

Action No.: 1701-05005
E-File No.: CVQ17NORTHBRIDGE
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

NORTHBRIDGE GENERAL INSURANCE CORPORATION

Plaintiff

and

MULLEN TRUCKING CORP. and TAMMY J. DETRAY

Defendants

PROCEEDINGS
EXCERPT

Calgary, Alberta
September 21, 2017

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1 collapse of that bridge or a portion of that bridge into the river below.

2
3 It is alleged that DeTray was operating a pilot truck, which was a Dodge Ram pickup
4 truck, that preceded the truck and tractor combination and that DeTray failed to warn or
5 advise the driver of the tractor of the clearance issues, when she knew or ought to have
6 known of the clearance issues. This includes allegations that the vertical clearance pole on
7 her pilot vehicle repeatedly struck parts of the bridge structure overhead, but she failed to
8 warn Mullen's driver of any issue.

9
10 Mr. Scott is Mullen's driver as referred to in the US proceedings.

11
12 The Alberta application was filed April 11, 2017 and scheduled for hearing on September
13 15, 2017. The respondent DeTray was personally served with the application and
14 supporting materials in the State of Washington on April 29, 2017. A copy of the
15 application was also sent by e-mail to an American lawyer located in Seattle, Washington
16 who is defending the respondent DeTray in some or all of the underlying actions.

17
18 DeTray filed an action in the Superior Court of the State of Washington on May 10, 2017
19 seeking a declaration of coverage and damages for breach of the insurance policy issued
20 by the applicant to the respondent, Mullen.

21
22 Apparently in August 2017, counsel for the applicant decided that it would not be
23 appropriate for this matter to be heard on the morning chambers list on the scheduled
24 date. Counsel therefore sought to schedule the matter on the special list for a 1/2 day
25 hearing.

26
27 On August 15, 2017, the applicant wrote to the respondent DeTray indicating that it
28 wanted to reschedule the hearing from September 15 until September 21, 2017 and
29 requested consent to the adjournment. That letter was sent by courier and left in DeTray's
30 mailbox. The respondent DeTray never did contact the applicant or its counsel in this
31 action to provide her availability or with respect to the defence of the action at all.

32
33 An agent for counsel for the applicant appeared in this court in civil chambers on August
34 30, 2017 before Mr. Justice Jones of this court. Mr. Justice Jones issued an order dated
35 August 30, 2017 that service on the respondents was deemed good and sufficient. The
36 requirement for consent of all parties to schedule a 1/2 special application was dispensed
37 with and the 1/2 special application was scheduled on September 21, 2017.

38
39 If that order was served on DeTray, then she knew that the application was on for hearing
40 today and, taken together with the application which was served on her earlier, she also
41 knew the place where the application would be heard, namely at the Calgary Courts

1 Centre in Calgary, Alberta.

2
3 Technically, an order for service outside of Alberta was required under the *Alberta Rules*
4 *of Court*. (See rule 11.25(2).) No such order was granted. The Court of Queen's Bench
5 has jurisdiction under rule 11.27 to make an order validating the service of a document
6 served inside or outside Alberta in a manner that is not specified by the *Rules* if the Court
7 is satisfied that the method of service was likely to have brought the document to the
8 attention of the person to be served, or did bring it to the attention of the person to be
9 served. The Court of Queen's Bench also has jurisdiction to cure irregularities under rule
10 1.5.

11
12 It is apparent from the materials provided to Justice Jones that Mr. Justice Jones was
13 aware of the status of the proceedings in the United States, the fact that DeTray was
14 resident in Washington State and of the cross-border ramifications of this case. It is also
15 obvious that the requirements of rule 11.25 would have been met if an order had been
16 applied for to permit service in Washington State because a real and substantial
17 connection exists between Alberta and the facts on which the claim in the action are
18 based.

19
20 Rule 11.25(3), subsections (b) and (c) provide that: (as read)

21
22 Without limiting the circumstances in which a real and substantial
23 connection may exist between Alberta and the facts on which a
24 claim in an action is based, the following circumstances are those
25 in which a real and substantial connection is presumed to exist:

26 . . .

27
28 (b) the claim relates to a contract or alleged contract made,
29 performed or breached in Alberta; and

30
31 (c) the claim is governed by the law of Alberta.

32
33 The applicant has proved that Mullen is a corporation incorporated under the laws of
34 Alberta. It has a head office located in Alberta and its base of operations is in Alberta.
35 Furthermore, Northridge, or pardon me, Northbridge was, at the material times, licensed in
36 Alberta with the Office of the Superintendent of Insurance, was authorized, at the material
37 times, to conduct insurance business in the Province of Alberta, had an attorney for
38 service in the Province of Alberta, and issued a policy of insurance in Alberta to Mullen.
39 Further, section 514(1) of the *Insurance Act*, RSA 2000, c I-3, a statute of the Province of
40 Alberta, provides that a contract is deemed to have been made in Alberta if it insures a
41 person who is domiciled or resident in Alberta when the contract is made or the subject

1 matter of the contract is property that is or will be located in Alberta.

2
3 The making of the contract is one of the factors to be considered in ascertaining the
4 proper law of the contract. There are others. In cases where the insured conducts
5 operations in multiple jurisdictions, as in this case where it is operating trucks both in and
6 outside of Alberta, and given that the head office of the company is in Alberta and the
7 affidavit evidence indicates that the policy was issued in Alberta, and further, that the
8 contract was negotiated through an insurance agent or broker in the Province of Alberta, I
9 am satisfied that the proper law of the contract is Alberta. In this regard, the governing
10 principles are described in *Gerling Global General Insurance Co. v. Canadian Occidental*
11 *Petroleum Ltd.*, 1998 ABQB 714, a decision of Madam Justice Romaine of this court, and
12 I have considered that decision in my deliberations.

13
14 Accordingly, I find that the contract was made in Alberta and the claim is governed by
15 the law of Alberta. Therefore, the action was one that was appropriate to be brought in the
16 Court of Queen's Bench of Alberta and this is clearly an appropriate case where the
17 respondent DeTray would rightly have been served with the application at her location in
18 Washington State.

19
20 I am advised that Ms. DeTray was served with the order of Mr. Justice Jones. Assuming
21 that to be true, the Court has jurisdiction over Ms. DeTray and it would be appropriate to
22 proceed today.

23
24 Counsel has undertaken to file an affidavit proving service of the Jones Order on
25 Ms. DeTray, and I have discussed with counsel, and this is a direction, that if he is
26 mistaken in that regard then he is relieved of that undertaking and he shall re-serve the
27 materials, including the application, all supporting affidavits and the Order of Mr. Justice
28 Jones, together with a notice to the effect that if Ms. DeTray intends to dispute this matter
29 she must file in this court with the clerk of the court and serve on counsel for the
30 applicant a notice of intention to appear within 21 days following service of the materials
31 on her.

32
33 Now, in that regard, somebody served in the United States is generally allowed two
34 months to respond under the *Rules*, but in this case she has had the materials for many
35 months, and therefore, I consider the number of days that I have prescribed as sufficient.
36 If she files such a notice, then the application will be scheduled for hearing. If she fails to
37 file such a notice, then counsel for the applicant will be in touch with the Court through
38 my assistant and advise me of the same, and a brief hearing will be convened by
39 conference call to complete this matter.

40
41 Now, the following is on the basis that she has been served.

1
2 First, it is beyond doubt that the Court of Queen's Bench has jurisdiction to deal with the
3 insurance dispute, notwithstanding that a claim has been asserted by DeTray against the
4 applicant seeking coverage in legal proceedings in Washington State. Assuming the Court
5 in Washington has jurisdiction to properly resolve the coverage dispute - and I make no
6 finding in that regard - Alberta case law makes it clear that the Court of Queen's Bench
7 of Alberta may resolve the coverage dispute by way of a declaratory action.

8
9 The propriety of such an action in Alberta was affirmed many years ago by the Alberta
10 Court of Queen's Bench and the Alberta Court of Appeal, which is the highest court in
11 Alberta, in *Gerling Global General Insurance Co. v. Canadian Occidental Petroleum Ltd.*,
12 [1997] AJ No. 400; 210 AR 134; 11 C.P.C. (4th) 349; affirmed [1997] AJ No. 782; 209
13 AR 68; 11 C.P.C. (4th) 356 (ABCA).

14
15 In that case there were competing applications in this court for a declaration with respect
16 to coverage and the state courts of Louisiana for damages for breach of the insurance
17 contract for failure to provide insurance coverage with respect to the loss. As in the
18 present case, the insurance policy was issued in Alberta to a Canadian corporation and the
19 loss occurred in the United States of America. Mr. Justice Medhurst of this court observed
20 that both courts may be considered appropriate jurisdictions for resolving the issue in
21 dispute, referring to the leading authority in the Supreme Court of Canada, *Amchem*
22 *Products Inc. v. Workers' Compensation Board, et al*, [1993] 1 SCR 897, [1993] S.C.J.
23 no. 34 (QL) at para 24 (QL version).

24
25 Mr. Justice Medhurst found that the action commenced by the plaintiff had a real and
26 substantial connection with Alberta because it concerned an insurance policy issued in
27 Alberta to the Canadian company. He declined to stay the action in favour of the
28 Louisiana proceedings because it had not been established on the basis of the evidence
29 that Louisiana was clearly the more suitable forum. On appeal, the Alberta Court of
30 Appeal held that the chambers judge, Mr. Justice Medhurst, correctly applied the correct
31 test for the determination of forum non conveniens: whether there was clearly some other
32 forum more convenient and appropriate for the pursuit of the action and for securing the
33 ends of justice; and that on the evidence he made no reversible error in reaching his
34 conclusion.

35
36 There is nothing on the record before me to indicate that the State of Washington is
37 clearly more appropriate. The relevant factors to be considered are conveniently
38 summarized in a Court of Queen's Bench of Alberta decision *Re: Foote Estate*, 2007
39 ABQB 654. In the interest of time, I will not enumerate those factors. It is clear that
40 Alberta is clearly an appropriate forum for the resolution of this dispute.

1 I turn then to the merits of the claim. The policy in question is Exhibit B to the affidavit
2 of Mr. Ryan Cobb, sworn August 24, 2017 and filed September 1, 2017. I will briefly
3 review the coverages and exclusions in the policies in issue, which are the auto policy, the
4 commercial general liability policy, which I will refer to as the "CGL Policy" and the SPF
5 6 non-owned auto policy.

6
7 Starting with the auto policy, the coverage is defined first in item 3 of the Declarations
8 page, which is page 25 of the Cobb affidavit, and the described automobile are all
9 vehicles owned, registered, leased and/or operated on behalf of the named insured.

10
11 There are additional descriptive provisions in the policy.

12
13 First, the policy endorsements appear at pages 41 and following. For example,
14 endorsement A-019 applies to all automobiles except those licensed or required to be
15 licensed in the Provinces of Ontario, Quebec, Manitoba, Saskatchewan or British
16 Columbia, which are: (as read)

17
18 (i) owned by and licensed in the name of the insured;

19
20 (ii) leased from the following lessors for a period in excess of 30
21 days on which the insured as lessee is required to provide
22 insurance under a written lease agreement;

23
24 and I will skip the list.

25
26 (iii) leased for a period in excess of 30 days under a written lease
27 agreement from a lessor other than those listed above.

28
29 And again, I will omit the balance of the (iii).

30
31 Second, one must have regard to the definition of "automobile" in the general owned
32 automobile insurance policy which is prescribed in the Province of Alberta and known as
33 SPF 1. The relevant provisions are quoted at page 197 of the affidavit and in the interest
34 of time I will not quote it.

35
36 Turning -- before I turn to the CGL Policy, I will briefly describe the applicant's
37 argument, which is that Ms. DeTray is an independent contractor, and therefore the
38 vehicle she was operating is not within the above quoted definitions, including item 3 of
39 the Declarations page because it was not a vehicle that was being operated on behalf of
40 Mullen.

41

1 Turning then to the CGL Policy, the coverage is generally described by considering the
2 Declarations page and page 133 of the policy. The Declarations page indicates the named
3 insured as Mullen Group Ltd. In addition, endorsement P-001 adds a number of other
4 named insureds. None of them include Ms. DeTray or G & T Crawlers, which appears to
5 be a sole -- some sort of a proprietorship or partnership that she operates with her
6 husband.

7
8 One then looks to the opening language of the CGL Policy on page 133, which indicates
9 that the words "you" and "your" refer to the named insured shown in the Declarations and
10 any other person or organization qualifying as a named insured under paragraph 3 of
11 section 2 of the policy. Also, the opening language indicates that the word "insured"
12 means any person or organization qualified as such under section 2 of the policy.

13
14 One then turns to section 2, which commences at page 142 and describes a number of
15 categories of persons who are also an insured. The first are volunteer workers. "Volunteer
16 workers" is defined in paragraph 30 on page 151 and it is obvious that has no potential
17 application here. The next are the employees as referred to in para 2(a) on page 142. The
18 term "employees" is also defined and in this regard one refers to para 8 on page 148
19 where it provides that employee includes a leased worker and a temporary worker. A
20 "leased worker" is defined at number 16 on page 149 as a person leased by a labour
21 leasing firm under an agreement between the insured and the labour leasing firm to
22 perform duties related to the conduct of the insured's business and does not include a
23 temporary worker. The term "temporary worker" is defined in para 28 at page 151 as a
24 person who is furnished to the insured to substitute for a permanent employee on leave or
25 to meet seasonal or short term workload conditions.

26
27 The insurer here argues that employees do not include independent contractors. Now, the
28 definition of "employee" in para 8 at page 148 is not exhaustive and is said only to
29 "include" a leased worker and a temporary worker. There are other employees who are
30 included.

31
32 The law of Alberta and Canada distinguishes between independent contractors and
33 employees and, even taking a rigorous interpretation of the policy contrary to the
34 insurance company, it is obvious that where the term "employee" is used the policy does
35 not include persons who are independent contractors unless, in this case, they amount to a
36 short term, or pardon me, a temporary worker, and that is because the definition of
37 "temporary worker" requires only a person who is furnished to substitute for a permanent
38 employee on leave or to meet seasonal or short term workload conditions. Such persons
39 could be furnished as independent contractors. The insurer argues that "short term
40 workload conditions" refers to short term conditions which cannot reasonably be covered
41 by the usual employment force of the insured, such as where there is a higher volume of

1 work than normally anticipated, or out-of-the-ordinary volume, or where the workforce is
2 inadequate because the employees are not available to attend at work, for example through
3 illness.

4
5 The insurer further argues that, even if Ms. DeTray were an insured, coverage for her
6 would be excluded under the automobile coverage exclusion in the CGL Policy. That is
7 set out at page 134 of the affidavit and it excludes bodily injury or property damage
8 arising directly or indirectly, in whole or in part, out of the ownership, maintenance, use
9 or entrustment to others of any automobile owned or operated by or on behalf of or rented
10 or loaned to any insured. Therefore, the insurer says that even if this automobile were
11 owned or operated by or on behalf of the insured, this type of liability is excluded from
12 the CGL Policy. Furthermore, the insurer points out that the liability need only arise
13 partly and need only arise indirectly out of the ownership, maintenance, use or
14 entrustment to others of such an automobile and, in this regard, the insurer argues that
15 Ms. DeTray can't be a pilot service if she doesn't have a pilot vehicle, and therefore, even
16 if she was operating on behalf of the insured, this would be excluded because it arises
17 partly out of the ownership, maintenance, use or entrustment to others of an automobile.

18
19 I agree with the insurer's position concerning the application of the exclusion. If in fact
20 Ms. DeTray were an employee - and I will come to that issue in a moment - then the
21 liability would have necessarily arisen indirectly or in part out of the use of the pilot
22 vehicle, and therefore, it would be excluded under the CGL Policy.

23
24 The third coverage in question is the non-owned vehicle policy under SPF 6. Here the
25 coverage is defined on the Declarations page at page 161 of the affidavit. Item 3 describes
26 that the automobiles in respect of which insurance is to be provided under SPF 6 are those
27 not owned in whole or in part by, nor licensed in the name of the "applicant" (which was
28 Mullen) used in the "applicant's business" of common carrier.

29
30 Page 162 provides for additional insureds, which is: (as read)

31
32 Every partner, officer or employee of the insured who, with the
33 consent of the owner thereof, personally drives

34
35 (a) in the business of the insured stated in item (3) of the
36 application any automobile not owned in whole or in part
37 by or licensed in the name of (i) the insured, or (ii) such
38 additional insured person, or (iii) any person or persons
39 residing in the same dwelling premises as the insured or
40 such additional insured person, or
41

1 (b) any automobile hired or leased in the name of the
2 insured except an automobile owned in whole or in part or
3 licensed in the name of such additional insured person.
4

5 In this case, the insurer argues that Ms. DeTray is not an employee, and further, that even
6 if she were, coverage would be excluded under the additional insureds provision because
7 the vehicle in question would be one owned in whole or in part by or licensed in the
8 name of the additional insured person, i.e. Ms. DeTray.
9

10 Turning then to the application of the policy, the applicant has established that Mullen is
11 an Alberta corporation. They have done that through providing a certificate of
12 incorporation from the Alberta Corporate Registry and that is admissible under the *Alberta*
13 *Evidence Act*.
14

15 As to Ms. DeTray's status, the insurer points primarily to a transcript, or portions from
16 the transcript, of a deposition under oath of Ms. DeTray taken in the Superior Court of the
17 State of Washington in and for Skagit County on April 18, 2016. Extracts from that
18 transcript are appended as Exhibit F to the affidavit of Mr. Cobb.
19

20 I will start with the use of that transcript.
21

22 In *Gerling Global General Insurance Co. v. Canadian Occidental Petroleum Ltd.*, 1998
23 ABQB 714, which I have referred to earlier, Madam Justice Romaine held, among other
24 things, that admissions made by the insured in a competing action are admissible in the
25 Alberta action as evidence, as admissions made in circumstances that would afford them
26 great weight.
27

28 In substance, it would amount to an admission against interest against her in these
29 proceedings. I find that these passages are admissible on the basis that they are admissions
30 against the respondent DeTray's interest in these proceedings and the meaning of the
31 passages is for me as the hearing judge to determine.
32

33 In the transcript, Ms. DeTray describes herself as an independent contractor. She indicates
34 that she was dispatched to carry out the work by a third party, not by Mullen. From her
35 transcript it is obvious that she provides services to a variety of motor carriers and indeed
36 through a variety of dispatch entities. Further, she was paid by a third party, not by
37 Mullen. And finally, I note there is nothing in her transcript to suggest that Mullen
38 instructed her in how to carry out her piloting duties under the laws of Washington State.
39

40 There is also evidence before me of a determination by the Washington Court in one of
41 the actions that Ms. DeTray was an agent. Some agents may be employees, others are not.

1 This is a neutral factor and does not suggest that Ms. DeTray is or is not an employee.

2
3 I am satisfied on the evidence and find as a fact that Ms. DeTray was an independent
4 contractor and not an employee of Mullen. It follows that she was not operating a vehicle
5 on behalf of Mullen, rather she was providing pilot services as an independent contractor.
6

7 The applicant asks me to find that the respondent DeTray was operating a vehicle, that is
8 the pilot vehicle, which was either owned by her or registered to her. In this regard, it
9 refers to allegations made against her in the United States proceeding such as the amended
10 complaint for damages filed by the State of Washington, Washington State Department of
11 Transportation against Mullen, DeTray and other parties. This is one of the actions for
12 which DeTray claims that the insurer applicant in this proceeding owes her a defence and
13 indemnity.
14

15 Paragraph 4.6 of that pleading alleges that at the time of the subject collision DeTray
16 drove a 1997 Dodge Ram pickup truck, Washington licence number B53185R, which was
17 registered to both DeTray and Gregory DeTray.
18

19 The insurer argues that in deciding the coverage issue the allegations are to be taken as
20 pleaded, referring to the decision of the Supreme Court of Canada in *Progressive Homes*
21 *Ltd. v. Lombard General Insurance Co. of Canada*, [2010] 2 SCR 245, and submits to the
22 extent the allegations are made in pleadings, one looks to the substance of the allegations
23 in ascertaining coverage, and the insurer submits that that includes both the type of the
24 activity covered and any facts alleged which would lead to the person being an insured or
25 not an insured. It points out that Ms. DeTray would nevertheless be able to file evidence
26 to the contrary in this proceeding if she wished to do so.
27

28 No authority was cited to me that the pleadings approach does not apply to the coverage
29 claimant's status as an insured. In my view, where such allegations are made it is
30 appropriate to use the pleadings to assess whether there is a case for coverage or against
31 coverage in terms of a duty to defend.
32

33 Ms. DeTray would have been free to bring forward evidence that she was not an owner or
34 registered owner of the vehicle, but she chose to ignore the proceedings. She does so at
35 her own peril.
36

37 I find that for the purposes of ascertaining a duty to defend she was an owner or
38 registered owner of the pilot vehicle operated by her during the events of the loss in issue.
39 I do not believe that the same would apply to a determination of actual coverage or
40 indemnity rights under the policy. In that regard, my view is that it was up to the
41 applicant to lead evidence with respect to the registration of the vehicle or its ownership,

1 and it has not done so.

2
3 Returning then to the policies, with respect to the auto policy the vehicle was not an
4 insured vehicle because it was not operated by or on behalf of Mullen. It was operated by
5 Ms. DeTray as an independent contractor. There is no coverage under the auto policy.

6
7 Turning to the CGL Policy, Ms. DeTray is not an insured under that policy because she is
8 not an employee of Mullen. Furthermore, even if she were an employee, coverage would
9 be excluded under the automobile exclusion at page 134 of Mr. Ryan Cobb's affidavit. It
10 seems clear to me that she can't run a pilot service if she doesn't have a vehicle, and
11 therefore, it has to be the case and it is clear that the liability must arise, at least in part
12 and at least indirectly if not directly, through the operation of that vehicle.

13
14 Turning to SPF 6, I find that there is no coverage because the vehicle in question is not
15 included in the coverage on item 3. It is not a vehicle that is used in the applicant's
16 business of common carrier; rather, it is a vehicle that is used by Ms. DeTray in her
17 independent contracting business which provides piloting services to various motor
18 carriers. I also note that under item 4 of the policy, the applicant's partners, officers,
19 employees and agents as of the date of the application were the partners, officers and
20 employees who regularly use automobiles not owned by the applicant in its business, and
21 that is a further indication that Ms. DeTray was not somebody who was contemplated in
22 the coverage provisions of that policy.

23
24 Further, I find that even if she was -- even if that vehicle was covered under that
25 provision, Ms. DeTray would not be insured under the policy because it is an automobile
26 that would be owned in whole or in part or licensed in the name of the insured. That
27 specific finding is made with respect to any duty to defend under that policy. On the
28 evidence before me, I cannot make that finding with respect to any indemnity for a
29 damages judgment.

30
31 However, I emphasize again that I have found that she is not entitled to coverage under
32 the policy.

33
34 In the result, there will be the following declarations:

35
36 (1) The Court has jurisdiction and Ms. DeTray has proper notice
37 of the application in accordance with the law of Alberta and the
38 rules and practices of this court;

39
40 (2) The vehicle Ms. DeTray was operating is not an insured
41 vehicle under the automobile policy;

1
2 (3) Ms. DeTray is not an insured under the CGL Policy;
3

4 (4) If Ms. DeTray were an insured under the CGL Policy,
5 coverage is excluded under the automobile exclusion on page 5 of
6 23 of the CGL Policy;
7

8 (5) Ms. DeTray is not insured under the SPF 6 coverage; and
9

10 (6) If Ms. DeTray were an insured under the SPF coverage, any
11 duty to defend would be excluded or does not apply.
12

13 As mentioned earlier, this is dependent upon proof that Ms. DeTray was served with the
14 order of Mr. Justice Jones and I have made a direction with respect to what will happen if
15 it turns out that that understanding is incorrect.
16

17 Are there submissions on costs?
18

19 **Submissions by Mr. Rhone (Costs)**
20

21 MR. RHONE: We'll just ask for costs of the application.
22

23 THE COURT: So, there will be costs -- it is a declaratory
24 action primarily, so there will be costs on the basis of a special application.
25

26 MR. RHONE: Although, My Lord, actually -- let me correct
27 that. I just want to check something. The originating application states, page 5,
28 Northbridge shall have its costs of this application, if opposed. So, it -- it wasn't opposed,
29 so I'll -- I'll withdraw the claim for costs.
30

31 **Ruling (Costs)**
32

33 THE COURT: All right. There is no order then of costs.
34

35 Is there anything else that has to be dealt with?
36

37 MR. RHONE: No, that -- I did phone my office. My assistant,
38 unfortunately, is away until Monday, but . . . so, I'll get the affidavit at that time.
39

40 THE COURT: All right. I am going to hand you back this
41 compendium.

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You will attend to drafting the form of order.

MR. RHONE: Yes, My Lord.

THE COURT: And you are at liberty to include in the recitals definitions of the various policies so that the order is intelligible.

MR. RHONE: Yes, My Lord.

THE COURT: And I have given you the contents of the declarations to be made, and if you need to clean those up a bit so that they are intelligible, that will be fine. The order will be submitted to me, not to the clerk, for review. And that way if I think the drafting is inappropriate then I will be correcting it or I will be in touch to have you correct it before the formal order is entered.

MR. RHONE: Yes, My Lord. I should note as well, because of this jurisdictional issue, I will probably order a transcript of -- of the decision, so . . .

THE COURT: So, you have the right to do so. It will come to me first for editing in accordance with the ordinary practice of the Court and, as I have indicated at the outset, I may repair some grammar and remove some "ums" and "ahs", but the substance --

MR. RHONE: Yes.

THE COURT: -- of it will be as I have provided to you today.

MR. RHONE: Thank you.

THE COURT: Even if there are errors.

MR. RHONE: Thank you, My Lord.

THE COURT: So, we will then adjourn. I will be here until the end of September and then I will be here for the middle two weeks of October, so if you need the order entered or you need to order a transcript, you may want to keep that timing in mind.

MR. RHONE: Thank you, My Lord.

1 THE COURT: And you will find in the Alberta system that I
2 think you can order the transcript from Transcript Management Services on the basis of
3 different days of service, and they have different rates.

4
5 MR. RHONE: Sure. Thank you, My Lord.

6
7 THE COURT: Okay. All right, then. Thank you.

8
9 THE COURT CLERK: Order in court.

10

11

12 PROCEEDINGS CONCLUDED

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1 Certificate of Record

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3 I, Kristine Kirby, certify that this recording is the record made of the evidence in the
4 proceedings in the Court of Queen's Bench, held in courtroom 1003 at Calgary, Alberta
5 on the 21st day of September, 2017, and that I was the court official in charge of the
6 sound-recording machine during the proceedings.

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1 **Certificate of Transcript**

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3 I, Carolyn Cruickshank, certify that

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5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best
6 of my skill and ability and the foregoing pages are a complete and accurate transcript of
7 the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and
10 is transcribed in this transcript.

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Carolyn Cruickshank, Transcriber
Order No. 91353-17-1

35 Pages: 18
36 Lines: 716
37 Characters: 28076

38

39 File Locator: 6419af5ea78e11e7a3e50017a4770810
40 Digital Fingerprint: 478f794f0ef21a1df922463681ce6da0bee17224429cdb011b68c7f079590d05

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Detailed Transcript Statistics	
Order No. 91353-17-1	
Page Statistics	
Title Pages:	1
ToC Pages:	1
Transcript Pages:	16
Total Pages:	18
Line Statistics	
Title Page Lines:	53
ToC Lines:	6
Transcript Lines:	657
Total Lines:	716
Visible Character Count Statistics	
Title Page Characters:	567
ToC Characters:	134
Transcript Characters:	27375
Total Billable Characters:	28076
Multi-Take Adjustment: (-) Duplicated Title Page Characters	27509