

CITATION: Harris v. Stennett, 2025 ONSC 5111
COURT FILE NO.: CV-18-00137003-0000
DATE: 20250908

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Kaijah Harris and Velma Harris) James R. Howie and David J. Levy, for the
) Plaintiffs
Plaintiffs)
)
– and –)
) Robert A. Betts, for the Defendants, Ontario
Lerrell Stennett, Jouvaine Stennett, Ontario) Corporation No. 2151862, c.o.b. as Lux
Corporation No. 2151862 c.o.b. as Lux) Entertainment Inc., Kris Lemanski and John
Entertainment Inc., Ontario Corporation No.) Doe
1718393 c.o.b. as Fortress Security Inc.,)
Ontario Corporation No. 2193511, c.o.b. as) Matthew D. Miller, for the Defendant,
Lions Gate Security Services Inc., Kris) Ontario Corporation No. 1718393, c.o.b. as
Lamanski, John Doe, Allstate Insurance) Fortress Security Inc.
Company of Canada, 2748355 Canada Inc.)
and Ontario Corporation 1722206 c.o.b. as) Michael Burgar, for the Defendant, Allstate
G5 Events Inc.) Insurance Company of Canada
Defendants)
) Paul W. Belanger, for the Defendant,
– and –) 2748355 Canada Inc.
)
The Personal Insurance Company) Paula J. Thomas, for the Statutory Third
) Party
Statutory Third Party)
)
)
) **HEARD:** June 18 and August 12, 2025

REASONS FOR DECISION

DE SA J.:

Overview

[1] The Plaintiffs have brought a motion seeking answers to various outstanding undertakings and refusals made by the Statutory Third Party, The Personal Insurance Company

(hereinafter “The Personal”). The questions/refusals relate to The Personal’s denial of coverage (off-coverage position) with respect to the Defendant, Jouvaine M. Stennett.

- [2] The Personal takes the position that issues of coverage are not relevant to the pleadings, are to be kept separate from the liability proceedings, and a statutory third party is not required to define or explain its position regarding coverage issues during examinations for discovery by any other party to the action.
- [3] While I agree that the coverage issues are distinct from the issues of liability that will be dealt with in the main action, that does not mean that the information sought is not relevant to issues engaged in the litigation (issues of coverage), or that the timely disclosure of the information underlying a denial is not required for the matter to move forward in a logical and efficient manner.
- [4] The Personal are to provide answers to undertakings and refusals as outlined in my original order within 30 days of the release of this decision.
- [5] The reasons for my decision are outlined below.

Summary of Facts

Background

- [6] This action arises out of a single vehicle motor vehicle accident (“the accident”). On August 20, 2016, after leaving the Luxy Nightclub intoxicated, Lerrell Stennett drove her vehicle westbound on Highway 7 West, near its intersection with Kipling Avenue, when she lost control of the vehicle crashing into a pole on the side of the road.
- [7] As a result of the accident, the Plaintiff, Kaijah Harris, who was a passenger in the motor vehicle, was injured. The injuries Kaijah sustained from the accident were catastrophic. Kaijah was only 20 years old at the time.
- [8] The Plaintiffs initiated an action against a number of Defendants which includes the Defendant, Lerrell U. Stennett, as well as Jouvaine M. Stennett, who is the owner of vehicle that was involved in the accident.
- [9] The Personal insured the vehicle of the Defendant, Jouvaine M. Stennett.
- [10] As a result of an investigation, The Personal denied liability under the policy with respect to the Defendants, Jouvaine M. Stennett and Lerrell U. Stennett and, as a result, on January 23, 2019, The Personal was added as a Statutory Third Party in accordance with s. 258 (14) of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, with all the rights available to it under s. 258 (15) of the said Act.
- [11] Allstate is also a Defendant in the action. Allstate provided uninsured, underinsured and unidentified insurance coverage to the Plaintiffs for damages occasioned as a result of the negligence of the owner or driver of an uninsured and/or underinsured automobile.

The Undertakings, Refusals and Under Advisements

- [12] The Examinations for Discovery of The Personal's representative, Debbie Hejno, took place on November 2, 2021. Ms. Hejno serves as the bodily injury adjuster for The Personal.
- [13] Various undertakings, refusals and under advisements, now deemed refusals, were provided at her Examination for Discovery.
- [14] The primary purpose of the discovery was to determine the basis for The Personal's off-coverage position.
- [15] The Personal did provide the Plaintiffs with the general reasons for the denial of coverage, which are the following:
- i. Material misrepresentation
 - ii. Non-cooperation
- [16] At the discovery on November 2, 2021, any questions directed at understanding the factual basis for the denial, including the investigation leading to the denial, were refused.
- [17] If The Personal's off-coverage position is valid, The Personal's exposure to damages is reduced from \$1,000,000.00 to \$200,000.00.

Directions of Pre-Trial and Case Conference judges as to the issue of coverage

- [18] Settlement discussions between the Plaintiffs and the remaining Defendants have progressed and a tentative settlement has been reached with the Defendants, Lux Entertainment, Kris Lemanski, G5 Events Inc., Fortress Security and 2748355 Canada Inc. (collectively, "the Corporate Defendants"). This would allow the claim to be dismissed as against Allstate (the OPCF 44 carrier) and carry on only against the Stennetts and The Personal.
- [19] The only practical issue remaining is whether The Personal would owe the Plaintiffs \$1,000,000.00 or only \$200,000.00. In other words, the only remaining issue of substance is whether The Personal's off-coverage position is valid.
- [20] The Personal was asked to agree that the Plaintiffs be permitted to finalize this agreement with the Corporate Defendants and move directly to address the coverage issue by way of resumed written and oral discovery, and eventually to pre-trial and trial, to determine the issue.
- [21] Despite repeated requests, including the understanding that the Corporate Defendants would drop any crossclaims against The Personal and its insureds, The Personal has failed to respond and refuses to agree to the aforementioned plan.

- [22] A Case Conference proceeded before Justice Casullo on December 3, 2024. Justice Casullo directed the Plaintiffs to bring a motion to obtain productions from The Personal arising from Ms. Hejno’s discovery.
- [23] A second Pre-Trial Conference was held before Justice Sutherland on December 17, 2024. Per the corresponding Endorsement, the parties were also instructed to bring a motion to address the issue of coverage as between the policies of insurance.

Analysis

- [24] The Personal takes the position that the Plaintiffs are not entitled to the refused discovery questions on the basis that: (1) the discovery questions are not relevant to the pleadings; and (2) the information sought is protected by solicitor-client privilege.
- [25] The Personal submits that the underlying purpose of the statutory scheme is to allow for the insurer to have the ability to “step into the shoes” of the Defendant to defend against the Plaintiffs’ allegations of liability as though the insurer has entered a defence on behalf of its insured.
- [26] According to The Personal, issues of insurance coverage are not relevant to the pleadings, are to be kept separate from the liability proceedings, and a statutory third party is not required to define or explain its position regarding coverage issues during examinations for discovery by any other party to the action: *Gordon v. Pendleton*, 2007 CanLII 39886 (ON SC); *Abdinur Ahmed v. Avinash Jade Maharaj*, 2010 ONSC 528, at para. 22; *Sunday Irving Holdings Inc. v. La Succession de Seymour Mender et al.*, 2025 ONSC 2745.
- [27] The Personal submits that some of the information and documentation sought by the Plaintiffs is also protected by litigation privilege. Litigation privilege provides documents and communications “immunity from disclosure whose dominant purpose is preparation for litigation”: *Lizotte v. Aviva Insurance Company of Canada*, 2016 SCC 52.
- [28] While I agree that the coverage issues are distinct from the issues of liability that will be dealt with in the main action, that does not mean that the information sought is not relevant to issues engaged in the litigation (issues of coverage), or that the timely disclosure of the information underlying a denial is not required for the matter to move forward in a logical and efficient manner. Admissibility at trial and relevance to the issues engaged in the action are distinct.
- [29] Rule 31.06 (4) and (5) governs the scope of examination of a party in relation to an insurance policy. Those sub-rules provide:

31.06 (4) A party may on an examination for discovery obtain disclosure of,

- (a) the existence and contents of any insurance policy under which an insurer may be liable to satisfy all or part of a judgment in the action or to indemnify or reimburse a party for money paid in satisfaction of all or part of the judgment; and

(b) the amount of money available under the policy, and any conditions affecting its availability.

(5) No information concerning the insurance policy is admissible in evidence unless it is relevant to an issue in the action.

- [30] In my view, much of the information sought by the Plaintiffs concerning the Defendants' insurance falls within the rationale of rule 31.06(4), requiring a defendant to disclose the availability of insurance and "the conditions affecting its availability." It is of little value to a plaintiff to know the conditions in the policy that affect the availability of the insurance without knowing the facts that caused the insurer to deny coverage based on those conditions: *Seaway Trust Co. v. Markle*, [1992] O.J. No. 1602; See also *Lica v. Dhaliwal*, 2015 ONSC 3888 at paras. 53 and 54 and *Antony v. Bakthavachalu*, 2017 ONSC 4943.
- [31] The rationale for rule 31.06(4) is that a plaintiff must know what insurance is available to the tortfeasor in order to know whether to make a claim against his own insurer, and the plaintiff's (secondary) insurer needs to know what insurance is available to the tortfeasor, and what conditions affect its availability, in order to assess its own exposure and set proper reserves so as to be able to meet its contractual obligations under its own policy.¹
- [32] In *Maccaroni v. Kelly*, 2011 ONCA 411, the Ontario Court of Appeal recognized that the plaintiff had the right to obtain the particulars of the denial of coverage and policy breach from the statutory third party. The plaintiff bears the onus to prove the tortfeasor insurer's off-coverage position. As such, this information is necessary for the plaintiff to establish its entitlement to coverage under its OPCF 44R claim by demonstrating that the available limits of insurance have indeed been properly reduced.²
- [33] Maccaroni was injured in a motor vehicle accident when the car in which she was a passenger was rear-ended by a vehicle owned and operated by the tortfeasors. The tortfeasors' vehicle was insured by the Co-operators. That policy had third party liability limits of \$1 million. Maccaroni's vehicle was insured by ING. That policy had an OPCF 44R -- Family Protection Coverage (underinsured motorist) endorsement. Maccaroni sued the tortfeasors and ING. Co-operators had itself added as a statutory third party pursuant to s. 258 of the *Insurance Act*, R.S.O. 1990, c. I.8. Co-operators denied liability under its contract of insurance and took the position that its liability to third parties was limited to \$200,000 under s. 258(11) of the Act.
- [34] Maccaroni settled her action with the tortfeasors and Co-operators for \$200,000 and signed a final release specifically releasing the tortfeasors and the Co-operators in respect of any and all claims arising out of the accident. Maccaroni then sought to recover the additional money to which she claimed entitlement from ING pursuant to the OPCF 44R endorsement.

¹*Lica v. Dhaliwal*, 2015 ONSC 3888 at paras. 53 and 54.

- [35] In commenting on the right to obtain the particulars of the denial of coverage and policy breach from the statutory third party (Co-operators), the Court explained at para. 23:

The motion judge was of the view that the Co-operators' off-coverage position could only be determined in an action where Co-operators and its policyholders, the tortfeasors, were parties. I do not agree with this conclusion. In my view, there is no reason why the appellants' action against ING may not proceed. *It will be for the appellants to prove their entitlement to recover from ING and they will have to prove Co-operators' off-coverage position in order to do so. The fact that Co-operators and the tortfeasors are not parties to the proceeding is of no moment. The tortfeasors and representatives of Co-operators can be called as witnesses and can be examined under oath as non-parties: see rules 31.10 and 53.04 of the Rules of Civil Procedure. While a factual finding made in respect of the coverage issue will bind neither Co-operators nor the tortfeasors vis-à-vis the appellants in view of the release, such a finding can determine, as between the appellants and ING, whether the appellants are entitled to recover anything from ING. If the appellants are successful and establish that the tortfeasors were in breach of their policy provisions, and hence that the off-coverage position taken by Co-operators is correct, they may be entitled to recover from ING.* If they are not successful, their action will be dismissed and they will, absent exceptional circumstances, be liable for the costs of those proceedings. [Emphasis added.]

- [36] Following the decision in *Maccaroni*, the Court in *Lica v. Dhaliwal*, 2015 ONSC 3888, held that both the plaintiff and the OPCF 44R insurer had the right to question the statutory third party on discovery and to receive documentary production relating to its denial of coverage. Only then could the plaintiff and the OPCF 44R insurer determine if the reduction in limits to the statutory minimum of \$200,000 was legally justified, a determination necessary for the plaintiff to access its OPCF 44R coverage.³
- [37] While the Court recognized that the actual coverage issue between the statutory third party and its insured is not being determined in this process, the Court concluded that the statutory third party is still required to disclose certain information so that the plaintiff and the OPCF 44R insurer can properly consider the issue of whether the OPCF 44R coverage is indeed available to the plaintiff in the circumstances. By obtaining this information, the plaintiff and OPCF 44R insurer are not legally “challenging” the denial of coverage but rather only seeking information as to the reasons and circumstances of the denial of coverage.
- [38] A similar finding was made in the decision in *Prentzas v. Rivera*, 2015 ONSC 5867. Again, the issue before the court was whether a statutory third party had to answer questions and

³ See also Jim Davidson, *A Lawyer's Guide to Statutory Third Parties*, April 7, 2024, for a helpful review of the jurisprudence on the issue.

provide documents pertaining to its decision to deny coverage. The court in *Prentzas* stated the following at paras. 37 and 44:

I find in this case, both the Plaintiff and the [OPCF 44R insurer] require the productions sought, to determine whether the tortfeasor's insurer CAA's off-coverage position is supported.

...

[The OPCF 44R insurer] has been sued on the basis that the CAA policy is "reduced by operation of law". Documents relevant to that issue are producible.

- [39] In this case, The Personal's off-coverage position is the main issue that remains in contention. In the absence of the information sought, the parties will likely be forced to unnecessarily incur significant costs and disbursements in proceeding with an 8-week trial. The suggestion that these issues be delayed until the end of trial makes no sense here.
- [40] I am satisfied that the Plaintiffs are entitled to production of documents/information relevant to the coverage determination and further discovery to answer all reasonable questions arising from these documents.
- [41] I canvassed the outstanding refusals at the initial hearing of this matter and provided direction to the parties as to which questions were to be answered. A draft order has now been submitted by the parties. No issue was raised by The Personal regarding any concerns with privilege or prejudice regarding those questions/answers.
- [42] Where relevant documents are protected by privilege, the Plaintiffs are still entitled to the factual information contained in those documents relevant to coverage. *Jones et al. v. Manzon et al.*, 2024 ONSC 1205.
- [43] The Personal are to provide answers to the undertakings and refusals as outlined in my original order within 30 days of the release of this decision.
- [44] If the Personal has any particular concerns that such disclosure would prejudice the defence of the defendant or raise an issue of privilege, it can seal those answers and provide them to the court for review for a determination pursuant to Rule 31.06(6) on whether this information should be withheld: see *Jones v. Manzon*, 2024 ONSC 1205.
- [45] The Plaintiffs are also seeking that The Personal's representative, Ms. Hejno, reattend for further discovery to answer any questions that arise from the productions. The Personal has asked that any further discovery be permitted to proceed in writing.
- [46] In the circumstances here, any additional information which is required beyond the productions can be sought by the Plaintiffs and provided by The Personal in writing. In my view, the reattendance of a representative would not assist in obtaining the necessary information and would simply create additional costs.

[47] Costs are ordered in favour of the Plaintiffs in the amount of \$5,000. This amount is inclusive of disbursements and HST and is to be paid within 30 days and will accrue post-judgment interest in accordance with s. 129(1) of the *Courts of Justice Act*.

Justice C.F. de Sa

Released: September 8, 2025

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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Kaijah Harris and Velma Harris

Plaintiffs

– and –

Lerrell Stennett, Jouvaine Stennett, Ontario Corporation
No. 2151862 c.o.b. as Lux Entertainment Inc., Ontario
Corporation No. 1718393 c.o.b. as Fortress Security
Inc., Ontario Corporation No. 2193511, c.o.b. as Lions
Gate Security Services Inc., Kris Lamanski, John Doe,
Allstate Insurance Company of Canada, 2748355
Canada Inc. And Ontario Corporation 1722206 c.o.b. as
G5 Events Inc.

Defendants

- and -

The Personal Insurance Company

Statutory Third Party

RULING ON UNDERTAKINGS, REFUSALS AND
COSTS

Justice C.F. de Sa

Released: September 8, 2025