

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Commonwealth Insurance Company v. Intercon Security Ltd.
BEFORE: Justice Cameron
COUNSEL: *Harvey Poss, Q.C.*, for the Applicant
Jeffrey W. Kramer, for the Respondent
HEARD: August 15, 2005

ENDORSEMENT

[1] The Respondent has been sued by the Royal Bank of Canada (“RBC”) for 13 thefts of a total of \$1,107,037.34 from cash machines during a 2½-year period.

[2] The Respondent has denied any liability to RBC. It alleges it was not negligent or vicariously liable. It says the losses were caused or contributed to by negligence on the part of RBC.

[3] In a CGL policy issued by Commonwealth covering the period in question the coverage provided for “...payment as damages because of ...loss of use of tangible property caused by an occurrence during the Policy Period.”

[4] The onus is on the Respondent to prove the loss fell within the coverage unless the language is so ambiguous as to require a broad interpretation. “Loss of use” is different from the extended use of “loss”. It is not a question of degree but one of material substance. I find the language clear and unambiguous. Coverage is restricted to “loss of use”. It does not extend to “loss”. Had the insurer so intended it would have said so. Had the insurer intended to cover such loss it would probably have issued an employee defalcation policy with specific limits as to persons and amounts. It did not.

[5] Accordingly, the policy does not extend to permanent loss of money stolen from the machine by any employee.

[6] Further, there is no obligation to provide a defence in such circumstances.

CAMERON J.

DATE: August 15, 2005