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Suing Unidentified Ontario Driver: Corroborative Evidence Required

The Issue: In this interesting case, the plaintiff driver hit another car from behind. She sued her own insurance company, alleging that another vehicle, whose identity she does not have, drove dangerously in front or beside her, causing her to take avoidance maneuvers and thereby hit the car in front of her: [*Chmielewski v Pishchak, 2014 CanLII 7592 \(ON SC\)*](#)

This summary judgment motion, brought by the insurer responding to this unidentified driver claim, was based upon the provisions related to Ontario's insurance coverage regarding unidentified vehicles - the OAP-1 and the OPCF R44.

Why This Matters

For personal injury lawyers, the point of the motion is that the OPCF R44 requires corroborative proof, other than the plaintiff's allegations, that there was another (unidentified) driver / vehicle present that allegedly played a role in the motor vehicle accident.

Specific Requirement of OPCF R44

In this case, the driver had no witnesses and therefore Justice Parayeski allowed the defendant's summary judgment motion on the OPCF R44 policy (which requires corroborative proof) but not the OAP-1, which has different wording, and thereby the insurance company still has a \$200,000 policy which continues to respond to this claim.

This is a useful illustration for personal injury lawyers of the evidentiary considerations necessary for an unidentified driver claim, particularly in light of the new Hryniak standard for summary judgment motions in Ontario.

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