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## The Driver You Sue Has No Insurance – Now What?

You were hurt in a car accident and sue the other driver. What happens if the other driver has an insurance policy but, during the course of your lawsuit, the other driver's insurance company denies coverage – i.e. refuses to defend or indemnify (protect) the other driver in the lawsuit? What happens if other driver does not have assets – like a house or steady job?

This is not an uncommon situation. Frequently, insurers have reason to deny their insured – see **Section 5 of the Ontario Automobile Policy** for a reference – which leads the insurer to add themselves as a statutory third party to the lawsuit.

Being a statutory third party means that the insurer can fully defend the lawsuit while maintaining an off coverage position relative to its insured. In Ontario, policy limits of \$200,000 respond to the plaintiff's lawsuit in this situation (in Ontario, car insurance policies must have a minimum of \$200,000 in insurance coverage).

A statutory third party position can be negative development for a plaintiff, given that the policy limits are reduced to \$200,000.

In this situation, the plaintiff usually reviews whether there is other coverage (i.e. their own policy) which may provide additional coverage over and above the \$200,000 policy limits.

In the recent case of **Frandsen v. Dalrymple** (2010 Ontario Superior Court of Justice), the defendant's insurer denied its insured coverage about 4 years after the accident had occurred and approximately 2.5 years after the start of litigation. The insurer had proceeded to Discovery (providing coverage to its insured) almost two years prior to bringing its application to be added as a statutory third party.

The entitlement of insurers to add themselves as statutory third parties and the consequences arising, including the propriety of the denial, are reviewed in this case.

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