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## **CASE SUMMARY: INSURED'S CLAIM UNDER A MOTOR VEHICLE INSURANCE POLICY WAS DISMISSED AS THERE WAS NO EVIDENCE THE ACCIDENT WAS CAUSED BY AN UNIDENTIFIED DRIVER**

### **Insurance law – Automobile insurance – Unidentified motorist – Practice – Summary judgments**

*Passarelli v. Personal Insurance Co.*, [2019] O.J. No. 1075, 2019 ONSC 1408, Ontario Superior Court of Justice, February 28, 2019, E.M. Morgan J.

The insurer applied for summary judgment on the basis there was no evidence for the insured's claim under the uninsured provisions of his motor vehicle insurance policy. The insured claimed the accident was caused by an unidentified vehicle that made unexpected maneuvers in a traffic jam, causing him to rear-end a stationary vehicle. The insured spoke with a police officer on the scene and did not mention an unidentified driver. He conceded to the Collision Report Centre that he was following too closely and could not stop in time. He further conceded in his submissions that his foot had slipped off the brake pedal. The issue was whether there was a genuine issue requiring a trial.

The court allowed the application and dismissed the insured's claim. The onus of proof was on the insured to prove the accident was caused by an unidentified driver. The evidence was there was a traffic jam with many unidentified vehicles changing lanes. There was nothing beyond speculation as to whether any of these vehicles' drivers were driving negligently. There was no genuine issue requiring a trial.

This case was digested by [Paul R. Saunders](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Paul R. Saunders at [psaunders@harpergrey.com](mailto:psaunders@harpergrey.com).