleet report required in paragraph (f) is the only monthly report set out in the Policy. In this case, the Vehicle was placed on the monthly report for the month of August 2020.

[30] In its affidavit, Travelers states that since the Vehicle was not listed on the monthly report on September 15, 2019, there was no coverage for it. It further states that the Policy is such that newly acquired vehicles by sale or lease can be added to the policy if reported on the 15<sup>th</sup> of the month thereafter, a “grace period.” In those cases, they do not need pre-approval.

[31] As I indicated the Vehicle was part of the schedule of automobiles, as defined in the OPCF 21A as of September 2019. That is the reason no pre-approval was required.

[32] The parties disagree as to why the Vehicle was removed from the monthly fleet report. Baird stated in its affidavit that it was advised that in June 2019, the Vehicle experienced engine failure, and as a result, it was taken off the road. It had to undergo extensive repairs, which repairs were delayed by the pandemic. West York also argues that Travelers provided “premium/report relief” to Platinum and other insured from March 2020 to June 2020 for cars not on the road, during the early months of the pandemic. When the Vehicle was repaired, it was returned to the fleet in August 2020, and rented out on August 24, 2020. The first rental was to Mr. Wright.

[33] Travelers contests West York’s evidence regarding the engine failure, saying it is based on double hearsay. It has no independent or firsthand evidence

that the Vehicle was off the road, or why. It is uncontested though, that throughout this period, Platinum continued to lease the Vehicle from West York.

[34] There is no reason for me to determine why the Vehicle was off the road. Clearly, the Policy allows for automobiles that are part of the fleet to be put on or off the policy on a monthly basis. That is the reason for such a policy, as set out in *Lombard*.

[35] The reason for Travelers' denial of coverage was made clear in the cross-examination of its representative:

Q. Okay. So then does that mean that for this policy to work the way it's supposed to work, Platinum has to submit the inventory and then put the vehicle on the road? Is that your understanding, meaning that if the -- let's say they acquired a new vehicle in between reporting periods, right, so they submit their report on the 15th of the month, they get a new vehicle on the 16th of the month, they cannot put that vehicle out on the road and have it covered until the following month when the inventory is submitted. That seems odd, if it's an inventory that's submitted to retroactively confirm the inventory, that would be strange to me if that was the expectation, but is that your understanding?

A. So the way the policy works is if you newly acquire a vehicle, you put it on the policy, then you take it off, you cannot put it back onto the policy only after an accident has occurred. That is not how the policy works.

[36] The inference by Travelers is that Platinum was leasing their vehicles uninsured, and then only put it on the list when it was involved in an accident and realized it needed to make a claim. First, there is no evidence to support this inference. Secondly, it makes no sense as the wording of the Policy makes it

clear that if a Vehicle is leased by Platinum from “all lessors”, which in this case was West York, it is automatically part of the schedule of automobiles, and only subject to the monthly report. The first opportunity to include the Vehicle would have been in the August Report, which they did, albeit late. There was no evidence that Platinum intended to omit the Vehicle from the August Report, but for the accident.

[37] Travelers also states in its affidavit that West York and Platinum had an obligation to advise Travelers that they were not listing the Vehicle in the monthly reports. Travelers did not know that Platinum was leasing the Vehicle again in August 2020.

[38] That is not what the Policy states. The Policy requires monthly reporting *after* the month the automobile was in use. There is no other obligation specified.

[39] What about the Certificate of Insurance issued to West York? It appears to specifically require a monthly report whereby coverage shall apply with respect to the vehicles designated.

[40] In *Lombard*, the court had a similar Certificate of Insurance in place. It pointed out that the Certificate of Insurance was between the insurer Zurich

(which stood in the same place as Travelers in this case), and the owner of the vehicles, Tracmount/Glojack Leasing (which stands in the same place as West York in this case). Accordingly, it was not part of the contract of insurance between Choice Car and Truck Rental (which stands in the same place as Platinum in this case) and Zurich. As such, it cannot help interpreting the monthly reporting requirement of Choice (or Platinum in this case): at para. 28-31, 46.

[41] In any event, this Certificate sets no timelines or deadlines for a monthly reporting obligation, over which West York has no involvement. As long as there is a monthly report made, designating certain automobiles, West York appears to be covered. West York has admitted that it did not verify the accuracy of the monthly reports to make sure all its leased cars were listed on it. In a cross-examination of a representative of Travelers, it was admitted that Travelers is not denying coverage to West York because of its failure to do so.

[42] Accordingly, subject to my finding on the next issues, the Vehicle was covered by the Policy as of the date of the accident.

***Issue 2: Can the Vehicle be added to Policy?***

[43] This issue is moot as I have found that the Vehicle was part of the Policy.

***Issue 3: Is Coverage invalid Because the Fleet Report was 14 days late?***

[44] I have found that the monthly fleet report was not part of the Policy. It served the purpose of calculating the premium owed each month and specified the cars in use from the fleet for that month. The Policy set out that premiums were based on the number of automobiles listed on the monthly fleet report. If the automobile listed otherwise satisfied the requirements of OCPF 21A, it was covered.

[45] With respect to the payment of premiums, it does not appear that the deadline of the 15<sup>th</sup> held any significance to the parties throughout their relationship. Travelers provided the monthly fleet reports from September 2019 to September 2020, to show that the Vehicle was not listed until the September 2020 report. What is evident from these thirteen reports though, is that during this period, nine of them were submitted beyond the 15<sup>th</sup> of the month. For the others, there was no date stamp at all, so it is not known what day they were received. While I have no evidence that any of the cars listed in that year were involved in an accident, there is no evidence that coverage was denied for any of these vehicles for those months in which the report was late.

[46] Also, I do not believe the delayed payment has any significant impact. There was no notice provided by Travelers that the coverage was in jeopardy.

Also, when the Policy commenced, Platinum paid a premium deposit of \$35,250 to Baird, which was held by Baird to cover in the event of any late payment or non-payment to Travelers. This premium deposit was many times more than what was owed by Platinum for that month. Again, this premium was never returned.

[47] Accordingly, the fact that the premium was paid late did not impact the Vehicle's coverage for the month of August 2020.

***Issue 4: Can the coverage be denied because of a breach of the Statutory Conditions?***

[48] It is clear that despite Platinum knowing about the accident on August 25, 2020, it did not report it to Travelers. Platinum paid for repairs to the Vehicle on September 19, 2020. They did not seek reimbursement of these expenses through Travelers. Instead, they listed the Vehicle on the August Report, and paid the premiums.

[49] A number of Statutory Conditions, under Section 8 of OAP 1, are relevant here. Statutory Condition #1 states that the insured must promptly notify the insurer, or its agent, of any change in the risk material to the contract and within the insured's knowledge. Examples of such a risk include if there was a

change in ownership of the insured, if the automobile insurer became subject to an encumbrance, or whether there was any other insurance that covered the same loss. Statutory Condition 5 requires the insured to provide written notice of any accident involving loss or damage to persons or property and any claim made as a result. Statutory Condition 6 states that if there is loss or damage to an automobile that is covered, the insured is to give the insurer notice in writing with the fullest information available at that time. In particular, it requires that the insured deliver within 90 days after the loss, a statutory declaration outlining all the relevant information. No physical repairs are to be done without the written consent of the insurer.

[50] Statutory Condition 7 states:

The notice required by sub condition (1) of statutory condition 5 and sub condition (1) of statutory condition 6 shall be given to the insurer within seven days of the incident but if the insured is unable because of incapacity to give the notice within seven days of the incident, the insured shall comply as soon as possible thereafter.

[51] So, it must be decided if any of these statutory conditions have been breached. If so, I must determine if that is sufficient to deny coverage to West York.

[52] In order to rely on a change in the risk material to the contract, the insurer bears the onus of showing that there is a material change to the risk, that the change was in the control of the insured, and that the insured had knowledge of the change. Materiality is a question of fact: *Jacobelli et al. v. Federation Insurance Co. of Canada et al.* (1975), 7 O.R. (2d) 657 (Ont. S.C.).

[53] In this case, I do not find that Travelers has shown that there was a change in the risk material to the contract. First, I do not believe materiality has been made out. The contract at issue is the Policy. The Policy insures a fleet of rental cars. The risk inherent in the Policy is that one of the rental cars may be involved in an accident. That risk has not changed solely by the fact that a car was involved in an accident. Nothing has been established to show that this type of accident was more likely to occur, and certainly not because of anything within the control of Platinum or West York. I have not found that Platinum was putting cars on the road that were not properly insured under the Policy.

[54] As for Platinum's failure to report the accident, it is clear that it did not do so. As for West York, it has not been established by Travelers that West York had any knowledge of the accident. Therefore, they could not have breached those statutory conditions related to reporting.

[55] Even if West York was bound by the reporting provisions placed on Platinum, the failure to give notice to Travelers on a timely basis amounts to “imperfect compliance” as set out in *Thomas v. Hickey* (1995), 22 O.R. (3d) 331 (Ont. Gen. Div), aff’d (1998), 38 O.R. (3d) 423 (Ont. C.A.). In those cases, West York would be entitled to claim relief from forfeiture: *Kozel v. The Personal Insurance Company*, 2014 ONCA 130, 119 O.R. (3d) 55, at para. 40. In reviewing the claim for relief, any prejudice to the insurer should be considered.

[56] In exercising its discretion to grant relief from forfeiture, a court must consider three factors: (i) the conduct of the Applicant; (ii) the gravity of the breach; and (iii) the disparity between the value of the property forfeited and the damage caused by the breach: *Kozel*, at para. 31.

[57] In this case, there is no evidence that West York did anything improper. It never received any notice of the accident until it was served in August 2022. In fact, it never received any notice of the denial of coverage from Travelers. It learned of the accident through its own insurer Aviva.

[58] As for the gravity of the breach, the degree of prejudice suffered by Travelers should be considered. In *Ideal Roofing Co. v. Royal & SunAlliance Insurance Co. of Canada* (2006), 43 C.C.L.I. (4th) 80, at para. 9, the factors that may be considered prejudicial enough to avoid coverage include the following:

- a) Whether the insurer was prevented from protecting its interests in the case;
- b) Whether the failure to provide notice of suit constituted prejudice as a matter of law;
- c) Whether the entry of adverse judgment against an insured deprived insurer of all opportunity to defend;
- d) Whether the delay precluded an insurer's investigation of claim;
- e) Whether the delay precluded an opportunity to affect an early settlement;
- f) Whether the delay precluded the insurer's participation in pretrial discovery proceedings; and
- g) Whether, during the delay, the insured essentially admitted liability in pretrial proceedings.

[59] In this case, the Action has not yet proceeded past the pleadings stage. The Statement of Claim was amended approximately one year ago. It cannot progress until the issue of coverage is determined. Travelers will have the ability to fully defend this claim, have the right to participate in discovery and

help affect a settlement. While I concede that they did not have the benefit of an immediate investigation into the accident, viewed in totality, the prejudice suffered was not great.

[60] With respect to the disparity between the value of the property forfeited and the damaged caused by the breach, this involves a comparison between the potential loss of coverage and the extent of the damage caused by the breach. In this case, West York may lose coverage of a \$1 million claim, while the breach of the statutory condition caused little prejudice to Travelers. Accordingly, the disparity is enormous and weighs in favour of granting relief from forfeiture: *Kozel*, at paras. 69-71.

[61] Accordingly, while I find there was a breach of the statutory conditions relating to the reporting of the accident, I find that West York is entitled to relief from forfeiture.

***Settlement with Baird***

[62] During the argument of this matter, Travelers submitted that the nature of the settlement between West York and Baird should have been disclosed and that this Application should be stayed as a result.

[63] As no formal request has been put before me, by way of a Notice of Application or a Notice of Motion, I will not decide that issue.

**D. Conclusion**

[64] For the foregoing reasons,

- a) The Application is granted; and
- b) The parties are encouraged to resolve the issue of costs between themselves; if they are not able, the Applicant shall serve and file its written submissions, limited to two pages, plus its Bill of Costs, and any offers to settle, on or before July 11, 2025; the Respondent shall serve and file its written submissions, limited to two pages, plus its Bill of Costs, and any offers to settle, on or before July 25; if it wishes, the Applicant may serve and file written reply submissions, limited to 2 pages, on or before August 8, 2025.

---

Fowler Byrne J.

**Released:** June 30 2025

**CITATION:**, 2025 ONSC 3845  
**COURT FILE NO.:** CV-23-00004838-0000  
**DATE:** 2025 06 27

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

WEST YORK SALES AND LEASING INC.

Applicant

**- and -**

THE DOMINION OF CANADA GENERAL  
INSURANCE COMPANY d.b.a.  
TRAVELERS CANADA

Respondent

---

**REASONS FOR JUDGMENT**

---

Fowler Byrne J.

**Released:** June 30, 2025