

## COVERAGE CANCELLATION BY CO-INSURED: ONT CA IMPOSES NOTICE REQUIREMENTS UPON INSURER

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In *Transportation Lease Systems Inc. v. Guarantee Co. of North America and Martin Beals*, heard May 4, 2005, the Ontario Court of Appeal ruled that for deletion by one co-insured to be effective, against the other co-insured, insurer must give 15 days prior notice of the cancellation or deletion to the insured who is affected & obtain express or implied consent of the co-insured.

In this case, the appellant, leasing company leased a motor vehicle to one Martin Beals, who was required under the lease agreement to obtain insurance for the vehicle. Mr. Beals decided to place his leased car in storage for the winter and directed insurer to delete all insurance coverage except fire and theft. Ten days after notice was given to leasing company that coverage is to be deleted on this vehicle, Beals damaged his vehicle beyond repair. The appellant sought judgement against insurer for indemnity on the basis that coverage was not deleted as against the appellant at the time of the accident.

In this case, the appellant received 10 days prior written notice of insurer's cancellation. On appeal, the issue was whether statutory condition 11(1) under the *Insurance Act*, which requires insurer to give 15 days advance notice of its intention to terminate insurance coverage, applies to an automobile leasing company where the lessee who is the other named insured, terminates portions of insurance coverage.

In deciding for the appellant, Justice Laforme noted that the this appeal requires determination of whether rights of co-insured under the policy are joint or several in nature. It was held that co-insured have several rights and obligations under the policy which require the insurer to treat them as separate and distinct entities under the contract.

Having found that the appellant was entitled to notice of coverage cancellation by the co-insured, the court noted that statutory condition 11(1) of the *Insurance Act* which requires 15 days notice of cancellation prior to policy termination *by insurer*, was equally applicable to the case of co-insured. Here the co-insured, Beals, was acting unilaterally and without knowledge or consent of the appellant.

Notably, Justice Borins, who wrote separate concurring reasons for the decision, preferred to base his decision on the fact that as the lessor and lessee were separately insured under the policy, deletion of coverage by Beals simply did not affect the appellant, lessee's coverage. Consequently, Justice Borins did not see the need for imposing a notice requirement upon the insurer.

The reasons of Justice Borins, which take away the onus of notice from the insurer, actually create a subcontract between each co-insured and the insurer which can only be

terminated by the individual co-insured, casting the insurance contract as a divisible whole which gets broken up once an insured chooses to cancel his part of the contract. Future decisions from the bench will need to clarify whether in fact a cancellation by one co-insured terminates the contract, subject to sufficient notice to the co-insured, or conversely only terminates the portion of the contract which relates the specific co-insured.

