IN FACT AND IN LAW

Damage Insurance

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"You", the Unnamed Insured and Intentional Fault: the Right Result, But Is It the Right Interpretation?

By Odette Jobin-Laberge

The Court of Appeal recently handed down its decision in *Hallé* vs. *La Bélair Compagnie d'assurances générales*[1]. Although the result is the correct one, we believe the reasoning followed is erroneous and could have an adverse influence on how policies are interpreted.

This decision, which deals with the interpretation of insurance policies, is surprising to say the least. The insureds/Appellants were co-owners of a house which was destroyed by fire in 1992. It was admitted that the fire was caused by the brother of the insureds, who was also an unnamed insured in the policy. According to the trial judge, the crime was committed in circumstances which could suggest the presence of a mental imbalance.

The insurer denied coverage, relying on the following exclusion:

> **[Translation] "losses caused by voluntary or criminal acts or omissions of which <u>you</u> are the perpetrator or instigator;"**
>
> **(emphasis added)**

The wording of the policy clearly indicated that "**you"** means the insured and the term "**insured"** was defined as [Translation] "*the named insured, his or her spouse, members of his or her family, members of the family of his or her spouse, and persons 21 years of age or less under his or her care or that of the above persons*."

As they had nothing to do with the cause of the loss, the insureds/Appellants argued that the exclusion could not apply to them as it leads to confusion. The trial judge rejected this argument but the Court of Appeal quashed that decision on the grounds that:

> **[Translation] "[13] Read alone, the clause appears to apply only to the named insureds who contracted with the insurer for the purpose of obtaining protection against the partial or total loss of their property: "We do not cover [...] losses of which <u>you</u> are the perpetrator or instigator." *Prima facie*, it only seems to reproduce the rule set out in the second paragraph of article 2563 C.C.L.C.**
>
> **(emphasis added)**

> **[14] To come to the conclusion that the exclusion applies to situations other than that in which the insured deliberately causes the loss, an additional exercise must be done, that of revisiting the definitions which appear elsewhere in the policy. The confusion results from the fact that, for a reasonable reader who is not especially well versed in the area, nothing in the wording of the clause would suggest that we should use an interpretation rule to discover the full meaning.**
>
> **[15] If one relies only on the apparent meaning of the wording chosen by the insurer, the named insured would wrongly believe that the issue was settled and would think that the exclusion does not apply in any case where a third party intentionally destroys his property. (...)"**

The Court compared this exclusion with that which was in issue in *Scott* vs. *Wawanesa*[2], where the exclusion reads as follows:

> **"*willful act or omission of the Insured <u>or of any person whose property is insured hereunder</u>;"***
>
> **(emphasis added)**

LAVERY, DE BILLY

BARRISTERS AND SOLICITORS

[1] *Hallé* vs. *La Bélair Compagnie d'assurances générales.* C.A. 200-09-004407-034, October 19, 2004, Thibault, Pelletier and Rayle JJ.

[2] *Scott* vs. *Wawanesa*, [1989] 1 S.C.R. 1945.

Odette Jobin-Laberge is a member of the Québec Bar and specializes in Insurance Law

In that case, the Court held that the reader was warned that the exclusion did not refer only to the named insured whereas in this case, the clause is confusing as to the real meaning of the word "**you**". The exclusion was therefore held not to apply.

The Court also raised on argument based on article 2563 C.C.L.C. which reads as follows:

> **"The exclusion of the prejudice caused by a fortuitous event or the fault of the insured is not valid unless it is expressly and restrictively set out in a stipulation in the policy."**

The Court held that the insurer must express itself in clear, specific and limited terms, which was not the case here, and the failure to do so does not meet the reasonable expectations of an insured.

Unfortunately, the Court did not refer to the provision of the Code which now settles this type of problem and which was adopted in the *Civil Code of Québec* to counteract the effect of the Supreme Court decision in *Scott* vs. *Wawanesa*. The legislature added a last sentence to article 2464, par. 1:

> **"2464. [...]**
>
> **Where there is more than one insured, the obligation of coverage remains in respect of those insured who have not committed an intentional fault."**

In his *Commentaires*, the Minister of Justice even stated that the addition of this sentence [Translation] "*thus puts an end to a doctrinal and case law controversy as to the personal nature of an intentional fault*."[3]

Use of this provision rather than an incomplete use of the interpretation rules and the questionable reasoning based on article 2563 C.C.L.C. would fully resolve the dispute.

Comments

This decision is important as it implies that the use of a defined word such as "**you**" to refer to all insureds, namely the named insured and the other unnamed insureds, could pose a problem in all clauses of a policy where the word **"you"** is used in reference to obligations, exclusions or limitations of coverage. However, this is a general practice in the industry.

In our opinion, it is a very questionable decision as the exercise is not necessary to settle the dispute. Also, it is normal for a policy to contain definitions and this decision disregards the rule that a contract is interpreted as a whole taking into account the definitions used. There is no reason for an insurance policy not to be governed by this rule.

This decision creates a serious problem with usual techniques for drafting contracts, including, as in this case, an insurance policy, but we submit that it will be of questionable and limited use as a precedent, as the real legal solution now lies elsewhere.

Odette Jobin-Laberge
(514) 877-2919
ojlaberge@lavery.qc.ca

[3] *Commentaires* of the Minister of Justice, Vol. II, p. 1548

You can contact any of the following members of the Damage Insurance Law group in relation with this bulletin.

At our Montréal Office
Edouard Baudry
Anne Bélanger
Jean Bélanger
Anthime Bergeron, Q.C.
Maryse Boucher
Marie-Claude Cantin
Michel Caron
Paul Cartier
Isabelle Casavant
Jean-Pierre Casavant
Louise Cérat
Louis Charette
Julie Cousineau
Daniel Alain Dagenais
Catherine Dumas
Nicolas Gagnon
Sébastien Guénette
Jean Hébert
Odette Jobin-Laberge
Bernard Larocque
Marie-Hélène Lemire
Jean-François Lepage
Anne-Marie Lévesque
Robert W. Mason
Pamela McGovern
Jacques Nols
J. Vincent O'Donnell, Q.C.
Jacques Perron
Dina Raphaël
André René
Ian Rose
Jean Saint-Onge
Vincent Thibeault
Evelyne Verrier

At our Québec City Office
Philippe Cantin
Pierre Cantin
Line Ouellet

At our Ottawa Office
Brian Elkin
Lee Anne Graston
Mark Seebaran

Montréal
Suite 4000
1 Place Ville Marie
Montréal, Quebec
H3B 4M4

Telephone:
(514) 871-1522
Fax:
(514) 871-8977

Québec City
Suite 500
925 chemin Saint-Louis
Québec City, Quebec
G1S 1C1

Telephone:
(418) 688-5000
Fax:
(418) 688-3458

Laval
Suite 500
3080 boul. Le Carrefour
Laval, Quebec
H7T 2R5

Telephone:
(450) 978-8100
Fax:
(450) 978-8111

Ottawa
Suite 1810
360 Albert Street
Ottawa, Ontario
K1R 7X7

Telephone:
(613) 594-4936
Fax:
(613) 594-8783

Web Site
www.laverydebilly.com