



Insurance Observer

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“The decision provides an excellent review of the case law regarding both the duties owed by and the standards of care that apply to police officers and common carriers.”

MEADY V OPP AND GREYHOUND

On a dark winter night in December of 2000, a young man, who was travelling from Calgary to Nova Scotia by Greyhound bus through a remote section of Northern Ontario, grabbed the wheel of the bus from the driver and sent the bus careening into a ravine. One person was killed and a score of passengers were injured. A number of the injured passengers and the family of the person killed sued the Ontario Provincial Police (OPP) and Greyhound for damages. The fatality claim was settled a number of years ago and several of the injured passengers' claims were also settled. The remaining 12 personal injury claims were all tried together between April of 2010 and April of 2011 before the Honourable Mr. Justice T. Platana in Thunder Bay. Justice Platana released his 111 page decision this past Tuesday and dismissed the actions against all of the defendants save the young man who grabbed the wheel.

The defence of the OPP and two of its officers was conducted by our Stephen Moore, Teri MacDonald, Danielle Stone, Bianca Matrundola and Rafal Szymanski. They were assisted back in Toronto by Frances Fintanopoulos and Rose Suppa.

The claims against the OPP arose out of the interaction between the young man and two police officers in the hours before the accident. When the bus arrived at the Tempo bus stop in Ignace (a small town NW of Thunder Bay), the young man complained to the driver that someone had stolen his knapsack. The police were called. During the course of the investigation, the lead police officer concluded that the knapsack had not been stolen and that the young man was mildly paranoid. The young man's paranoia extended to a belief that

some young people on the bus were after him. The officers found nothing in the young man's presentation that suggested that he would pose a danger to himself or anyone else and therefore did not apprehend him pursuant to section 17 of the *Mental Health Act*.

To avoid further contact with these people, the young man decided to take a later bus. A couple of hours later, the police again attended at the Tempo bus stop, when the young man boarded the next bus. They advised the driver of the situation and the driver decided to seat the young man by himself in one of the front seats near the driver. It was anticipated that this would assist in reducing the young man's anxiety.

The young man told the officers that he was taking a prescription medication for ADHD, but they did not ask any him questions about this medication. Unbeknownst to either of the officers or the bus driver, the young man was actually overdosing on his medication (Dexedrine). He was supposed to take only one pill a day, but he had actually consumed in excess of 35 pills in the 3 days before the accident. One of the side effects of an overdose of this medication is psychosis.

About an hour after the bus left Ignace, the young man, believing that people on the bus were going to beat him with a baseball bat, grabbed the wheel from the driver in an apparent attempt to stop the bus. The foregoing description of why the young man attacked the bus driver is based on testimony from the earlier inquest and criminal trial of the young man. However, in this trial, the plaintiffs inexplicably failed to prove that the young man was ingesting Dexedrine or that his attack on the driver was triggered by that medication.



Stephen Moore is a partner at Blaney McMurtry and a member of the firm's Insurance Litigation Practice Group. A certified specialist in Civil Litigation, Stephen's main areas of interest are bodily injury claims and coverage issues.

Stephen is listed and recognized by Lexpert Legal Directory as a leading practitioner consistently recommended in Litigation (Commercial Insurance; Personal Injury), 2011.

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There were a number of allegations made against the OPP. The most significant was that the young man ought to have been apprehended by the officers pursuant to section 17 of the *Mental Health Act* rather than being allowed to board the second bus. There were two main allegations against Greyhound. The first was that its driver did not properly evaluate the situation and should never have allowed the young man to board the bus. The second was that the driver should have pulled the bus over at the first sign of unusual conduct by the young man. Justice Platana, after a detailed review of the evidence and the law, concluded that the actions of the young man were not reasonably foreseeable and that the two police officers and the driver had handled the situation appropriately.

The decision provides an excellent review of the case law regarding both the duties owed by and the standards of care that apply to police officers and common carriers. It contains an in depth analysis of a police officer's powers and obligations under the *Mental Health Act*. Justice Platana declined to impose liability in respect of a number of allegations because the plaintiff was unable to demonstrate a causal link between the alleged negligence and the plaintiff's damages. For example, although the police were aware that the young man was taking a prescription medication, Justice Platana was not prepared to impose liability upon the officers for failing to ask more questions about this medication, in part, because the plaintiffs had neither proven that he had ingested this medication nor that

it caused him to attack the driver.

Justice Platana also ruled that there is no reverse onus on a common carrier to disprove negligence. He concluded, relying on a decision of the Newfoundland Court of Appeal, that while common carriers are subject to a higher duty of care than ordinary drivers, the onus of proof remains with the plaintiff. We anticipate that this analysis will find favour with other Ontario courts. This should make it easier to defend common carriers in the future.

The decision also contains 12 concise assessments of damages. Justice Platana declined to award any of the plaintiffs damages for future losses of income. In a refreshing analysis, Justice Platana refused to award such damages because the plaintiffs had failed to prove the assumptions which underpinned their accountant's testimony. As an example, one of the plaintiffs claimed a future loss of income based on her failure to pursue a nursing career which she blamed on the accident. Justice Platana concluded that her pre-existing psychological problems and difficulties in high school precluded the possibility that she would have successfully pursued a nursing career.

The full text of the decision is available here. If you have any questions about this case please call Stephen Moore at 416-593-3950 or e mail him at smoore@blaney.com. ■

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