

## ***Relevancy of Reserves: Kanani v. Economical Insurance***

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In *Kanani v. Economical Insurance*,<sup>1</sup> the plaintiffs brought a motion for production of their accident benefits insurer's reserve information. The plaintiffs had brought claims against Economical for the breach of its duty to act in utmost good faith, retroactive and ongoing attendant care benefits, and statutory interest.

In essence, the plaintiffs argued that the setting of reserves of a claim file may dictate or impact on how the claim is adjudicated or what benefits are paid on a claim. They also argued that the state of mind of Economical was the central issue in this case, in particular how the issue of attendant care benefits was analyzed, adjusted and considered.

The plaintiffs also submitted that Economical had put its state of mind at issue by claiming that it was unaware of the need for attendant care benefits. In addition, the plaintiffs' Statement of Claim contained particular allegations of bad faith, which the plaintiffs argued put Economical's knowledge in issue.

On the other hand, Economical argued that the reserving process is different than the adjudication process. It also denied that it had put its state of mind in issue and also argued that the setting of reserves would not show Economical's state of mind.

The plaintiffs' motion was dismissed.

Justice Nadeau reasoned that, while reserves are created and affected by the ongoing assessment and adjustment of the claim as new information comes in, the adjustment of the claim is not affected by the presence or quantum of reserves. His Honour added that the fact that reserves and adjusting may be intertwined does not necessarily make reserves relevant to the litigation.

Justice Nadeau opined that, in the absence of unusual circumstances supported by the existence of sufficient facts, the level of the reserves set by an insurer is immaterial to a bad faith claim.

His Honour reasoned that the fairness aspect of the duty of good faith relates to the manner in which the insurer conducts its dealings with the insured in investigating,

assessing and responding to the insured's claim. It does not relate to the insurer's setting of a reserve after considering the risk as a whole, which includes its assessment of the claim as well as other factors, such as legal costs and the cost of experts.

For reserve information to be considered relevant, evidence is required that the setting of reserves influenced or dictated the ongoing assessment of the claim or influenced bad conduct. Such evidence was not provided in this case.

Justice Nadeau added that the prejudicial effect of requiring Economical to produce reserve information would outweigh its minimal, if any, probative value. Namely, the plaintiff would be provided with an unfair and unnecessary advantage in the lawsuit by being told what the insurer believes the case is worth.

Further, Economical's ability to negotiate a settlement would be impaired, as knowledge of the reserve might create a feeling of entitlement in the plaintiff to a settlement in that amount, despite the reserve being nothing more than an "intelligent estimate of the risk as a whole" based on the facts known at the time.<sup>2</sup>

Justice Nadeau further noted that, without there being allegations of misconduct in the setting of the reserves, disclosure of the reserve information is "generally not relevant".<sup>3</sup>

This is an important decision for insurers, as it means that, outside of rare and exceptional circumstances, an insurer is not required to provide a claimant with reserve information.

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<sup>1</sup> 2020 ONSC 7201.

<sup>2</sup> *Ibid* at para 24.

<sup>3</sup> *Ibid* at para 29.