

Can Your Insurer Stop Defending You, Even Though You're Being Sued?

The Issue

Can your insurance company simply pay out the policy limits when you are involved in a very bad accident – i.e. policy limits of \$200,000 – and then stop defending you against the claims made against you arising from that accident?

In other words, are you entitled to a defence against lawsuits arising from the accident (as stipulated / promised under your insurance contract) until the lawsuit is completed? Or can the insurer simply choose the cheapest option, for the insurer, to deal with the defence of your lawsuit.

Why This Matters

This is a very important concern for people who buy insurance.

You obviously buy insurance during the good times, when nothing has (yet) gone wrong.

So when everything goes wrong, how much protection can you expect from your insurance policy?

For example, what if you have a house, stocks and other assets that you wish to protect when faced with a large lawsuit?

What if your insurance policy is only \$1 million in coverage and you are faced with a \$10 million lawsuit (i.e. you hit a car full of high-earning business executives who cannot work after your accident)?

Can your insurance company pay the \$1 million in coverage and then walk away, leaving you to spend your own money in order to hire a lawyer to protect you against the lawsuit which is still continuing against you?

The Details

In the case of [Dominion of Canada v. Kingsway, 2011 ONSC 1249](#), a driver got into a single car accident “where 4 individuals were either killed or badly injured.” Those four victims sued the driver, who only had \$200,000 in insurance coverage.

The case proceeded to a partial resolution – 3 of the 4 victims agreed to settle their claims inside the \$200,000 policy limit. The 4th person agreed to take a portion of the \$200,000 policy limit, but continued her claim based upon her own \$1M insurance policy (against which she could claim).

The driver’s insurance company then argued, in Court, that they could simply walk away from defending the driver, simply because they had paid the full \$200,000 policy limit (plus costs). This would mean that the driver would have no lawyer to protect him against the 4th plaintiff’s continuing lawsuit.

The Court agreed with the driver’s insurance company and released them from further obligation to defend.

Important to Note:

- The driver here did not contest or argue against his insurance company stopping their defence of the lawsuit against him. Why would he do that? Our guess – likely because he does not have significant assets and perhaps because he will go bankrupt in the future in response to the anticipated judgment against him

From our view, the fact that the driver here did not contest the withdrawal of his insurance company from the lawsuit (i.e. he was willing to have no legal representation) is the major factor leading to this specific result.



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With respect, given that the lawsuits against the driver were not completed and settled, it is our view that the insured (the driver) had the contractual right to insist upon a defence, by his insurance company, against all claims arising from this car accident.

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