

Multiple Loss Transfer Deductibles Permitted: *Economical v. Northbridge*, 2016 ONSC 458

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On January 21, 2016, the Ontario Superior Court released a decision of Justice Faieta, *Economical Mutual Insurance Company v. Northbridge Commercial Insurance Company*, finding that the \$2,000 loss transfer deductible in s. 275(3) of the Insurance Act applies to each person who receives accident benefit payments. Previously, the only appeal case dealing with this issue was a 1994 decision of Justice Holland (*Progressive Casualty Co. v. Jevco Insurance Co.*¹), where the judge found that the deductible was only applicable to indemnity claims for accident benefits paid to the named insured.

Justice Faieta's decision is very well-reasoned and seems to accord with the purpose of the loss transfer deductible (more so than Justice Holland's). Justice Faieta recognized that loss transfer is claimant-centric, and indemnity considerations could be different depending on the claimants and their insurers. Justice Faieta also accepted that below a certain threshold (\$2,000), it would be inappropriate for insurers to have to incur transaction costs to reallocate losses in the loss transfer scheme. The Judge concluded:

The approach of applying a single deductible...greatly dilutes the pragmatic cost avoidance ... interpreting the deductible provided by s. 275(3) of the *Insurance Act* to apply to each claim of indemnification for statutory accident benefits paid to each person involved in an automobile accident is a just and reasonable result.

Technically, there are now two conflicting decisions from the same level of court. However, it is anticipated that insurers will likely accept Justice Faieta's interpretation and apply the deductible for all claimants subject to loss transfer, given the more thorough, thoughtful and compelling analysis provided by Justice Faieta and the impracticality of pursuing loss transfer indemnity for less than \$2,000.

¹ [1994] O.J. No. 3152 (Gen. Div.)

The full decision, *Economical Mutual Insurance Company v. Northbridge Commercial Insurance Company*, 2016 ONSC 458, is available through the following link:
<https://www.canlii.org/en/on/onsc/doc/2016/2016onsc458/2016onsc458.html?resultIndex=1>