

Court of Appeal Settles Multiple Deductibles Issue

A Commentary by John D. Strung Strung Mediations and Arbitrations Inc.

The Ontario Court of Appeal, in [Martin v. Fleming](#), 2012 ONCA 750, released Nov. 6, 2012, has settled the long-standing issue as to whether a plaintiff who is injured in successive automobile accidents is subject to an individual deductible for each accident. The Court of Appeal found the wording of the Insurance Act, R.S.O. 1990, c. I.8, s. 267.5(7) to be unambiguous and that individual deductibles must be applied to the portion of the claim arising from each accident.

This issue was vigorously contested, not only by the parties but by the Ontario Trial Lawyers and the Canadian Defence Lawyers, as intervenors.

While the result on the face of it may not seem surprising, in practice the result can work a hardship in some cases. For instance a few years ago I was involved in a case in which the plaintiff was involved in 10 minor automobile accidents in 11 years. The plaintiff was seriously disabled with a traumatic neurosis as a result of the cumulative effect of the accidents. Applying 10 deductibles, however, would have wiped out the plaintiff's recovery entirely.

Wisely, counsel compromised their positions on the deductibles and settled the matter. One wonders whether the Court of Appeal would have come to a different conclusion when faced with this fact situation.

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