



**Citation: Robinson v. AIG Insurance, 2024 ONLAT 23-008880/AABS**

**Licence Appeal Tribunal File Number: 23-008880/AABS**

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

**Carrie Robinson**

**Applicant**

and

**AIG Insurance**

**Respondent**

**DECISION**

**PANEL:**

**Rebecca Hines  
Dagmara Szczudlo**

**APPEARANCES:**

For the Applicant:

Ashu Ismail, Counsel

For the Respondent:

Kadey Schultz, Counsel

Court Reporter:

Lynn Jefferson, Taylor Reporting

**HEARD: by Videoconference:**

**September 11 and 12, 2024**

## OVERVIEW

- [1] Carrie Robinson, the applicant, was involved in an automobile accident on March 1, 2019, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The applicant was denied benefits by the respondent, AIG Insurance, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.
- [2] The parties entered into settlement discussions in March 2023. The applicant now brings an application to enforce a settlement agreement she submits was reached on March 24, 2023.

## ISSUE

- [3] The sole issue in dispute is whether the applicant and respondent reached a binding and enforceable settlement agreement on March 24, 2023?

## RESULT

- [4] For the reasons that follow, we find that the applicant and respondent did not reach a binding and enforceable settlement agreement on March 24, 2023.

## PROCEDURAL ISSUES

### ***Non-Party Motion***

- [5] A non-party motion to quash a summons for Jason Frost, previous counsel for AIG Insurance, and a witness for the applicant, was filed on September 6, 2024. It was heard by Vice-Chair Lindsay Lake on the day of the hearing. The motion was granted orally and written reasons were provided in a Motion Order dated September 23, 2024.

### ***Respondent’s request to omit examination-in-chief***

- [6] At the outset of the hearing, the respondent requested that the hearing proceed with cross-examination and re-direct of the sole remaining witness, Joseph Campisi. The respondent argued that the witness submitted an affidavit, and this document should serve as evidence-in-chief. Furthermore, it submitted that the applicant failed to provide a summary of the anticipated evidence the witness would give at the hearing, contrary to the amended Case Conference Report and Order (“Order”) released on March 17, 2024.
- [7] The applicant opposed the respondent’s request and argued that the affidavit required further clarification and that her questions during examination-in-chief of

Joseph Campisi would be limited. In addition, the applicant maintained that she will be prejudiced if she is unable to conduct an in-chief examination of the witness in light of the motion decision quashing the summons of Jason Frost.

[8] We find that the parties were notified of the documents required for the hearing in the Tribunal's Order. The order was subject to the *Licence Appeal Tribunal Rules, 2023* (the "Rules") and paragraph [22](ii) required each party to serve and file a summary of evidence each of their witnesses would give. This summary was provided by the respondent who summoned Mr. Campisi to testify, not the applicant, who is seeking to lead an examination-in-chief of this witness.

[9] In the circumstances, we declined the respondent's request to omit examination-in-chief of the remaining witness pursuant to s. 15(1) and s. 25.0.1 of the *Statutory Powers of Procedure Act*. The Tribunal has the power to determine its own procedures and practices and control the process. Further, it is the applicant's onus to prove the issue in dispute. We find the respondent is not prejudiced by allowing the applicant to conduct an in-chief examination of the witness because the affidavit filed by the applicant provided the respondent with enough information about the witnesses' anticipated testimony. We provided a brief recess after the in-chief testimony of the witness for the respondent to consider anything that was unforeseen or not addressed in the affidavit.

## **ANALYSIS**

[10] The applicant has the onus to prove that the parties reached a binding and enforceable settlement agreement on March 24, 2023.

### ***Settlement agreement requirements for statutory accident benefits***

[11] Regulation 664: Automobile Insurance, under the *Insurance Act*, provides a framework for agreements that finally dispose of a claim or dispute in respect of a person's entitlement to statutory accident benefits under the *Schedule*.

[12] Sections 9.1(2) and 9.1(3) require that a settlement notice be in writing, signed by the insurer, and prescribes the content of a notice, including:

1. The insurer's offer with respect to the settlement.
2. A description of the benefits that may be available to the insured person under the *Statutory Accident Benefits Schedule*.
3. A statement that the insured person may, within two business days after the later of the day the insured person signs the disclosure notice and the day the insured person signs the release, rescind the settlement by delivering a written notice to the office of the insurer or its representative

and returning any money received by the insured person as consideration for the settlement.

- [13] Based on section 9.1(3) of Regulation 664, both the signed disclosure notice (“SDN”) and a release are required components of a settlement agreement. In this case, we find that neither documents were signed by both parties.

***There was no binding settlement between the parties***

- [14] As noted in *Olivieri v. Sherman*, 2007 ONCA 491 (CanLII), cited by both parties, a settlement agreement is a contract. Thus, it is subject to the general law of contract regarding offer and acceptance. For a contract to exist, the Tribunal must find that the parties: (1) had a mutual intention to create a legally binding contract; and (2) reached agreement on all of the essential terms of the settlement.
- [15] We reviewed the evidence before us and find that there was a mutual intention to create a legally binding contract to settle the accident benefits claim, however the parties did not reach an agreement on all of the essential terms of the settlement.
- [16] We find that neither the email ‘agreement in principle’ dated March 24, 2023, nor the stand-alone SDN amended and signed by the applicant on May 4, 2023 establish a binding contract between the parties and cannot be enforced by the Tribunal because the applicant amended an essential term in the SDN without agreement from the respondent and did not provide the signed release as required by Regulation 664.

***A mutually agreeable release was an essential term of the settlement agreement***

- [17] We find that the parties did not enter into a binding settlement agreement because both parties did not sign the SDN and a mutually agreeable release on March 24, 2023, as required by s. 9.1(3) of the Regulation.
- [18] The parties negotiated a settlement agreement between March 9, 2023 and March 29, 2023 using e-mail and telephone communications. The applicant submits that all essential terms were negotiated and concluded with a final offer and final acceptance between the parties on March 24, 2023, followed by a confirmation email. The respondent argues that a mutually agreeable worded release was an essential term of the settlement. Further, settlement negotiations fell apart when the parties could not agree to the terms of the release.
- [19] We are not persuaded that a final acceptance was reached on this date as the email exchanges clearly refer to ‘an agreement in principle’ and the exchange of formal documents such as the SDN and the release for signature were still pending.

- [20] Although an agreement was reached on the monetary value of the settlement, how the funds would be categorized, and other details listed in the SDN, the parties did not agree on the content of the release. In the email dated March 24, 2023, where counsel for the respondent confirmed that an agreement had been reached in principle, a condition of the proposed settlement was that the parties agreed that a mutually agreeable worded release would need to be signed. As part of that agreement, the applicant would release future claims flowing from the accident benefit claim against AIG, AIG's vendors and agents. The specifics of exactly who would be included in the release were not identified.
- [21] We find that the settlement negotiations fell apart when the applicant did not agree to the inclusion of Ryder Truck Rental Canada Ltd. ("Ryder") (in its role as the named insured in the subject AIG policy and the party responsible for the deductible in that policy), in the release.
- [22] On March 31, 2023, the applicant sent an email to the respondent with proposed amendments to remove references to Ryder in the original release shared on March 29, 2023. Correspondence regarding this request continued in April 2023. A second version of the SDN and release were sent to the applicant's counsel on April 25, 2023, indicating that "As we discussed via telephone, it is a fundamental term of the release for AIG that all owners, directors, employees of AIG and its agents, adjusters, investigators, its insured, IE vendors, lawyers, etc. are released to the extent that the claim or complaint flows from the handling of the accident benefits claim." This communication also raises the possibility of a global settlement. On April 26, 2023, Mr. Campisi replied that the "wording of the release will be problematic" because Ryder is still mentioned in version 2 of the release.
- [23] The applicant submitted that Ryder is the defendant in a companion tort action associated with this accident and its inclusion in an accident benefits release is unreasonable and in violation of Ontario law which requires that a firewall be erected between AB claims and tort adjusters. The applicant also argued that AIG's desire to protect Ryder in an accident benefits release indicates a conflict of interest and falls outside the reach of the *Schedule*, the *Insurance Act*, and *Regulation 664*.
- [24] The respondent submitted that the signed release was an essential term of the settlement agreement and a reference to 'as set out in the attached release' was made in the SDN which was provided for the applicant's signature on March 29, 2023.
- [25] On May 4, 2023, the applicant crossed-out and initialled the reference to 'as set out in the attached release' and signed the SDN. The applicant emailed the

respondent on May 5, 2023 sharing the signed SDN and advised that a motion to enforce settlement associated with the March 24, 2023 agreement would be brought. The applicant also indicated that while she “anticipates it’s rejection”, the signed SDN is being returned for the respondent’s reconsideration.

- [26] The parties agree that the required release was not executed by the applicant as of the date of the hearing.
- [27] We find that the applicant amended a listed term in the SDN without agreement from the respondent and did not provide the signed release as required by Regulation 664. We are persuaded by the respondent’s evidence that this release was an essential term of the settlement agreement between the parties and was not provided as required.

***The Tribunal dismisses the applicant’s request to enforce the settlement***


- [28] While both parties agree that the Tribunal has jurisdiction to enforce settlement, the applicant did not provide any authority to support her position that the Tribunal has the jurisdiction to impose the terms of the settlement and release when it was not agreed to by the parties.
- [29] The applicant submits that it was not in the contemplation of the parties that Ryder would be part of the release on March 24, 2023. Rather, at that time, the applicant was asked to only release AIG, its vendors, and agents. The request to include Ryder was made after March 24, 2023 and was highly unusual.
- [30] The applicant argues that if AIG wanted to release Ryder, a party not represented by Mr. Frost (as determined by the Tribunal already in Motion Order dated November 19, 2021 for Tribunal File 20-003795/AABS), it would have had to instruct Mr. Frost to represent or negotiate Ryder’s interests, placing him in conflict with longstanding Ontario jurisprudence which requires him to place the interests of the applicant on par with his service to AIG.
- [31] The applicant is seeking a remedy from the Tribunal to order the removal of references to Ryder from the release, submitting that the request itself gives the impression that AIG feels the need to protect the tortfeasor and is omitting its good faith obligation to protect the insured and to not place its own self-interest above hers.
- [32] The applicant relies on *Haider v. Rizvi*, 2023 ONCA 354 (CanLII) (“*Haider*”) in support of her position that post-settlement release discussions do not negate the settlement agreement, submitting that implicit in agreements to settle is a promise to furnish a release, however, unless agreed to, no one is bound to execute a complex or unusual release.

- [33] In *Haider*, minutes of settlement were signed by both parties, however, the release was never finalized because counsel for the respondent passed away. The Court of Appeal approved the settlement that included a no claims over clause. We find *Haider* distinguishable because it involved a civil matter involving the *Rules of Civil Procedure*, rather than the mandatory requirements for a settlement involving accident benefits outlined in the Regulation. In addition, in *Haider*, the parties signed minutes of settlement, whereas in this case the email exchanges between counsel following March 24, 2023, show ongoing negotiations between the parties up until the applicant signed the amended SDN on May 4, 2023. We find there was no meeting of the minds about the essential terms of settlement on March 24, 2023 as the details of the release had not been agreed to.
- [34] We find the other case law relied upon by the applicant unhelpful to her position because those decisions involved cases where a party to the settlement had deceased after the essential terms of settlement had been determined.
- [35] The Tribunal's authority is limited to a determination of whether the parties entered into a legally binding settlement in order to resolve disputes arising from these settlements. For the reasons noted above, we find that the parties did not reach a binding settlement. Consequently, the Tribunal dismisses the applicant's request to enforce settlement.

**ORDER**

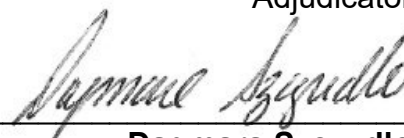
- [36] We find that the applicant and respondent did not reach a binding and enforceable settlement agreement on March 24, 2023.

**Released:** October 24, 2024



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**Rebecca Hines**  
Adjudicator



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**Dagmara Szczudlo**  
Adjudicator