Indexed as:
Jackson v. Dennis

Between
Paul Andrew Jackson, Kenneth Jackson, Violet Jackson, Lee Jackson, an infant under the age of eighteen years by his Litigation guardian Kenneth Jackson and Ivy Elliot, plaintiffs, and
Brian Dennis and Leggat Leasing (Halton) Limited, defendants,
And between
Paul Andrew Jackson, Kenneth Jackson, Violet Jackson, Lee Jackson, an infant under the age of eighteen years by his Litigation guardian Kenneth Jackson and Ivy Elliot, plaintiffs, and
Brian Dennis and Leggat Leasing (Halton) Limited, defendants,
and
Liberty Mutual Insurance Company also known as Liberty Mutual Fire Insurance Company and also known as Liberty Mutual Insurance Group, third party
And between
Paul Andrew Jackson, Kenneth Jackson, Violet Jackson, Lee Jackson, an infant under the age of eighteen years by his Litigation guardian Kenneth Jackson and Ivy Elliot, plaintiffs, and
Brian Dennis and Leggat Leasing (Halton) Limited, defendants,
and
Liberty Mutual Insurance Company, William Wedlock and Dominion of Canada Insurance Company, third parties
And between
Paul Andrew Jackson, plaintiff, and
Liberty Mutual Insurance Company and The Wellington Insurance Company, defendants
And between
Paul Andrew Jackson, Kenneth Jackson, Violet Jackson, Lee Jackson and Ivy Elliot, plaintiffs, and
Wellington Insurance Company (Compagnie D'Assurances Wellington), defendant
And between
Paul Andrew Jackson, Kenneth Jackson, Violet Jackson, Lee Jackson and Ivy Elliot, plaintiffs, and
Wellington Insurance Company (Compagnie D'Assurances Wellington), defendant, and
Brian Dennis, and Leggat Leasing (Halton) Limited, third party
And between

Paul Andrew Jackson, Kenneth Jackson, Violet Jackson, Lee Jackson and Ivy Elliot, plaintiffs, and Wellington Insurance Company (Compagnie D'Assurances Wellington), defendant, and Liberty Mutual Insurance Company and Dominion of Canada General Insurance Company, third parties
And between
Leggat Leasing (Halton) Limited, plaintiff, and Brian Dennis and Liberty Mutual Insurance Company also known as Liberty Mutual Fire Insurance Company and also known as Liberty Mutual Insurance Group, defendants
And between
Brian Dennis, plaintiff, and Liberty Mutual Insurance Company and Dominion of Canada Insurance Company, defendants

[1998] O.J. No. 288

Ontario Court of Justice (General Division)

Lax J.

Heard: November 17, 18 and 19, 1997.
Judgment: January 27, 1998.

(19 pp.)

Insurance -- Automobile insurance -- Actions, defence by insurer -- Multiple insurers -- Identity of responding insurer -- Misidentification of particulars of insured -- Effect when insured purporting to cancel coverage.

This was an application to determine which insurance company had to indemnify Dennis for his motor vehicle accident claim. Dennis leased a porsche and obtained insurance on it from Liberty Mutual Insurance and its agent Wedlock. The Porsche policy was issued by Liberty on behalf of the Facility Association, which dealt with high-risk claims. Association required that policies for long-term automobile leases had to show the name and address of the lessor followed by the name and address of the lessee in item 1. The name and address of the lessee were to be shown in item 3. The policy did not comply with the Association's rules as it identified the insured as Leggat, care of Dennis and Dennis' address was shown. Dennis put the Porsche into storage on October 31, 1988. He then leased another vehicle to drive during the winter. If Dennis wanted to take the Porsche out in the winter, he was required to contact Wedlock in order to reinstate coverage. On January 13,

1989 Brian Dennis was seriously injured in an accident involving the Porsche. On the day of the accident Dennis unsuccessfully attempted to contact Wedlock.

HELD: Liberty was the insurer on this claim. The doctrine of contra proferentum applied in this case. Leggat was a named insured in the policy and the effect of its inclusion was to enlarge the scope of coverage provided by the policy to include the lessee, who was Dennis. There were two insured named in the policy and each had separate and distinct interests that were not joint and several. Leggat had every reason to believe that the coverage would continue for the term of the lease as if it had ceased it would have repossessed the car. Liberty could not rely on its own misdescription of the insured on the policy to relieve it of its obligation under section 205(3) of the Insurance Act. Deletion of coverage by Liberty, when the Porsche was put into storage amounted to cancellation and there was a notice requirement on Liberty to give notice of cancellation to Leggat pursuant to section 207. The effect of Liberty's breach of sections 205(3) and 207 was that it placed Leggat in the same position as a mortgagee who was unable to monitor the state of affairs between an insurer and mortgagor. Since no notice was given by Liberty of the deletion to Leggat, coverage continued and the Porsche policy remained in force.

Statutes, Regulations and Rules Cited:

Insurance Act, R.S.O. 1980, c. 218, ss. 1, 110(1), 205(3), 207, 209(1).

Counsel:

Howard Smith and Daniel Balena, for the plaintiffs.
David Zarek, for the defendant, Brian Dennis.
Robert Wasserman, for the defendant, Leggat Leasing (Halton) Limited.

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1 **LAX J.**:-- On January 13, 1989, Brian Dennis was driving a 1983 Porsche which was leased from Leggat Leasing (Halton) Limited ("Leggat") and which was involved in a serious motor vehicle accident. Mr. Dennis apparently lost control of the car and as a result of the impact, he was rendered a paraplegic, his passenger Paul Jackson suffered multiple injuries, and the vehicle was damaged beyond repair. This unfortunate event has produced nine proceedings which involve claims, cross-claims and third party actions for damages and declaratory relief. This trial was concerned solely with insurance coverage which was tried as a separate and preliminary issue to determine whether Mr. Dennis' insurer, Liberty Mutual Insurance Company ("Liberty") or Leggat's insurer, Dominion Insurance Company of Canada ("Dominion") is obliged to respond to some or all of the claims which are advanced in the various actions.

Issues

2 At the time of the accident, Mr. Dennis had two policies of insurance with Liberty. The first was a standard automobile policy, referred to as the Porsche policy, and the second was a standard automobile policy, referred to as the Sirocco policy. It is the position of Mr. Dennis that on the day of the accident, both policies were in full force and effect and that Liberty is obliged to respond un-

der one of these policies to his claim for accident benefits, to the claims of Mr. Jackson and his family for tort damages, to the claim of Leggat for collision damage, to the subrogated claim of its insurer, Dominion, and to the claim of Mr. Jackson's insurer, Wellington Insurance Company ("Wellington") for indemnity for the accident benefits it has paid to Mr. Jackson. Liberty does not dispute that the Sirocco policy was in effect on the date of the accident. However, it denies that the Sirocco policy responds to the losses claimed. Liberty also denies that the Porsche policy responds. It alleges that Mr. Dennis deleted all but comprehensive coverage on the Porsche policy when the vehicle was placed in storage for the winter at the end of October 1988 and that this deletion was effective to terminate coverages under Section A (Third Party Liability), Section B (Accident Benefits) and Section C (Collision). According to Liberty, it is Leggat's insurer, Dominion, who is the responding insurer.

3 Leggat, Dominion and Wellington support the position of Mr. Dennis that he did not delete coverages on the Porsche policy. They go on to argue that any purported deletion was ineffective against Leggat as owner of the Porsche and as a named insured under this policy as Leggat received no notice that coverages had been deleted. It is their position that all coverages remained in effect under the Porsche policy or, alternatively, that some or all of this coverage can be claimed under the Sirocco policy.

4 A determination of whether the Sirocco policy responds is unnecessary if there were Section A, B and C coverages under the Porsche policy. There can only be these coverages under the Porsche policy if the coverages were improperly deleted by Liberty. I am asked to first determine if Mr. Dennis requested a deletion of coverages. This is strictly a question of fact. If I find that Mr. Dennis did not request a deletion of coverages, they remained in effect and Liberty is the responding insurer. If I find against Mr. Dennis on this question, the contest between Liberty and the other parties turns on whether there was a legal duty imposed on Liberty to notify Leggat of the deletion of coverages and the legal effect of its failure to do so.

Mr. Dennis' Insurance History with Liberty

5 From July 1987, Mr. Dennis had dealt with Liberty for his automobile insurance needs, and specifically with Mr. William Wedlock who is a captive agent for Liberty. During the 18 month period with which this trial was concerned, Brian Dennis had owned one automobile and had leased four other automobiles. The first vehicle to be insured by Liberty was a Corvette which Mr. Dennis leased in July 1987. This car was placed in storage for the winter in early December 1987 and all coverages except comprehensive were deleted from the policy. A new policy of insurance was issued for a Sirocco (referred to at trial as "Sirocco No. 1") which Mr. Dennis purchased at that time. He apparently drove Sirocco No. 1 until the spring of 1988 when he sold this vehicle and leased the Porsche from Leggat. Liberty issued a new policy of insurance for the Porsche with Section A, B and C coverages as well as comprehensive coverage. The policy period corresponded to the term of the lease and was from May 3, 1988 to May 3, 1989. Mr. Dennis put the Porsche into storage for the winter on or about October 31, 1988. At that time, all coverages except comprehensive were deleted from the Porsche policy. Mr. Dennis then leased a Jetta from another leasing company to drive during the winter. A new policy of insurance was issued by Liberty for the Jetta with identical coverages and limits as had originally been on the Porsche policy. On January 1, 1989, Mr. Dennis surrendered the Jetta to the leasing company and replaced it with a Sirocco (referred to at trial as "Sirocco No. 2"), which was substituted on the Jetta policy of insurance. The policy period for the Sirocco was from January 1, 1989 to November 1, 1989. Accordingly, on the day of the accident, the

Sirocco policy was in force with all coverages, but the Porsche policy had only comprehensive coverage.

Did Brian Dennis request a deletion of coverages?

6 It was Mr. Dennis' evidence that in the case of each of the changes to insurance on the vehicles which he from time to time owned or leased, he requested Mr. Wedlock to "transfer" coverage from the previous vehicle to the one he was proposing to drive. The suggestion was that Mr. Dennis intended and Mr. Wedlock understood, that Mr. Dennis wished to remain fully insured on the two vehicles which were placed in storage during this period and that he relied on Mr. Wedlock to effect a "transfer" of coverage consistent with this. I find this position to be without merit.

7 Liberty required written instructions to effect a deletion of coverage. In regard to the Corvette, Mr. Dennis acknowledged his signature on an undated note to Mr. Wedlock instructing him to "delete all coverages except comprehensive as of Dec 4, 1987, as per our conversation". In regard to the Porsche, Mr. Dennis acknowledged his signature on a note dated October 31, 1988 which states: "This is to advise you that my 911 Porsche is now in storage for the winter". Having signed a document in December 1987 instructing Mr. Wedlock to delete coverages on the Corvette, the only sensible interpretation of the note which Mr. Dennis signed on October 31, 1988 is that he did not intend to drive the Porsche over the winter and that he did not require the coverages associated with a vehicle which was in storage. While it obviously would have been better for Liberty to have obtained the kind of specific written instructions it had obtained for the Corvette, it was reasonable for Liberty to rely on Mr. Dennis' note as a request to delete all but comprehensive coverage as had been requested for the Corvette less than ten months previously. I am satisfied that Mr. Dennis knew that his instructions to "transfer" coverage from the Porsche to the Jetta in October 1988, together with the note he provided to Mr. Wedlock at that time, would have this effect.

8 I am also satisfied that Mr. Dennis knew that it was necessary for him to reinstate coverage before driving a car which had been placed in storage and that Liberty would do this at his request. According to Mr. Dennis, he advised Mr. Wedlock when the Corvette and Porsche were each put away that he might wish to take the stored car out for a run over the winter. He asked Mr. Wedlock what he should do. He was told to contact him. Although Mr. Dennis claimed that he was given no advice by Mr. Wedlock nor had any understanding as to what would happen if he drove a vehicle without contacting him, I do not find this evidence plausible. Mr. Dennis knew enough about cars and insurance to contact Mr. Wedlock each time he acquired a new vehicle and required insurance. He knew enough about cars and insurance to request a "transfer" of coverage on vehicles which he was no longer driving as well as on vehicles which he no longer owned or leased. I do not think that Mr. Dennis believed that he remained insured on cars which he had surrendered or sold, yet this is the implication of his evidence. That Mr. Dennis understood that he had deleted coverages on the Porsche is underscored by his actions on the day of the accident. He attempted to reach Mr. Wedlock several times prior to taking the Porsche on the drive which ended so tragically. He was not successful in speaking with him, but if Mr. Dennis believed that he was fully insured, there would have been no reason for him to contact his insurance agent.

9 Although Mr. Dennis did not recall receiving notices of changes to coverage, he did not deny that such documents were sent to his home address and the weight of the evidence is that they were sent by Liberty and received by Mr. Dennis. The documents include alteration endorsements and specifically, a Multiple Alteration Endorsement in November 1988 showing a deletion of coverages on the policy for the Porsche and a refund of premium for the balance of the policy period. Each

time Mr. Dennis requested a "transfer" of coverage, this resulted in a notice of change of coverage and refund of premium or, more usually, a credit of unearned premium to another policy. In all likelihood, Mr. Dennis received from Liberty in mid-November 1988, the Multiple Alteration Endorsement on the Porsche policy showing the deletion of coverages and a refund of premium for the balance of the policy period. The fact that the premium was credited to another policy and was not in fact refunded is of no consequence. This was precisely the practice which had been followed in respect to previous "transfers" of coverage. The preponderance of evidence is that Mr. Dennis requested a deletion of coverage on the Porsche policy. This is borne out by the documents which he signed at the time the Corvette and Porsche were respectively placed in storage, by the discussions which he had with Mr. Wedlock on both of these occasions, by his conduct on the day of the accident and by the fact that Mr. Dennis was notified of the change and received a credit for refunded premiums on the Porsche policy and made no complaint or objection.

Was Liberty's deletion of coverage effective as against Leggat?

10 It is contended by all parties except Liberty, that the Porsche policy which Liberty issued, named both Brian Dennis and Leggat as insured, that, in addition, Leggat was a lienholder and loss payee on the policy, and that Liberty was bound by contract, by statute and in law, to give notice to Leggat of a change in coverage. Having failed to do so, the coverages set out in the policy when it was issued, remained in effect.

11 The Porsche policy was issued by Liberty on behalf of the Facility Association which is an association of insurers which monitors procedures, issues policies and processes and pays claims for high-risk drivers or high-risk vehicles. The Association is governed by a set of internal rules and procedures. Since 1986, it has been a rule of the Facility Association for long-term automobile leases that: "On the policy the name and address of the Owner ("as lessor") are to be shown in Item 1, followed by the name of the Applicant ("as lessee"). In addition the name and address of the lessee are to be shown in Item 3." I understand from the evidence that the reference to 'Item 1 'is a reference to the item on a Facility Association policy of insurance which identifies the insured as the lessor and the lessee of the vehicle, and sets out the address of the lessor. By the rules of the Association, the Leggat lease was considered to be a long-term automobile lease and the form of policy which Liberty issued as agent for the Facility Association would be expected to comply with its rules. However, the Porsche policy was not issued by Liberty in the prescribed manner. Instead, the policy which it issued identifies the insured in Item 1 as "LEGTA c/o Brian Dennis 6555 Falconer Dr Unit 144 Mississauga On L5N 3N6". 'LEGTA' is a short form for Leggat, although why that designation was used is somewhat of a mystery. The address shown in Item 1 is in fact the address of Mr. Dennis, the lessee, and not the address of Leggat, who was the owner and lessor. The address of Leggat is shown on the policy in the item described as "Name and Address of Lienholder to whom loss may be jointly payable (S.E.F. No. 23A Mortgage Endorsement on the Back hereof)."

12 The witness called by Liberty who was said to be familiar with the rules of the Facility Association was unable to explain the purpose of the rule I have referred to. Notwithstanding the rule, she testified that all Facility Association policies were prepared with the name of the owner/lessor c/o the name and address of the lessee as was done in this case. She also testified that it was the practice of Liberty as agent for the Facility Association to send all notices to the applicant/lessee unless there was a cancellation of policy by the insurer, in which case the notice of cancellation would also go to the lessor. She confirmed that Leggat received no notices.

13 Section 205(3) of the Insurance Act, R.S.O. 1980, c. 218 requires an insurer to deliver or mail to "the insured named in the policy ... the policy or a true copy thereof and every endorsement or other amendment to the contract" (emphasis added). Liberty does not dispute that a deletion of coverage is encompassed in the language "every endorsement or other amendment to the contract". It is in fact Liberty's position and I have already found, that when coverage was deleted from the policy in the fall of 1988, it sent the endorsement to Mr. Dennis. Nor does it contend that Brian Dennis was agent for Leggat, which he was not. It simply says that "the insured named in the policy" is LEGTA c/o Brian Dennis and that it fulfilled its statutory duty by sending the endorsement to Mr. Dennis. This is a circular argument. Although this is how Liberty chose to describe the insured on the policy, (a description which is conceded to be in contravention of the internal rules of the Association on whose behalf the policy was issued), this cannot determine who is an insured named in the policy. The entire thrust of Liberty's submissions was to deny that Leggat was entitled to notice of the deletion of coverages and some of those submissions rest on the proposition that Leggat was not entitled to the statutory notices under the Insurance Act because it was not an "insured named in the policy" or an insured. Liberty's own practice of notifying lessors of a termination of coverage, belies the suggestion that Leggat was not an insured. While there may be instances where an insured is not named in the policy but is nevertheless an insured, it seems fairly obvious to me, that if an insured is named in the policy as Leggat was, it must necessarily be an insured.

14 It is trite law that contracts of insurance are to be interpreted contra proferentum and are to be strictly construed against the insurer. In Sutherland Leasing Ltd. et al. v. General Insurance Corporation of New Brunswick (1986), 19 C.C.L.I. 264 (N.B.Q.B.), the insured were described in a manner identical to the description which appears on the Liberty policy. The Court had no difficulty concluding that lessor and lessee were both insured named in the policy. The Liberty policy was issued with Standard Endorsement Form 5A (S.E.F. No. 5A), which is the standard permission to rent or lease endorsement. It is recognition that Leggat was an insured named in the policy and its effect is to enlarge the scope of coverage provided by the policy to include the lessee, who, in this case, was Brian Dennis. It is plain to me that there were two insured named in the policy and each had separate and distinct interests which were not joint and several: Forbes Chevrolet Oldsmobile Limited v. Home Insurance Company, [1991] I.L.R. para. 1-2714 at 1186 (N.S.T.D.).

15 At the inception of the policy, Leggat independently verified with Liberty that the required coverages had been taken out by Mr. Dennis. It obtained a copy of the policy to confirm this. It had every reason to believe that the coverages would continue for the term of the lease. Liberty cannot rely on its own misdescription of the insured on this policy to relieve it of the statutory obligation it had to send a copy of the multiple alteration endorsement to Leggat as an insured named in the policy. I accept the evidence of Leggat that had it received this document or been advised that there was a change in coverage, it would have re-possessed the car. Liberty was in breach of the statutory requirement in s. 205(3) of the Insurance Act. I turn then to consider what effect this had on the policy.

16 The parties who argue that Liberty is the responding insurer relied heavily on the decision of the Supreme Court of Canada in London and Midland General Insurance Co. v. Bonser, [1973] S.C.R. 10, hereinafter Bonser Estate. This case concerned a fire loss and turned on an interpretation of s. 110(1) of the Insurance Act which provides:

> s. 110(1) Where the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured,

> the insurer shall not cancel or alter the policy to the prejudice of that person without notice to him. R.S.O. 1960, c. 190.

17 The issue on the appeal before the Supreme Court of Canada was whether the notice of cancellation served on the insurers by the mortgagor's agent brought the contract to an end or whether the insurer's liability to the mortgagee remained outstanding unless and until a notice was served on the mortgagee in accordance with s. 110(1). The Court concluded that the effect of the section, when read with the statutory condition on termination, was to place the insurer under a duty not to cancel or alter the policy without the statutory 15 days' notice and that the policy remained in effect until that time. The Court went on to consider the additional protection afforded the mortgagee by the mortgage clause in the contract of insurance, which it said "constitutes recognition by all concerned of the inviolability to be attached to the mortgagee's right to the continued protection of his interest in the land notwithstanding any act or neglect of the mortgagor" (p. 17). It then embarked on a discussion of the legal effect of such a clause in those jurisdictions which did not have the statutory protection, citing with approval a line of Ontario cases decided prior to the first enactment of s. 110(1): see, Bonser Estate, supra, at pp. 19-20.

18 There is no mortgage clause here, but the policy identifies Leggat as a lienholder and loss payee, entitled to the protection of Standard Endorsement Form 23A. By this endorsement, Liberty expressly agreed to give Leggat 15 days' written notice if the insurance provided by Section C (Collision) of the policy were to be cancelled. The decision of the Supreme Court of Canada in Bonser Estate recognizes that where a mortgagor may lose protection under a policy, the mortgagee remains fully protected until notice is given pursuant to the provisions of the Insurance Act. The reason for this is that the mortgagee cannot be expected to monitor the state of affairs between the insurer and mortgagor: Bank of Nova Scotia v. Commercial Union Assurance Co. of Canada (1993), 104 D.L.R. (4th) 318 (N.S.C.A.) at 332, leave to appeal ref'd, [1994] 1 S.C.R. vi. As was observed by the Supreme Court of Canada in Bonser Estate, the importance of protecting the interest of a mortgagee has long been recognized in jurisdictions where there is no statutory protection requiring written notice of any cancellation or alteration of the policy.

19 The Insurance Act does not expressly deal with the effect of non-compliance with s. 205(3), nor is there any authority precisely on point. I was urged to find that the principles articulated in Bonser Estate establish that this section places an insurer under a duty not to cancel or alter a policy of insurance without notice to an insured and the effect of a breach is to continue the policy until such notice is given. There is, of course, a statutory duty imposed on an insurer to give 15 days' written notice to an insured of a termination or cancellation of the policy: Statutory Condition 8(1)(a), s. 207 of the Insurance Act, R.S.O. 1980, c. 218. This condition is part of every standard automobile policy in Ontario and explains Liberty's practice of notifying lessors of a cancellation of policy. Liberty argues that the statutory obligation to give notice of termination does not apply to a deletion of coverage. This argument is answered by the decision in Bank of Nova Scotia v. Scottish & York Insurance Co. Ltd. et al., [1988] I.L.R. para. 1-2313 at 8944 (Alta. Q.B.). It was held there that the deletion of coverage can be equated to the cancellation of a policy in circumstances where it has the same effect. In that case, the deletion affected both the owner and a bank who held a chattel mortgage on the vehicle. The insurer was unsuccessful in resisting the bank's claim. In this case, Liberty deleted Section C coverage without notice to Leggat, notwithstanding that it expressly agreed by S.E.F. 23A to give Leggat, as lienholder and loss payee, 15 days' notice before cancelling this coverage. The deletion of this coverage amounted to a cancellation.

20 The standard mortgage endorsement (S.E.F. 23A), constitutes recognition by the insurer of the inviolability to be attached to Leggat's right to the continued protection of its interest in the vehicle, notwithstanding any act or neglect of Mr. Dennis. However, Leggat's insured interest encompassed more than its interest in the value of the vehicle as lienholder and loss payee. To Liberty's knowledge, Leggat was the owner of the Porsche and the policy which Liberty issued was, in fact, an "owner's policy", as defined in s. 1 (para. 46) of the Insurance Act. As such, it was required to comply with s. 209(1) of the Act and insure the owner and driver against liability imposed by law arising out of the ownership, use or operation of the vehicle and resulting from injury to or death of any person and damage to property. The deletion of Section A and Section B coverages removed the insurance required by this section and left Leggat unprotected for its statutory obligations under the Insurance Act and under the Highway Traffic Act. The deletion of Section C coverage left Leggat unprotected for damage to its property caused by collision, whether or not that damage occurred on a highway or in the facility where Mr. Dennis had stored the Porsche. The effect of the deletion of coverages was no different than if the policy had been terminated. By failing to give notice, Liberty placed Leggat in the same position as a mortgagee who is unable to monitor the state of affairs between insurer and mortgagor. I can think of no reason why a mortgagee, whose insured interest is limited to its financial interest in the land or chattel, should have more protection on a policy than an owner of a vehicle, who not only has a financial interest in the property insured, but, is also exposed to statutory liability to third parties. The combined effect of ss. 205(3) and 209(1) of the Insurance Act, when read together with Statutory Condition 8(1)(a) and the mortgage endorsement on this policy, imposed a duty on Liberty not to delete any coverages without giving Leggat the required 15 day's notice. No notice having been given, the coverages on the Porsche policy remained in force.

21 Dominion's contingent liability policy only responds if there is no other coverage. Having concluded that all coverages on the Porsche policy issued by Liberty remained in effect, the responding insurer is Liberty and not Dominion. This leaves Wellington, who is a defendant by virtue of a standard automobile policy issued by Wellington to the father of Paul Jackson and under which it provides coverage in the event of damages incurred due to an uninsured or inadequately insured motor vehicle and under which it has paid accident benefits to Paul Jackson. As the Liberty policy provides identical insurance coverage with identical limits of coverage as the Wellington policy, there is no recourse to the S.E.F. 44 endorsement on the Wellington policy and Wellington is entitled to be indemnified by Liberty for the accident benefits paid to Paul Jackson.

22 The claims, cross-claims and third party actions in the various proceedings are to be disposed of in accordance with these Reasons. Counsel should be able to agree on the appropriate Orders as well as the question of costs. Otherwise, I may be spoken to.

LAX J.

qp/s/mjb/DRS