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## CASE SUMMARY: FIRE LOSS CAUSED BY TENANT'S NEGLIGENT MAINTENANCE OF A MOTOR VEHICLE IS EXCLUDED FROM COVERAGE

A fire loss caused by the tenant's negligent maintenance of a motor vehicle was excluded from coverage pursuant to the omnibus motorized vehicle exclusion.

### Homeowner's insurance; Fire; Landlord and tenant; Exclusions; Action; Subrogation

*Horsefield v. Economical Mutual Insurance Co.*, [2017] O.J. No. 4226, 2017 ONSC 4868, Ontario Superior Court of Justice, August 14, 2017, M.D. Faieta J.

A landlord's insurer brought an action for debt against the tenant's insurer pursuant to s. 132(1) of the *Insurance Act*, R.S.O. 1990, chap. I.8, to recover the costs of repairing fire damage to the landlord's home. The tenant was in the course of repairing his car in the garage of his rented home when the gas tank fell to the floor, spilling gas which quickly ignited. The ensuing fire caused damage to the garage and the home. The landlord's insurer paid the cost of repairing the damage caused by the fire and sought to recover from the tenant. The tenant notified his insurer of the claim. The tenant's insurer denied coverage on the basis that the claim was excluded pursuant to an omnibus motorized vehicle exclusion. The exclusion stated:

You are not insured for claims made against you arising from:

- (a) The ownership, use or operation of any motorized vehicle, trailer or watercraft, except those for which coverage is shown in this form;

The landlord's insurer commenced a subrogated action against the tenant. The impecunious tenant admitted liability and consented to judgment in the full amount. The landlord's insurer then commenced this action against the insurer pursuant to s. 132 of the Act.

The court rejected all of the arguments raised by the landlord's insurer and dismissed the action. The court did not accept the argument that the exclusion did not apply because it was in a different coverage section of the policy than the tenant legal liability coverage. The court rejected this interpretation as it would render the provisions of a number of exclusions meaningless and would require omnibus policy exclusions to be ignored. The court also rejected the argument that an exception to the motor vehicle exclusion rendered the exclusion inapplicable as the exception clearly contemplated exceptions for specific types of motorized vehicles, such as a golf cart. Finally, the court rejected the argument that the exclusion did not apply to the facts of the case. First, citing *Reliance Petroleum Ltd. v. Stevenson* [1956] S.C.R. 936, para. 11, the court noted that "use" of a motorized vehicle included repair and maintenance activities and held that the repair and maintenance performed by the tenant at the time fell within the meaning of "use". Second, the court concluded that there was an unbroken chain of causation between the "ownership, use, or operation" (being the tenant's negligent maintenance) and the loss.

This case was digested by [Michael J. Robinson](#) and edited by [Steven W. Abramson](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at [mrobinson@harpergrey.com](mailto:mrobinson@harpergrey.com) or [sabramson@harpergrey.com](mailto:sabramson@harpergrey.com) or review their biographies at <http://www.harpergrey.com>.