



THE DEFINITION OF 'ACCIDENT' IN INSURANCE POLICIES

by Erin Swift, Associate, Insurance Law



In the recent decision of *Co-Operators Life Insurance Co. v. Gibbens* (“*Gibbens*”) the Supreme Court of Canada revisited the definition of “accident” in insurance policies. Justice Binnie held that Insureds that suffer unexpected and grave consequences from a disease do not have valid claims under accident insurance policies.

In *Gibbens*, the Claimant contracted genital herpes which lead to the inflammation of his spinal cord, a rare but known complication of herpes. This caused total paralysis in the Claimant from his abdomen down. He claimed compensation under a group insurance policy on the basis that the paralysis resulted “...directly and independently of all other causes from bodily injuries occasioned solely through external, violent and accidental means.” The policy did not define “accident” or “accidental means”.

Both the Trial Judge and the Court of Appeal held that the Claimant’s rare form of herpes was sufficient to qualify as “accidental” in the ordinary meaning of that term. The disease did not arise “naturally”, rather it arose from an external factor or “unlooked-for mishap”- which in this case was the introduction of the virus into the Claimant’s body by a sexual partner.

In his analysis Justice Binnie noted that the fact the Claimant’s paraplegia was caused by a disease did not alone bar his claim. The question was whether the disease was acquired “in the ordinary course of events”. The Insurer argued that “... nothing could be a more ordinary part of life than sexual intercourse with a willing partner...”.

The Claimant attempted to rely on the 2007 Ontario Court of Appeal decision in *Kolbuc v. ACE INA Insurance* (“*Kolbuc*”), where an Insured was bitten by a mosquito carrying the West Nile Virus and rendered a paraplegic. In *Kolbuc*, the Insured recovered compensation under the accident policy. Justice Binnie said that he could not comment about the merits of *Kolbuc*, however, at paragraph 64 added:

Various forms of bacteria and viruses constantly make their way into our bodies ... and we in turn spread them to others ... It cannot be correct that passengers sitting in an airliner who catch the SARS virus through the plane’s air circulation system... or riders on the bus who catch “swine flu” from [a] ... passenger ... have valid claims under an accident policy ... [S]uch a conclusion would stretch the boundaries of an accident policy beyond the snapping point ...

Justice Binnie concluded that the Claimant acquired herpes in the “ordinary course of events”, and was not entitled to coverage under the policy. To conclude otherwise would serve to add sexually transmitted diseases to the list of critical diseases in the policy, contrary to the parties’ intentions.



Gibbens is an important decision for insurers. It clarifies and narrows the definition of “accident” in the context of accident insurance, preventing these types of policies from morphing into comprehensive health insurance policies.