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CASE SUMMARY: ONTARIO COURT OF APPEAL RULES MINNESOTA IS AN “INADEQUATELY INSURED MOTORIST”

A U.S. state with statutory limits on tort payments following a motor vehicle accident is considered an inadequately insured motorist allowing an insured to claim against his or her own underinsured motorist coverage.

Insurance law – Automobile insurance – Underinsured motorist – Interpretation of policy; Practice – Leave to appeal – Standard of review; Damages – Special damages

[Hartley v. Security National Insurance Co.](#), [2017] O.J. No. 4774, 2017 ONCA 715, Ontario Court of Appeal, September 14, 2017, G.J. Epstein, C.W. Hourigan and D. Paciocco JJ.A.

The insured was injured in a motor vehicle accident in Minnesota when he was struck by a state of Minnesota owned truck driven by a state employee. The insured began an action against the State of Minnesota which settled for US\$500,000, the maximum permitted under statute. After fees were deducted, the insured was left with CAD\$386,500.

The insured applied for underinsured motorist coverage in Ontario under the optional statutory Family Protection Coverage Endorsement, OPCF 44R. The insurer denied coverage on the basis that Minnesota was not an inadequately insured motorist because it was self-insured and was protected by a statutory immunity. These arguments were rejected by the application judge and by the Court of Appeal.

The Court of Appeal rejected the insured’s argument that the fees paid to his Minnesota lawyer were special damages owed under the Canadian underinsured motorist endorsement. These fees were not recoverable.

This case was digested by [Laura E. Miller](#) and first posted on Quicklaw and published in the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact [Laura E. Miller](mailto:lmiller@harpergrey.com) at lmiller@harpergrey.com.

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