SUPREME COURT OF CANADA

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Case in Brief: *Trial Lawyers Association of British Columbia v. Royal & Sun Alliance Insurance Company of Canada*

Judgment of November 18, 2021 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2021 SCC 47

The Supreme Court rules that an insurance company with no knowledge of a policy violation may deny full coverage once made aware of the violation.

On May 29, 2006, Mr. Steven Devecseri died in a motorcycle accident where other people were injured. Among them, Mr. Jeffrey Bradfield and Mr. Jeremy Caton decided to sue his estate. Mr. Devecseri's insurance company, Royal & Sun Alliance (RSA), proceeded to defend the estate in the two lawsuits.

Three years after the accident, and more than a year into litigation, RSA learned Mr. Devecseri had consumed alcohol immediately before the accident, putting him in breach of his insurance policy. RSA promptly stopped defending Mr. Devecseri's estate and denied coverage. In doing so, Mr. Bradfield and Mr. Caton were no longer eligible for $1 million under the insurance policy. Nearly three years later, Mr. Caton's action went to trial. The result was a judgment against Mr. Devecseri's estate as well as against Mr. Bradfield. There was also a judgment in favour of Mr. Bradfield on his counter-claim against the estate.

Mr. Bradfield sought a declaration allowing him to recover judgment against RSA on the basis that the insurance company had waived its right to deny full coverage because it had provided a defence to Mr. Devecseri's estate as the litigation progressed.

The trial judge granted the declaration, finding that RSA had indeed waived its right to deny full coverage.

The Ontario Court of Appeal allowed RSA's appeal. It held that RSA could deny coverage, despite having provided a defence to Mr. Devecseri's estate, because it did not know of his policy breach.

Mr. Bradfield sought to appeal the decision to the Supreme Court of Canada, but after being granted leave, he settled with RSA and dropped his appeal. The Trial Lawyers Association of British Columbia was permitted to be substituted as the appellant. Although the appeal was moot, the Trial Lawyers Association wanted to know how the Court would have decided the issue. An appeal is moot if the dispute is already resolved. However, a court may decide to hear a case nonetheless, to clarify the law on the issue.

The Supreme Court agreed to hear the appeal, but ultimately sided with RSA.

Waiver by conduct was not possible under the statute as it read at the time.

Writing for a majority of the judges, Justices Moldaver and Brown observed that the Trial Lawyers Association had conceded, rightfully in their view, that waiver by conduct was precluded by the *Insurance Act* as it read at the time. The statute required that waiver be given in writing and, in this case, the parties agreed that RSA had not given a waiver in writing.

Also, the majority agreed with the Court of Appeal that RSA could deny coverage, despite having defended claims against Mr. Devecseri's estate, because it did not know of his policy breach.

Breakdown of the decision: *Majority*: Justices Moldaver and Brown dismissed the appeal because RSA could not have intended to alter its legal relationship with the third party as it lacked knowledge of the insured person's policy violation (Chief Justice Wagner and Justices Côté, Rowe and Kasirer agreed) | ***Concurring*:** Justice Karakatsanis dismissed the appeal, agreeing with much of the majority's analysis. However, she disagreed that to have intended to alter its legal relationship a promisor had to have actual knowledge of the facts underlying it.

More information (case # 38949): Decision | Case information | Webcast of hearing

Lower court rulings: judgment (Ontario Superior Court of Justice) | appeal (Court of Appeal for Ontario)
