

Brokers Errors and Omissions

Brokers & Agents Need to go Beyond Explaining Coverage

Insurance brokers in Ontario need to be concerned about potential claims from clients if they fail to properly notify insureds' explaining the new optional benefits scheme in Ontario's auto insurance regime.

Brokers would be wise to review the case of Fletcher v. Manitoba Public Insurance Co.

In this case the Fletchers suffered severe injuries as a result of an automobile accident caused by the driver of the other vehicle. The driver of the other vehicle did not carry sufficient insurance to cover the losses.

The Fletchers were residents of Manitoba and were therefore insured under the mandatory public insurance scheme "Autopac." Under this scheme the owner of a motor vehicle must purchase insurance which provides minimum collision and public liability coverage. In addition, "underinsured motorist coverage" (UMC) is available upon the payment of a slightly higher

premium. At the time of the accident the Fletchers were insured through Autopac. He had asked for the maximum coverage available; however, it was determined after the accident that they did not carry UMC.

It was ruled that the Manitoba Public Insurance failed in its duty to properly inform the Fletchers of the full range of coverage available to them and in particular UMC and awarded damages to the Fletchers to the extent of the shortfall.

Although the initial decision was appealed the final outcome was that the decision was upheld. To quote the decision "The sale of automobile insurance is a business in the course of which information is routinely provided to prospective customers with the expectation that they rely on it."

It was determined that a duty was owed to its customers to inform them of all available coverage, its purpose and its cost. In this case



we are dealing with Government insurance; however, it was noted that the onus on the Government is not as onerous as that imposed on private agents and brokers.

The panel of judges in the Supreme Court of Canada wrote "...private insurance agents owe a duty to their customers to provide not only the information about available coverage, but also advice about which forms of coverage they require in order to meet their needs."

This case illustrates that Brokers and Agents need to go beyond informing their clients of the available coverages. They also need to determine what kind of coverage each client needs. Simply mailing out or handing out information is not sufficient. With the new optional benefits under the SABs, the Brokers and Agents need to go further.

There are all sorts of mailings that have gone out to consumers explaining the benefits and the optional benefits but this does not go far enough. The Broker needs to determine what the needs of the client actually are. A close look at the mailings shows that they have almost too much information and are too detailed for the average consumer to understand.

The mailings don't describe what can happen if the insured's do not buy the optional coverage so they have no real meaning to the individual. It would be wise to provide examples of how the optional coverage can work and why it should be considered by the client.

If you have questions about your insurance or Access to Benefits law, please contact one of our personal injury lawyers at (613) 728-8057. You can also contact Donna Robinson directly at (613) 288-3215 or by email at drobinson@tslawyers.ca.



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PRACTICE SUMMARY:

Donna Robinson has over 30 years experience in the Insurance and Legal fields. She began her career as a claims examiner for The Co-operators and then worked as a litigation law clerk before entering into the independent adjusting field. As a licensed independent adjuster she worked handling all lines of claims.

Donna is a Paralegal and Insurance Claims Consultant in the Personal Injury Litigation Group of Tierney Stauffer LLP. She is hands-on with her clients and epitomizes the firm's creed that we focus on solutions. She works closely with insurers, medical and health practitioners and is often consulted by other law firms in Ottawa on SABs issues and assists other firms in resolving conflicts with the insurers. She is recognized in Ottawa as the expert in the Quebec/Ontario automobile legislation and has given expert witness testimony on various insurance issues in the Ontario courts.

Donna has her CIP designation through the Insurance Institute of Canada and has also completed her accreditation as a mediator through the University of Windsor. She was instrumental in getting the business insurance program at Algonquin College up and running and taught the insurance courses in the full-time program for two years. She is an instructor in the Insurance Institute CIP program as well as instructing in the Registered Insurance Brokers of Ontario licensing program.