

INSURANCE ISSUES

The SEF 44 Endorsement is not a standalone policy and exclusions in the underlying policy apply to it such that a claimant passenger of a stolen vehicle is not entitled to benefits if he/she did not know nor ought to have known that the vehicle was stolen.

Cardinal v Alberta Motor Association Insurance Company, [2018] S.C.C.R No. 129 refusing lv. to app.; 2018, ABCA 69; rev'g 2017 ABQB 487

FACTS AND ISSUES:

The insurer, AMA, issued a standard Alberta automobile policy to the policyholder including both SPF no. 1 and SEF 44 coverage. The policyholder's daughter was injured while riding as a passenger in an automobile that was being operated without the consent of the owner.

AMA sought summary dismissal of the claim for coverage. At issue was whether the daughter was entitled to recover under her mother's SEF 44 if she was unaware that the vehicle was stolen. AMA relied on an exclusion in the auto policy to which the mother's SEF 44 was an endorsement, which exclusion provided as follows:

3. CONSENT OF OWNER

No person shall be entitled to indemnity or payment under this Policy who is an occupant of any automobile which is being used without the consent of the owner thereof.

The Court of Queen's Bench dismissed the insurer's summary dismissal application, relying on recent Ontario Court of Appeal legislative amendments. The Court of Appeal reversed this decision and found in favour of AMA on the basis that the SEF 44 was not a stand-alone policy but an endorsement to the SPF no. 1 and that the Consent of Owner provision of the SPF no. 1 applied to the claim under the SEF 44. The Court of Appeal further held that the fact that the daughter did not know that the driver was using the automobile without the consent of its owner did not affect this result. Both the Queen's Bench and Court of Appeal decisions were briefed in the [February 2018](#) edition of ***Defence + Indemnity***.

The insured sought leave to appeal to the Supreme Court of Canada.

HELD: For the Insurer; leave to appeal dismissed.

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