

[Intact Insurance Co. v. Thompson, \[2016\] O.J. No. 6696](#)

Ontario Judgments

Ontario Superior Court of Justice

Small Claims Court - Toronto, Ontario

M. Gannage Deputy J.

Heard: February 12, March 24, 31, June

14, 29, August 24 and September 26,

2016.

Judgment: December 28, 2016.

Court File No.: SC-14-00003039-0000

[2016] O.J. No. 6696

Between Intact Insurance Company, Plaintiff, and Wasing Thompson, Frempong Manson and John Coteau, Defendants

(99 paras.)

Counsel

Andrew T Grayson, Counsel for the Plaintiff.

Ken Singh, Counsel for Defendant Thompson.

Janet Bingham, Licensed Paralegal for Defendant Coteau.

Defendant Manson did not attend and was not represented.

REASONS FOR JUDGMENT

M. GANNAGE DEPUTY J.

OVERVIEW

1 This action arises out of insurance claims made by the Defendants to the Plaintiff Intact Insurance Company for damages and injuries resulting from an alleged car accident on November 20, 2011 in Toronto. Intact says the accident did not happen ; it was "staged". Intact has already paid out to the Defendants under the insurance policy. Now Intact wants its money back and damages.

ISSUES

1. Was there an accident or was it staged?
Is this action barred under the *Limitations Act, 2002*?
3. Are the Defendants liable to Intact and if so, on what basis?
4. What are Intact's damages?
5. Are the Defendants jointly and severally liable?

CONCLUSIONS

2 For the reasons articulated further below, on a balance of probabilities, my conclusions follow.

1. There was no accident. It was staged.
2. This action is not barred under the *Limitations Act, 2002*.
3. The Defendants are liable to Intact based on breach of contract and breach of statute (*Insurance Act* and Regs).
4. Intact's damages are limited to \$25,000 allocated to the individual Defendants as follows:

Thompson	\$12,874.93
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Manson	\$6,224.98
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Coteau	\$5,900.09.
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5. The Defendants are not jointly and severally liable.

BACKGROUND

The parties

3 The Plaintiff Intact Insurance Company ("Intact") is a corporation carrying on business in Ontario as an automobile insurer. It provided a policy of insurance to the co-Defendant, Wasing Thompson, under policy No. 744541114. It provided, among other things, coverage for statutory accident benefits under the *Statutory Accident Benefits Schedule -Effective September 1, 2010*, O. Reg. 34110 (the "SABS"), under the *Insurance Act*, RSO 1990, c.1-8.

4 The Defendant Wasing Thompson ("Thompson") is a 34 years old barber who lives in Toronto. At the time of the alleged accident he was the driver, owner and operator of a used 2003 Toyota Corolla ("Thompson's car").

5 The Defendant Frempong Manson ("Manson") lives in Brampton. He was a passenger in Thompson's car at the time of the alleged accident. He did not testify.

6 The Defendant John Coteau ("Coteau") is 70 years old and lives in Brampton. He was a passenger in Thompson's car at the time of the alleged accident.

Insurance claims paid

7 In keeping with its contractual obligation and duty of good faith, Intact promptly made payments to each of the three defendants, as described below. In this action, Intact is seeking to recover this money and damages.

Thompson

8 In November 2011, Thompson made a claim to Intact under the Policy for the damages and loss to his car as a result of the alleged accident. Within five days Intact indemnified Thompson \$7,378.90 in costs and expenses related to the property damage and loss of his car.

9 In January 2012, Thompson submitted a claim for statutory accident benefits (SABs) in which he alleged to have sustained neck, shoulder and lower back injuries arising from the alleged accident.

10 Intact accepted Thompson's application and paid Thompson \$1,950.00.

Manson

11 In December 2011, Intact received a claim for SABs in which Manson alleged to have sustained soft-tissue injuries arising from the alleged accident.

12 Intact accepted Manson's application and paid Manson \$1,715.00.

Coteau

13 In January 2012, Intact received a claim for SABs in which Coteau alleged to have sustained neck and shoulder injuries arising from the alleged accident.

14 Intact accepted Coteau's application and paid Coteau \$108.65.

Intact's subsequent investigation

15 Intact investigated the claim and obtained an accident reconstruction for the two cars said to have been involved in the accident and the dynamics of the collision as reported. Intact found significant inconsistencies between the physical evidence obtained in the course of the investigation and each of the Defendants' testimonial evidence.

16 The investigation determined that the damage to the two cars alleged to be involved in the accident did not match. Intact alleges Thompson's car was intentionally damaged to give the appearance that an accident had taken place when none had.

17 On September 24 and November 23, 2012, the Defendants attended Examinations Under Oath ("EUOs"), pursuant to Section 33 of the SABS, to assist Intact in properly investigating and adjusting the claim.

Intact unsuccessfully sought repayment

18 In June and July 2013, Intact told the Defendants that all statutory accident benefits payments relating to the claim will be stopped for wilful misrepresentation of a material fact that related to an application for Accident Benefits, pursuant to Section 53 of the SABS.

19 Intact asked each of the Defendants to repay the amounts that Intact had paid as a result of the allegedly fraudulent claim, under Section 52 of the SABS. The Defendants declined to repay.

20 After this, mandatory mediations involving the Plaintiff and the Defendants occurred between July 16, 2013 and February 7th, 2014, at the Financial Services Commission of Ontario ("FSCO"), under s. 280 of the *Insurance Act*, RSO, 1990, c.I-8. The last of the mediations on February 7, 2014 failed as the parties were not able to resolve any issues.

ANALYSIS and FINDINGS

1. Was there an accident or was it staged?

21 Based on the evidence and my factual findings below, I have determined on a balance of probabilities that there was no accident; that the "accident" was staged.

The alleged accident

22 Thompson and Coteau testified in court that they were in an accident and they were injured. The alleged accident occurred on November 20, 2011, at approximately 10:00 p.m. in Toronto. The date and approximate time are undisputed. As addressed further below, the exact location in Toronto is subject to conflicting evidence and not determinative of the central issue.

23 Thompson was driving his car, a used 2003 Toyota, with Manson and Coteau as passengers. Manson and Coteau were his clients. They did not know each other. Thompson said he met them separately and coincidentally that night in the same general vicinity and offered them a ride as they happened to be going to the same part of the city.

24 Thompson testified he was going about 60 kms/hour on a straight part of the ramp from Highway 409 to Highway 401. His car was allegedly struck in the rear by a 2001 two-door Honda Accord ("the other car") driven by Quebec resident, owner and insured Laurence Trudeau, insured by la capitale of Quebec and bearing Quebec licence plates. This alleged accident caused damage to Thompson's car and injury to the Defendants, which required medical treatment.

25 The other car was totalled and not driveable. Intact's appraiser determined that Thompson's 2003 car was not driveable and was salvaged since the cost of repairs exceeded its value.

26 Police Constable A. Hussain arrived about 20 minutes after the alleged accident. PC Hussain took statements from both drivers and wrote a report (Ex 1, Vol 6, Tab 1, pp 4-5). PC Hussain did not investigate to verify a collision and determine the extent of damages.

Intact's evidence

27 Intact argued that the alleged accident did not occur; that the Defendants' tried to make it look like an accident had occurred so that they could claim unmerited SABs and property damage; in other words, that the "accident" was "staged".

28 Intact's counsel called two witnesses, Mike Hart (adjuster) and Rob Seaton (expert). Their germane evidence is

distilled below.

Mike Hart (Adjuster)

29 Mr Hart has been employed with Intact for six years. In his first year he was an Accident Benefits ("AB") adjuster for property damage to cars and SABs claims and then worked in the AB Special Handling Unit ("SHU"). In December 2011 he adjusted the Defendants' claims. He said that no denial is made right away. Denial is a multi-stage process. He said certain indicators make a claim suspicious and need to be further investigated.

30 At the start of the Defendants' claims, Hart arranged the appraisal of Thompson's car (Ex 1, Vol 1, Tab 22) and in early 2012 the appraisal of the other car, insured by la capitale in Quebec (Ex 1, Vol 2, Tabs 62 and 63).

31 Hart testified he had major concerns when he compared the photos in early 2012; particularly with the displacement and scope of the damages. The photos showed the other car was more damaged than Thompson's car. The other car's front hood was pushed in and the airbags deployed. He thought the other car's damage did not correspond with what he called the superficial damage to the Thompson's car. So he sent the claim to an accident reconstruction expert to investigate. Hart asked Rob Seaton to review the photos, police records, appraisals and statements and to comment on whether the vehicles collided as reported. Seaton's evidence is addressed further below.

Claimants' statements

32 Hart testified that each of the Defendant s/claimants gave statements in 2012 (Ex 1, Vol 3). They were done by different Intact field adjusters and taken on different days: Manson - January 6 (Tab 52); Thompson - February 22 (Tab 24); Coteau - March 16 (Tab 110). They were done at the offices of the legal representatives of the claimants at the time. They were re-read by the claimants and signed to be true.

33 Thompson and Manson made corrections as they went, implying that those areas needed corrections, but other areas did not. Coteau testified he had no corrections, as nothing needed to be corrected.

34 Hart testified that found inconsistent evidence in the three statements.

Claimants' Examinations under Oath

35 Hart testified that since suspicious indicators were present, he had Intact conduct Examinations under Oath (EUOs) of the claimants after their statements and - the first reconstruction report were completed. (Ex 1, Vol 1 -- Thompson, Tab 25; Manson, Tab 52; Coteau, Tab 114)

36 The EUOs were done by Intact's lawyer, Mr. Sethi. All claimants had their legal representatives present. Thompson and Manson were given the reconstruction report at the end of the record. Coteau was given his on the record. All claimants testified that despite the reconstruction report, the accident did occur and they did not agree with the report. All swore or affirmed to tell the truth.

Inconsistencies in the Defendants' Statements, Examinations under Oath and Oral Testimony

37 The inconsistencies in the Defendants' statements to Intact, their EUOs and Thompson's and Manson's oral evidence at trial about the alleged accident and its surrounding circumstances were identified by Hart and addressed in Intact counsel's submissions. In my view, these inconsistencies are cumulatively significant. Some examples follow.

1. How they knew each other, how well and for how long.
2. Whether they knew the other's name at the time of the alleged accident.

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3. Where they met on the night of the accident before getting into the accident (inside Tim Hortons; outside Tim Horton in the parking lot; at the bus stop on the street).
4. The circumstances under which they met that night (arranged in advance by cell phone call vs. coincidence).
5. Where the alleged accident happened. Several different dizzying versions have been stated by the Defendants, including: Hwy 409 and Kipling ramp; Hwy 409 and 401 ramp; Hwy 401 trying to merge onto Hwy 409; Hwy 409 eastbound and Highway 401; trying to merge onto Hwy 401; entered Hwy 409 ramp; Hwy 409 to enter Hwy 401 eastbound).

The police report states Kipling ramp to Highway 409 (Ex 1, Vol 6, Tab 1, pp 4-5). Thompson and Coteau testified in court that it occurred on Highway 409 toward Highway 401.

6. How the accident happened and whether there was another car in front of Thompson's.
7. The location of the two cars right after the alleged accident (touching vs one foot apart, as depicted in Thompson's photos).
8. Whether they were in the car or outside it when the police arrived.
9. Whether the airbags were deployed upon impact.
10. Whether the road conditions that night were wet or dry.

Coincidental and unbelievable evidence

38 Intact submitted none of this coincidental and unbelievable evidence alone is typically sufficient enough to deny insurance claims. But when put together with contradictory evidence, such as the reconstruction report and the claimants' inconsistent evidence, it supports the conclusion the accident was probably staged. I accept this submission.

All the claims were very similar

39 Hart testified that the claimants' OCF-1, 2, 3, 18s¹ which were adduced and which I have reviewed, were similar even with different legal representatives.

40 All claimants' medical complaints were read from their OCF-18s. They are similar complaints: back pain, and not objective injuries like broken bones. Indeed, they testified that after the alleged accident, none had to be hurried away in an ambulance.

Income Replacement Benefits denied

41 Hart testified all claimants sought but were denied Income Replacement Benefits ("IRB"). He testified that people usually pursue their IRB claims if they are not paid at all. Hart said all Defendants did not provide further required information to support their IRB claims and some employment information provided was incomplete, incorrect or suspicious.

Collision World

42 Hart confirmed that Collision World was close to the accident scene but that Intact had preferred body shops that were closer. Hart said Thompson did not accept the offer to take his damaged car to one of Intact's preferred body shops and decided instead to leave it at Collision World. Also Thompson did not use an Intact preferred rental company. He used Five Star Car Rental which is located at Collision World. They have the same address: 32 Stoffel Road. The police report shows both cars used Freeway Towing which also has the same address, i.e. 32 Stoffel Road.

43 The other car was also towed to Collision World, which appraised it. Both Hart and Mr Rob Seaton testified that it is uncommon for both cars in an accident to go to the same body shop.

44 Hart concluded, based on the information in the police report and the claim to insurer la capitale, that the passenger in the other car was Kwasi Hoffman. He has a connection to Collision World.

45 Intact's counsel suggested that Collision World and other 32 Stoffel Road companies have a financial motive to assist in staging accidents and was involved in staging the alleged accident in the case at bar.

46 Thompson and Coteau testified that they know no one at Collision World or Kwasi Hoffman and they have never been there.

47 No one from Collision World testified.

Insurance Bureau of Canada's Tip Notice

48 Hart testified Intact coincidentally received a General Intelligence Tip Notice (Ex 1, Vol 3, Tab 73) from the Insurance Bureau of Canada ("IBC") on June 25, 2012. This was seven months after the alleged accident and just 10 days after Seaton's first reconstruction report.

49 This Notice was based on IBC's review of multiple insurance company claims. The Notice listed specific loss characteristics notable in recent suspected staged collisions. Hart said two of the four listed characteristics applied to the current claim: the rear end impact and the 32 Stoffel location. Another characteristic was that the other car was a rental. The other car here, while not a rental, was an out-of-province car. Thus, as with a rental, it is difficult for insurers' investors to get information about that car, its claimants and the alleged accident. The tip identified Collision World's history of staged accidents.

Intact's denial of the claims

50 Hart testified that based on all the evidence gathered from his investigation, he recommended in June 2013 that the claims be denied (Ex 1, Vol 3, Tab 70 - summary of claims). His manager and the denial committee agreed. Hart then sent all claimants denial letters (Vol 6, Tab 5). Hart conducted FSCO mediations of each claimant to seek repayment. They failed. Intact then filed this Claim .

Submissions of Thompson's counsel

51 Thompson's counsel submitted that Hart's findings are based on speculation, conjecture and falsehoods. I reject this submission. While Hart initiated the investigation because of "subjective red flags", he used reliable evidence, as described, to support the denial of claims. He did not, as submitted, base his conclusion on Google searches and anecdotal articles about Collision World.

52 The criticism that Hart did not call certain witnesses, like the investigating officer, applies equally to the Defendants. Moreover, the officer was not an eyewitness. The officer attended after the alleged accident to take statements from those involved. The officer's report has been entered as an exhibit. The officer did not clearly have additional pertinent evidence.

53 The failure to obtain the MTO footage was explained by Mr Seaton: if it ever existed, it would have been erased long before the full investigation.

54 The fact that Intact's appraiser, who inspected Thompson's car to promptly assess the extent of damage, did not find anything fraudulent is not conclusive, especially since a further indepth investigation suggested otherwise. Intact's appraiser is not an accident reconstructionist.

55 In my view, any error by Intact's witnesses about the gender of the other driver, Laurence Trudeau, is peripheral to the central issue.

Rob Seaton (Expert)

56 Based on his credentials, including his 20 years' experience, Rob Seaton easily qualified as an expert in accident reconstruction. The Defendants' representatives did not challenge his expertise. He testified for Intact and filed two reports. Seaton's evidence confirmed Hart's.

57 I accept Seaton as an experienced and objective expert in accident reconstruction and his conclusions about the alleged accident distilled below and covered in Hart's testimony. The Defendants' representatives did not tender any expert evidence of their own to counter his conclusions.

58 Seaton analyses objective "crash test data" to determine whether a collision happened as reported or at all. Seaton reviewed the appraisals for both cars, the appraisal photos of both cars, Thompson's photos, the police report and the Defendants' statements and Examinations under Oath. He also attended at Kipling and 409, the location in the police report. He did not inspect the cars. After the appraisals were done, there was no opportunity to inspect the cars as they were salvaged.

59 Intact adduced his first reconstruction report (June 15, 2012) [Ex 1, Vol 6, Tab 1] and his revised one (March 3 2016) [Vol 7, Tab 2]. He did his revised report after three photos were provided by Thompson at the start of trial (though Intact had requested them in 2012).

60 Seaton's reports concluded the damage to the cars was not consistent with the reported collision and the sequence of events. He concluded that the damage profiles of the two cars did not match. There was an absence of damage that should have been seen and there was damage that should not have been seen

61 Based on several adduced photos, he testified that the rear of Thompson's car suffered a low speed collision and superficial abrasions. The profile, elevation and extent of damage did not match the considerable longitudinal crush damage to the front of the other car. He concluded there was a significant disparity with the speed required to do such damage. If the Defendants' version of events in their EUOs were correct, the photos would have depicted a lot more damage to Thompson's car. The muffler would have been considerably pushed forward (though the appraiser noted muffler damage). There would have been tire marks on the road, though none were documented in the police report (protocol requires that this be recorded on a drawing if there are tire marks).

62 He testified it is impossible to tell if the debris depicted in Thompson's photos was from those two cars or not. In reviewing the first photo, he testified that the debris field would not usually show all the debris centred in the middle. The debris field would have been wider and more west than that depicted in some photos.

63 The differences in the heights of the damage were inexplicable. A change in tire size or pressure could affect the height by only a half to one inch, which is not significant.

64 He testified that the descriptions from the Defendant's statements did not match the photos, including the alleged speeds.

65 He said the alleged accident probably did not happen at Kipling and 409 as the police reported. When attending at Kipling and 409, he noted there is a right curve. He concluded that if the cars collided there, there should have been corresponding curve damage.

66 Seaton testified that the new photos taken by Thompson did not change his conclusion. He speculated that the cars might have got there by being either towed or driven damaged.

Submissions of the Defendants' representatives

67 The Defendants' representatives, while not challenging Seaton as an expert, criticized Seaton's failure to: contact the investigating officer or Intact's appraiser; obtain MTO footage; attend the scene of the accident; ascertain the correct location from among the conflicting evidence; base his evidence on the alleged accident occurring on a straight, not curved road; notice damage to the muffler of Thompson's car; and determine accurately the other driver's gender. In my view, these alleged failures are not fatal. They do not undermine Seaton's conclusion that the damage profiles to the two cars did not match.

68 Thompson's counsel submitted that Seaton's conclusion was based on Autostats software and on measurements Seaton took of a sample four-door Honda Accord that were transposed onto pictures of the two-door Honda Accord involved in the accident. Thompson's counsel submitted that, as Seaton admitted, a four-door Honda is about two inches higher than a two-door Honda, which explains why its hood crumbled upon hitting the lower part of Thompson's car. This explanation was uncorroborated.

69 I reject the submission that Seaton's investigation was fundamentally flawed. I find that Seaton's conclusion was based on his expertise, proper methodology and measurements within an acceptable margin of error. Perfection is not required or expected. The applicable standard is one of probability, not certainty.

Credibility of the witnesses

70 Intact's two witnesses were credible. Their evidence, while not flawless, was internally consistent and corroborated each other. Their testimony stood up under cross-examination.

71 In contrast, the two Defendants were generally not credible. As addressed above, their evidence was sometimes internally inconsistent and contradictory of sworn statements they made earlier, without explanation. Their testimony on basic facts did not match in some cases. Their inconsistent evidence calls into question the veracity of the Defendants' accounts.

72 The Defendants did not call any witnesses to support their version of events, thus leading to an adverse inference. For instance, the Defendants did not call an expert, the investigating police officer, their medical services providers, anyone from Collision World, the driver of the other car, its apparent passenger Kwasi Hoffman, a representative of insurer la capitale, or close family members. So the Defendants' evidence is uncorroborated and unconvincing. If the accident had happened as alleged, one would have expected more consistency in their evidence about it. After all, they were there.

73 The coincidental meeting that night of Thompson and his two clients, Coteau and Manson, who had never met, who just happened to be going to the same part of the city casts further doubt about their version of events.

74 Overall, I find the testimony of Intact's witnesses is more reliable than that of the Defendants. The Defendants' various statements cannot be reconciled with Intact's more credible evidence.

75 For the above reasons, having carefully weighed all the evidence, I conclude on the balance of probabilities that the accident did not happen; it was staged.

2. Is this action barred under the *Limitations Act, 2002*?

76 The Defendants' representatives argued the action is statute-barred. Applying sections 4 (two years) and 5(1) (discoverability) of the *Limitations Act, 2002*, S.O. 2002, c. 24 to the circumstances of the case at bar, I conclude that Intact's Claim has been commenced within two years of it being discovered. Intact's Claim is not barred under the *Limitations Act, 2002*.

77 The alleged accident took place on November 20, 2011. This date is undisputed. Hart asked Seaton for and

received a preliminary opinion in May 2012. In November 2012 Intact concluded the last Examination Under Oath. Several mandatory mediations involving the Plaintiff and the Defendants occurred between July 16, 2013, and February 7, 2014, at FSCO, pursuant to s. 280 of the *Insurance Act*. The last of the mediations failed on February 7, 2014, as the parties were not able to resolve any issues. The Claim was issued on June 12, 2014, well within two years of this date, as well as within two years of the last EUO. So it is not out of time.

78 This action is not statute-barred.

3. Are the Defendants liable to Intact and if so, on what basis?

79 Intact is seeking damages for breach of contract, breach of statute, and/or wilful fraudulent misrepresentation, and/or negligent misrepresentation, deceit, and unjust enrichment, in the amount of \$25,000.

80 In my view, based on the evidence and my above factual findings, the Defendants are liable to Intact for breach of contract and breach of statute. Based on the insurance policy and under various pertinent provisions of the *Insurance Act* (ss 233(1)(b)(c), 118) and SABS (s 52(1)) discussed below, I have concluded the Defendants were not entitled to the money they received. Given this finding, it is unnecessary to address the other causes of action. Intact is entitled to seek repayment and damages from the three claimants/Defendants.

SABS

81 Sections 52(1) and (3) of the SABS state:

52. (1) Subject to subsection (3), a person is liable to repay to the insurer, (a) any benefit described in this Regulation that is paid to the person ... as a result of wilful misrepresentation or fraud;

...

(3) If the notice required under subsection (2) is not given within 12 months after the payment of the amount that is to be repaid, the person to whom the notice would have been given ceases to be liable to repay the amount unless it was originally paid to the person as a result of wilful misrepresentation or fraud.

82 This applies to all three Defendants. On the evidence, I find that they were paid statutory accident benefits as a result of wilful misrepresentation or fraud. Accordingly, the Defendants are liable to repay their benefits to Intact.

83 For accident benefits, the claimants have to be in an accident as defined by s. 3 of SABS, which reads in relevant part:

3. "accident" means an incident in which the use or operation of an automobile directly causes an impairment ...;

84 On the evidence, I find on a balance of probabilities that the cars did not hit as alleged; the incident did not directly cause an impairment to them. So it was not an "accident". Thus, the Defendants did not qualify for payments for statutory accident benefits or any insurance proceeds under the policy.

85 Intact's counsel cited only FSCO decisions granting repayment of SABS following a staged accident; specifically, *Katawaru v RBC General Insurance Co* (Dec. 22, 2014), *Abdulkadir et al v Economical Mutual Insurance Co* (Oct 30, 2014), [\[2014\] O.F.S.C.D. No. 222](#) *Addae v Dominion of Canada General Insurance Co* (Nov 9, 2007), [\[2007\] O.F.S.C.D. No. 238](#) *Geele v. State Farm Mutual Automobile Insurance Co* (April 29, 2015), and *Johnson v State Farm Mutual Automobile Insurance Co* (July 23, 2015), [\[2015\] O.F.S.C.D. No. 194](#). As Intact's counsel acknowledged, these decisions are not binding on me.

Property damage claim

86 Thompson violated his contract with Intact for his property damage claim pursuant to s. 233(1)(b)(c) of the *Insurance Act*, which states:

Where,

...

(b) the insured contravenes a term of the contract or commits a fraud; or

(c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

87 Section 1 says in part "'contract' means a contract of insurance, and includes a policy, ...".

88 On the evidence, I find on a balance of probabilities that Thompson contravened a term of the contract, committed a fraud or made willful false statements for his property claim. Accordingly, his claim is invalid.

Section 118 of the *Insurance Act*

89 The Defendants' insurance claims are also unenforceable under section 118 of the *Insurance Act*. It says that where the insured contravenes any law with intent to bring about loss or damage, a claim for indemnity under a contract of insurance is unenforceable.

4. What are Intact's damages?

90 It follows from my above finding of liability that Intact is entitled to seek repayment and damages from the three claimants/Defendants. Intact is alleging joint and several liability or alternatively, individual liability of each of the Defendants for the respective amounts Intact paid them plus their share of Intact's examination and investigation expenses.

91 Intact's claim for damages encompasses:

- * amounts it paid to Thompson for car loss (property damage), car rental and medical benefits (SABs)
- * amounts it paid to Manson and Coteau for medical benefits (SABs)
- * amounts it spent in relation to each claimants/ Defendants' claim; viz. Insurer's Examination Fees and investigations.

92 All these amounts are uncontested and summarised as follows:

Defendant	Total	Car loss	Car rental	Medical benefits	Insurer's Examination Fees	Investigations
Thompson	\$13,966.55	6,864.75	514.15	1,950.00	3,685.68	951.97
Manson	\$6,752.77	-	-	1,715.00	3,410.00	1,627.77
Coteau	\$6,400.34	-	-	108.65	6,190.72	100.97
All three	\$27,119.66					

(Based on Ex 1, Vol 7, Tab 1- Rebecca Castelino's Payment Revised Summary (updating Ex 2).)

93 The total amount of the Claim is \$25,000.00, the maximum monetary amount permitted in Small Claims Court. Accordingly, the above amounts are equally and proportionally reduced using this formula: amount claimed for each Defendant multiplied by \$25,000 divided by \$27,119.66.

94 Thus, the amounts of each Defendant's liability are specifically:

Thompson	\$12,874.93
Manson	\$6,224.98
Coteau	\$5,900.09
Total of all three	\$25,000.00.

5. Are the Defendants jointly and severally liable?

95 Intact 's counsel has failed to provide persuasive authorities that would support a finding of joint and several liability. Intact's counsel cited the following two cases in oral argument (he withdrew a third case): *MTCC No. 710 v. Khan*, [2012 ONSC 5494](#) (SC) (re condo manager's massive fraud); *Fletcher v. Hand*, [1994] A.W.L.D. 942, [\[1994\] A.J. No. 531](#) (QB) (re realtors' supervisor; fiduciary relationship; material misrepresentation and negligence). As Thompson's counsel persuasively argued and Intact's counsel admitted, the facts of these cases are very different from those here. Analogies cannot be convincingly made. Nor are these cases binding on me.

96 The specific amount of damages varies among the three defendants, all of whom are known to Intact. These amounts can be allocated to each of the three defendants according to the amounts Intact paid to them and spent on them. These amounts are not in dispute. Holding any one Defendant responsible to pay the totality of these damages would be unreasonable and unfair in the circumstances of this case. For instance, why should the two passengers Manson and Coteau be liable to pay back that which Intact paid to the insured Thompson for property damage to his car and for car rental?

DISPOSITION

97 Judgment for the Plaintiff Intact against the Defendants as follows:

Thompson to pay the Plaintiff	\$12,874.93
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Manson to pay the Plaintiff	\$6,224.98
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Coteau to pay the Plaintiff	\$5,900.09
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plus prejudgment interest under the *Courts of Justice Act, R.S.O. 1990, c. C.43*, from June 12, 2014 (the date of the Claim) and post-judgment interest under the *Courts of Justice Act*.

COSTS

98 As mentioned at the end of the trial, if the parties cannot agree on costs and wish to make submissions, they should serve written submissions (no more than three typed double-spaced pages) on each other, and file the submissions with the Court according to the following timetable:

- (a) on or before Tuesday January 10, 2017, the Plaintiff shall deliver to the Defendants' representatives and file with the Court, written submissions with respect to any request for costs;
- (b) on or before Tuesday January 24, 2017, the Defendants' representatives shall deliver to the Plaintiff and file with the Court, responding written submissions.

99 In making submissions on costs, the parties should state if any settlement offers were made that should be taken into account in fixing costs and attach copies of the offers.

M. GANNAGE DEPUTY J.

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- 1** These prescribed forms are described as follows. OCF-1 is the claimant's Application for Accident Benefits. OCF-2 is the Employer's Confirmation Form completed when the Income Replacement Benefits are claimed. OCF- 3 is a Disability Certificate completed by the treating medical professional. OCF- 18 is the Treatment and Assessment Plan completed by the treating medical professional under the Minor Injury Guideline ("MIG").