

BETWEEN:**ALBA ARTURI****Applicant****and****STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY****Insurer****DECISION****Issues:**

The Applicant, Alba Arturi, was injured in a motor vehicle accident on March 6, 1992. She applied for and received statutory accident benefits from State Farm Mutual Automobile Insurance Company (“State Farm”), payable under Ontario Regulation 672.¹ Weekly income benefits were terminated by State Farm on October 15, 1993. Mrs. Arturi seeks reinstatement of these benefits. The parties were unable to resolve their disputes through mediation and Mrs. Arturi applied for arbitration under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended. State Farm alleges that the application for arbitration was frivolous, vexatious or an abuse of process, and seeks repayment of its assessment fee.

The issues in this hearing are:

¹Prior to January 1, 1994, Ontario Regulation 672 was called the *No-Fault Benefits Schedule*. After that date it became the *Statutory Accident Benefits Schedule — Accidents Before January 1, 1994*. In this decision, the term “*Schedule*” will be used to refer to Regulation 672.

1. Is Mrs. Arturi entitled to further weekly income benefits after October 15, 1993?
2. Is State Farm entitled to an award in the amount of its assessment fee?

Mrs. Arturi also claims interest on any amounts owing, and her expenses incurred in the hearing.

Result:

1. Mrs. Arturi is not entitled to further weekly income benefits after October 15, 1993.
2. Mrs. Arturi must pay State Farm the amount of \$2,000.
3. Mrs. Arturi is not entitled to her expenses of this hearing.

Hearing:

The hearing was held at the offices of the Ontario Insurance Commission in North York, Ontario, on June 24, 26, and 27, 1996, before me, David Evans, Arbitrator.

Present at the Hearing:

Applicant:	Alba Arturi
Mrs. Arturi's Representative:	Joseph Farcas Barrister and Solicitor
State Farm's Representative:	Eric Grossman Barrister and Solicitor
State Farm's Officer:	Stephen von Kannen

Witnesses:

Alba Arturi
Stephen von Kannen
Dr. David G. Slyfield
Linda Scopazzi

Exhibits:

- Exhibit 1 Hospital records from the York-Finch General Hospital
- Exhibit 2 Clinical notes and records of Dr. Weinberger (transcription and photocopy of originals)
- Exhibit 3 Printout of transactions between Mrs. Arturi and Avon Canada Inc.
- Exhibit 4 Letter from Linda Delorme, attorney for Avon Canada Inc., to Mrs. Arturi dated September 3, 1992
- Exhibit 5 Report dated June 30, 1993, by Dr. Louise E. Koepfler of the Health Recovery Clinic
- Exhibit 6 OHIP list of services and providers for Mrs. Arturi
- Exhibit 7 Clinical notes and records of Dr. Brenda Whitney, Dr. S.J. Coish, and Dr. M.I Zitney
- Exhibit 8 Investigative reports from Scope Investigations Ltd. dated August 12, 1993, and September 20, 1993
- Exhibit 9 Medical reports dated May 29, 1992, and November 4, 1992, with attached curriculum vitae of Dr. John Zeldin
- Exhibit 10 Medical report dated August 24, 1992, with attached curriculum vitae of Dr. Barry J. Little
- Exhibit 11 Report dated August 16, 1993, by Dr. Louise E. Koepfler of the Health Recovery Clinic
- Exhibit 12 Report dated September 27, 1993, by Dr. Louise E. Koepfler of the Health Recovery Clinic

Exhibit 13 Curriculum vitae of Dr. Louise E. Koepfler

Exhibit 14 Two photographs of the right rear of Mrs. Arturi's truck

Evidence and Findings:

Mrs. Arturi claims that, as a result of a single-vehicle accident on March 6, 1992, involving her pickup truck, she has not been able to return to the work she had performed over several periods in her life and was engaged in at the time of the accident: selling Avon products.

Background

Mrs. Arturi testified that for several periods during the 33 years of her first marriage to Mr. Migotto — who by her own account had provided well for her — she had sold Avon products. She stopped selling these in 1988 after she left Mr. Migotto to live with her Argentinian cousin, Flavio Arturi, whom she later married. Mr. and Mrs. Arturi then set up a business on Yonge Street selling a wholesale ice cream product. This business closed in October 1990 with an estimated loss of \$25,000. Mrs. Arturi subsequently started receiving social assistance, and resumed selling Avon products in March or April of 1991 in Woodbridge. Although she testified that she worked 40 to 60 hours per week performing this job, the Emergency Report of the York-Finch General Hospital for January 4, 1992, indicates her employer as “AVON (PART TIME).” Mrs. Arturi had no explanation for this entry, and I can only assume that either she or Mr. Arturi gave the treating physician this information.

At this point I note that much of the evidence relevant to this hearing was contained in documents such as the medical notes and records of Mrs. Arturi's family physicians, Drs. Weinberger and Whitney. Mrs. Arturi either denied or claimed not to remember almost all entries that detracted from her case, particularly the elements suggesting that she had had problems before the accident.

Pre-Accident Conditions

Although Mrs. Arturi downplayed them, the medical records show a pre-accident history of physical, marital, and mental problems:

- The OHIP records contain over 50 entries in the year preceding the accident for items such as “Fractures/Dislocations — vertebral col,” “Sprains, strains, other trauma — neck,” “Anxiety neurosis, hysteria,” migraine, family disruption, and marital difficulties;
- Mrs. Arturi told Dr. Barry Little, neurologist, that on February 16, 1990, she fractured her T12 vertebra, spent 30 days in hospital, and had some pain for a number of months afterwards. She testified that on that occasion Mr. Arturi had picked her up in “horseplay,” tripped, fell, and dropped her;
- Dr. Weinberger’s notes of Mrs. Arturi’s visits in December 1990 and October 1991 show that she complained of Mr. Arturi’s use of drugs and alcohol and his physical abuse of her.
- Dr. Weinberger’s notes for the same period show Mrs. Arturi complained at various times of palpitations, confusion, forgetfulness, headaches, nervousness, shortness of breath, chest pain, rapid heart rate, and dizziness with an accompanying sight problem. He diagnosed mixed anxiety, depression, and marital problems, and recommended that she seek counselling and report the abuse to the appropriate authorities.

Mrs. Arturi also testified that she had had an episode of depression when she went through menopause.

The Accident

Mrs. Arturi testified that on March 6, 1992, she was backing up her 1989 Chevy S-10 pickup truck when her foot slipped. As a result, the truck accelerated and hit a cement wall at a high speed that she estimated at 40 km/h. I note that photographs of the truck show as the only damage visible to me a bent and twisted right rear bumper, above which is an unbroken taillight.

On March 9, 1992, Mrs. Arturi told her family physician, Dr. Weinberger, that at the time of the accident her head and neck had been turned to the right. As a result, on impact the right side of her head hit the back window, but she suffered no loss of consciousness. She had bruises above her left knee and left ankle and neck discomfort. She felt her memory had decreased since the accident, and she complained of blurriness and sparkles in her right eye. Dr. Weinberger assessed an acute cervical strain, with local contusion to the head and the described bruises. He recommended rest, local moist heat, and no driving.

Mrs. Arturi testified that she cannot return to work and remains disabled. State Farm paid benefits until October 9, 1993, when surveillance suggested that Mrs. Arturi was working. The medical reports indicate that Mrs. Arturi had many problems unrelated to the accident, and several physicians, including her family physicians, suggested that she return to work.

Relationship with Avon After the Accident

Mrs. Arturi testified that she worked on no more than one occasion after the accident as an Avon sales representative. By contrast, Dr. Weinberger's notes for March 27, 1992, indicate that Mrs. Arturi told him she was going out to work two days per week, and that she complained of feeling dizzy that morning "while making a house visit as an Avon Lady."

Mrs. Arturi testified that in April 1993 she and Mr. Arturi left Woodbridge, where she had her sales area, for Thornhill. In May 1993 Avon took back her merchandise and claimed \$549.

Mrs. Arturi denied placing any Avon orders after the accident. However, the Avon printout of Mrs. Arturi's transactions shows two orders placed after the accident. Although Mrs. Arturi challenged the accuracy of the printout — despite the suggestion from counsel that she herself had produced it to State Farm — entries showing credits for returned products and monies still owing are consistent with Mrs. Arturi's evidence. Therefore, I accept the accuracy of this printout.

Mrs. Arturi insisted that her old job at Avon was available to her at any time after the accident. Again, the documentary evidence suggests otherwise. Avon's attorney wrote September 3, 1992, threatening to sue Mrs. Arturi for the outstanding funds. Dr. Louise Koepfler, clinical psychologist at the Health Recovery Clinic, in her report dated June 30, 1993, wrote: "Ms. Arturi feels strongly that she no longer has a job at Avon as she still owes the company for merchandise which she returned after the accident."

Actions by State Farm After the Accident

Mrs. Arturi claimed benefits from State Farm shortly after the accident. Stephen von Kannen, Claims Specialist with State Farm, testified that he referred Mrs. Arturi to Dr. Zeldin, orthopaedic surgeon, to the Canadian Back Institute, and to Dr. Little, neurologist.

Based on the reports of the specialists named above, Mr. von Kannen discontinued benefits in October 1992, after State Farm had paid approximately \$5,568 in benefits. After mediation, he agreed to continue the benefits and referred Mrs. Arturi to the Health Recovery Clinic for the period July–September 1993. Mr. von Kannen testified that the additional payments were to give

Mrs. Arturi the benefit of any assistance available from the clinic. State Farm provided an additional 53 weeks of benefits through October 15, 1993, amounting to nearly \$10,000.

Mr. von Kannen ordered surveillance in the summer of 1993 to determine Mrs. Arturi's activity level. She was observed cleaning the house of Dr. Newbigging, whose house Mrs. Arturi admitted she had cleaned prior to the truck accident.

Dr. John Zeldin

In his first report dated May 29, 1992, Dr. Zeldin sets out Mrs. Arturi's history of personal problems, a tendency to cry, and pill-taking for anxiety and stress at the time of the accident. She told him she had suffered from anxiety and depression in the past and had sustained a compression fracture of her spine in 1990.

After the March 6, 1992, accident she complained of headaches, back pain, left ankle and knee pain. However, the physical examination was largely normal: full bilateral straight leg raising; normal configuration of the dorsal and lumbar spine; normal configuration of the shoulders; full range of motion with no spasm or tilt in the neck. As Mrs. Arturi had been on a physiotherapy program for six weeks, he suggested that she continue for another three weeks: "By the end of that time she should be pretty well back to her pre-accident physical state."

In his second report of November 4, 1992, Dr. Zeldin included some information about the Canadian Back Institute evaluation: "They felt that the patient was deconditioned and also that she appeared to be poorly motivated." Although the CBI recommended an exercise and active rehabilitation program, Mrs. Arturi gave up after approximately 20 attendances: she felt the CBI was using the "wrong machines" and that the program was not helping her.

Bone density tests revealed that Mrs. Arturi had some moderate post-menopausal osteoporosis in keeping with her age and not associated with any injury. The physical examination having revealed no more than in May, Dr. Zeldin concluded that, although Mrs. Arturi might have some discomfort consistent with her age and mild to moderate osteoporosis, there were no physical findings to suggest that she was physically disabled from performing her regular activities, including the essential duties of her occupation.

Dr. Barry Little

Dr. Little, neurologist, examined Mrs. Arturi on August 24, 1992. Mrs. Arturi related to him her constellation of symptoms — as Dr. Little puts it — since the motor vehicle accident, including her nervousness, headaches, burning sensations in her neck, diffuse shoulder and back pain, difficulty in concentrating and forgetfulness. As mentioned above, Dr. Little also learned of the February 16, 1990, compression fracture of her spine.

Dr. Little's findings were virtually negative for problems. Mrs. Arturi's attention, concentration, and memory were normal, as were the mental status modalities. Physical examination was also normal, except for the following: "There was a global loss of sensation to all sensory modalities in the right lower limb (this is non-physiological)." He concluded that there was no clinical evidence of intracranial injury, but to be safe he recommended a CT scan and some reasonable attempt to return to work on a part-time basis, as part of confidence building.

Health Recovery Clinic

Mrs. Arturi started a Functional Restoration Program in July 1993. Dr. Louise Koepfler, psychologist, wrote in her report dated August 16, 1993, that Mrs. Arturi's exhibited strength in the gym did not correlate with her perceived restrictions in performing basic pushing, pulling and

lifting. Mrs. Arturi made conflicting statements. At times she indicated that she was feeling better, but when told she was looking better, she vehemently denied this and claimed she was a very sick woman. She was very articulate in elaborating all her pains. Because she had been an Avon sales agent, the work-hardening had been focussed on work activities. However, the following quotation indicates Mrs. Arturi's attitude:

Vocationally, Mrs. Arturi expresses no intention to return to work. She feels she is not ready for anything because she has aggravating pain all over her body. When asked if she wants to work in the future, she replied "No." She said that she will just wait for her retirement. She told the class that she did not work for more than 25 years in her first marriage, and does not see herself going to work in the future, saying, "I have a husband."

Dr. Koepfler therefore recommended changing the work-hardening program to a homemaking program.

Dr. Koepfler's second report on September 27, 1993, followed completion of the program on September 20. Physically, Mrs. Arturi had no limitations in range of motion or strength in her neck and back, and it was noted that, in fact, her overall physical performance was above average for her age. When asked about her plans after the program, Mrs. Arturi said that she "will be in another treatment, have a vacation, wait for retirement and stay at home." She continued to be inconsistent in her reports. She told the kinesiologist that her overall level of pain was reduced, but when asked if she had benefitted from the program, she replied "No change!" When told the treatments would stop if she received no benefit, she uttered positive assessments, saying: "I feel better here...insurance cannot stop paying me." She was described as putting forth minimum effort to comply with assigned tasks, and continued asking staff to "take away" her pain.

Dr. Koepfler discharged Mrs. Arturi because she was physically capable of activities of daily living and there was no physical limitation on her working as an Avon Sales representative. She wrote: "The client has indicated that she feels incapable of doing so and does not wish to return to work

of any sort.” Dr. Koepfler indicated that Mrs. Arturi anticipated more therapy elsewhere, and remained anxious about a termination of her benefits: “She feels entitled to benefits until she reaches 65.”

The Surveillance

The investigator for Scope Investigations Ltd. reported that he observed Mrs. Arturi at Dr. Newbigging’s house on July 27, 1993, and August 31, 1993. He saw Mrs. Arturi picking weeds, carrying a broom, vacuuming the floor, moving and replacing furniture, dusting, and picking up garbage.

The investigator was only able to take photographs outside the house; at the hearing, Mrs. Arturi identified herself in these. However, she denied that the investigator had seen her in the house, and complained that in any event he should not have been looking in at her. She also testified that she was only at the house “for fun,” and that during the hours she was observed there — from 10:00 a.m. to 4:00 p.m. — she was “just killing time.”

Medical Reports, Records and Other Evidence:

The medical records indicate Mrs. Arturi had many post-accident problems other than those from the truck accident, including degeneration of her eyesight, several slip and fall accidents, and continued marital difficulties. The records also show that Mrs. Arturi constantly requested more tests from her doctors, including tests at the request of her lawyers. Mrs. Arturi called her psychiatrist, Dr. David Slyfield, but he knew almost nothing of Mrs. Arturi’s life other than the fact she had been in an accident. Mrs. Arturi also called her daughter; for reasons set out below, I disregard this evidence.

Eye problems

Mrs. Arturi testified that about seven days after the accident she had a “flashing” in her right eye, and she claims her eye has been affected since the accident. The consultation note from Dr. Mandelcorn, who started treating Mrs. Arturi in October 1993, indicates that by March 1994 he had diagnosed an irreversible loss of central vision in the right eye as a consequence of a haemorrhagic form of *age-related* macular degeneration. Dr. E.R. Simpson confirmed this diagnosis in a report dated August 26, 1994.

Although Mrs. Arturi continues to reject this diagnosis, there is no medical evidence to suggest any of her eye problems are related to the accident. Accordingly, I find no such connection and do not deal with her eye problems further.

Dr. Alan Weinberger

Dr. Weinberger’s notes through to 1995 contain references to Mrs. Arturi’s ongoing marital and other problems, as well as numerous requests by Mrs. Arturi for further tests, x-rays, chiropractic treatments, physiotherapy, and examinations by specialists. Whereas Mrs. Arturi attempted to tie any given problem to the truck accident, Dr. Weinberger repeatedly advised her to leave her husband and get on with her life.

On April 10, 1992, she complained that Mr. Arturi had lost his job and owed the employer money that he was spending on drugs. She described Mr. Arturi as a trouble-maker who lost \$100,000 of her money in the last three years. Mrs. Arturi thought he had hidden \$35,000 from her. She thought he was only interested in being with her to obtain citizenship in Canada.

Over several visits in the early fall of 1992, Mrs. Arturi described to Dr. Weinberger the Canadian Back Institute treatments. She had attended the CBI for one week and then stopped because she could not afford the parking, the hours were not flexible there, and the traffic was too heavy in the morning. She had not wanted to attend daily, although it was recommended to her, as she was busy with other things such as house cleaning, family problems, and lawyers.

On November 11, 1992, she complained of right knee pain onset on the evening of November 2, 1992, after dancing on and off for a few hours. She visited three chiropractors, continued to complain of various pains — blaming the accident for them — and was upset at the cessation of compensation. She wanted to see specialists weekly for advice, despite the normal examination. Dr. Weinberger advised her to “get on with her life” and avoid ruminating about her accident and pains.

Over the next 30 months Dr. Weinberger’s observations focus on Mrs. Arturi’s osteoporosis and blood pressure problems, with the occasional notation about her compensation concerns. For instance, on February 14, 1994, she came to his office with “the same symptoms”: “She is upset regarding her perceived disability, delving with why the insurance company will not cover her disability and insists that ‘they have to help me.’” Dr. Weinberger felt she should try a return to work.

Dr. Weinberger’s notes reflect the other accidents. On December 28, 1993, she complained of injuries sustained at Knob Hill Farm Stores on December 18, 1993. She slipped while walking outdoors, sustaining a scalp laceration that was sutured. She complained of resulting dizziness. On May 5, 1994, she complained of left wrist pain after a fall at a laundromat in March 1994. At her last visit on April 25, 1995, Mrs. Arturi mentioned a fall on a GO train in January 1995.

Mrs. Arturi continued to suggest that all her problems were related to the truck accident. As noted above, she blamed the reduced vision of her right eye on the accident. She repeatedly asked if a right foot pain originated with the motor vehicle accident, and, although she admitted to Dr. Weinberger the symptoms began much after the accident, she wanted the insurance to pay for her orthotics. She felt her daily dizziness was related to the accident and she wanted tests for her reduced concentration. She complained of reduced memory and wanted brain tests. Finally, on April 25, 1995, she insisted on having further tests such as a CAT scan and neuropsychiatric tests as suggested by her lawyer. Dr. Weinberger, after discussing their failing relationship, advised Mrs. Arturi to see Dr. Whitney for all her general practice care from then on.

Dr. Brenda Whitney

Dr. Whitney treated Mrs. Arturi concurrently with Dr. Weinberger. Mrs. Arturi testified that she had seen Dr. Whitney before the accident, and that Dr. Whitney had known all her family since 1983.

Dr. Whitney's notes contain numerous references to marital, housing, money and other problems, such as the illness and death of Mrs. Arturi's ex-husband. The entry for November 30, 1992, is particularly eloquent:

- ① is in dangerous, dead-end relationship with Flavio who beats her, drinks, drugs, works constantly and doesn't bring home any money. In addition, he doesn't let her see any of her friends.
 - ② Had 2 MVAs in 3 years. Wants to get money from Ins. Co. re: "disability" after last MVA (single vehicle). Claims "inflammation" of her scalp makes her disabled.
 - ③ Under pressure from daughter & ex-husband who is becoming ill & everyone expects her to take care of him.
 - ④ etc./etc.
- Suggested: Will not feel any better until takes control of her own life and helps herself. Aches and pains are all prob UNL [?] for her experience etc. and are not 'curable'.

Dr. Whitney also wrote on November 2, 1994, that Mrs. Arturi was upset about the death of her ex-husband and of a recent move with nowhere to go.

It appears from the records that at times Mrs. Arturi pressured her doctors. For instance, Dr. Whitney's entry for November 9, 1993, reads in part as follows: "Husband nabbed by Immigration. All his I.D. (incl OHIP) taken. Wants to know if I'll charge OHIP under her number if he's sick. DENIED." (This entry also shows that, as Mrs. Arturi admitted, her husband had had problems with Citizenship and Immigration Canada.)

Similarly, on January 15, 1996, the notes show that someone from the office of Mr. Farkas — Mrs. Arturi's solicitor — called, wanting Dr. Whitney to approve an MRI scan of Mrs. Arturi's head relating to the March 1992 accident. She told them she had difficulty doing so, noting that they could obtain one for medical-legal purposes without her approval. Again, on April 26, 1995, Dr. Whitney noted that the lawyer wanted more tests and wrote in apparent exasperation: "I can't keep track of who [Mrs. Arturi] sees and where she goes."

This litigation motif reappears on November 30, 1995, when Mrs. Arturi, who had been complaining of her various ailments, told Dr. Whitney she had three different lawyers all working on various accidents, and that she was frustrated with the resistance she was meeting to her multiple claims. In this respect, I note that as early as November 27, 1992, Dr. Whitney asked herself: "Some element of compensation anxiety?"

It appears that Mrs. Arturi did not always mention the truck accident when discussing her problems with other doctors. Dr. A. Shedletzky of the Professional Centre for Rehabilitation, who saw Mrs. Arturi on March 26, 1996, and whose notes are in Dr. Whitney's file, diagnosed mechanical low back pain. He based this diagnosis on the history Mrs. Arturi gave of chronic low back pain after a slip and fall accident in 1993 with recurrent flareups radiating down both legs

and of a fall on a bus in 1995. There also appears to be another reference to the 1990 T12 fracture. Nowhere is the March 1992 truck accident mentioned. Mrs. Arturi could give no reason why that would not have been in the record.

Linda Scopazzi

Mrs. Arturi called her daughter, Linda Scopazzi, to testify. Her testimony was very brief. Ms. Scopazzi testified that she and her mother had a close relationship, talking once a day and seeing each other once or twice a week. However, she did not notice any changes in her mother until after Mrs. Arturi left Woodbridge, which was approximately one month after the accident. As to the changes Ms. Scopazzi noticed, I must discount her testimony: I had ordered Mrs. Arturi not to speak about the proceedings with witnesses who were to testify, yet Ms. Scopazzi testified that her mother had visited her the previous evening to discuss her case.

Dr. David Slyfield

Mrs. Arturi called Dr. David Slyfield, psychiatrist. He testified that he first started seeing Mrs. Arturi in April 1993, and saw her about 25 or 30 times over the next three years, which he described as not being very frequent. She was frequently late or absent or came without an appointment, usually when distressed. The only drugs he prescribed were anti-depressants and tranquillizers. He diagnosed a pain disorder. He did not know Mrs. Arturi's prognosis; he did note that after litigation ends, most of his patients stop seeing him. He does not make any judgments about his patients in relation to their behaviour while litigation is ongoing.

On being told that Dr. Weinberger recommended that Mrs. Arturi attempt a return to work, Dr. Slyfield testified that he would not dare say such a thing for fear of causing a hostile reaction, because he does not give that kind of advice.

Dr. Slyfield did not know of most of the other factors in Mrs. Arturi's life, not even that she had been married before, had a history of depression, and was now married to a man about whom she had complained to others of his drug, alcohol, and physical abuse. The few things outside of the truck accident that Dr. Slyfield knew of, such as the "horseplay" incident in February 1990, and the failed Yonge Street business, he had only learned of in the weeks before the hearing. He admitted that knowledge of these factors would have had an influence on his opinion. He also testified that it is common for victims of abuse to disguise the fact afterwards.

In conclusion, after being advised of these other factors, Dr. Slyfield indicated that he did not know if the motor vehicle accident was more important in causing Mrs. Arturi's problems than the disputes with her husband or the money problems.

Conclusion:

Mrs. Arturi seeks continuation of her benefits under section 12 of the *Schedule*. In order to receive benefits, she has to suffer a substantial inability to perform the essential tasks of her occupation or employment because she sustained a physical, psychological or mental injury as a result of the accident. (The test for receiving benefits changes after 156 weeks, but that issue is not before me, and in any event, in light of my findings, it cannot become an issue.)

Mrs. Arturi herself admitted that she could physically do her work for Avon. Indeed, there is not one piece of evidence to suggest that she is physically unable to work, and the evidence suggests the opposite: several doctors recommended she return to work, and Health Recovery found there was no physical limitation to her working as an Avon sales representative.

As to the essential tasks, I do not believe Mrs. Arturi when she states that she worked 50-60 hours per week. Certainly, the Avon transaction record does not reflect a 60-hour job, and the

York-Finch General Hospital records for January 4, 1992, indicate that she was working part-time. It seems likely to me that she carried on after the accident as before, going out twice a week, as she told Dr. Weinberger she was doing at the end of March 1992.

That leaves the non-physical area, the psychological or mental injury she claims to have suffered as a result of the accident. The records speak for themselves, and there is no evidence to suggest they are inaccurate. They suggest many reasons for her troubled mental health:

- Mrs. Arturi had had a large home with Mr. Migotto, her husband of 33 years;
- Mrs. Arturi left Mr. Migotto;
- Mrs. Arturi brought back a man from Argentina who perhaps had motives other than love for wanting to be with her;
- Their business on Yonge Street failed;
- She lost \$100,000 to Mr. Arturi;
- Mr. Arturi hid \$35,000;
- Mr. Arturi lost his job;
- Mr. Arturi abused drugs and alcohol;
- Mrs. Arturi had to make welfare claims and suffered a lifestyle change;
- Mrs. Arturi complained of never having to work before, and not wanting to return to work;

- The Avon job was not available after the dispute;
- Mrs. Arturi broke her back in 1990, possibly as the result of abuse;
- She fell at Knob Hill Farms in December 1993;
- The records suggest that Mr. Arturi abused Mrs. Arturi;
- Mr. Migotto's health deteriorated, and he and the children asked for help;
- Mr. Migotto then died;

- Mrs. Arturi fell on a GO bus in January 1995.

The cases before the Commission on causation in similar circumstances have been consistent that, to be compensable, the accident forming the basis of Mrs. Arturi's claim has to have made a significant or material contribution to her problems.

In *Bruna Pisani and Canadian General Insurance Company*,² Arbitrator Makepeace was unsatisfied that the accidents in question *significantly contributed* to the severity or duration of Ms. Pisani's symptoms. On appeal, Director's Delegate Draper said that the Applicant did not have to show that the injury was caused **solely** by the accident. However, she had to establish on a balance of probabilities that she was injured **as a result of** the accident. This required more than **some** contribution. [Emphasis in the original.]

In *Shelley L. P. and Royal Insurance Company of Canada*,³ Ms. P. had been diagnosed as suffering from drug-induced psychosis, conduct disorder, depression, post-traumatic stress disorder, borderline personality, hebephrenic schizophrenia, bipolar disorder, as well as organic personality syndrome. Senior Arbitrator Rotter found that it was equally likely that any of the other psychological or social stressors that were affecting Ms. P., or a combination of all or some of them, may have played a *significant role* in her mental illness.

In *P. S. and Toronto Transit Commission (Markel Insurance)*,⁴ Arbitrator Naylor wrote that the accident need not be the sole, or even the primary cause of the continuing problems; it is sufficient if the accident contributes to the development or continuation of the condition, to a material

²(November 7, 1994), OIC A-005693

³(February 9, 1994), OIC A-002235

⁴(May 4, 1994), OIC A-001116

degree. In that case, the accident may have been one factor, among many possible factors, which contributed to the Applicant's psychological condition. However, it had not *materially aggravated* her existing physical or mental condition or precipitated her subsequent psychological problems.

In the present case, I find Dr. Slyfield's evidence of no assistance to Mrs. Arturi. He knew almost nothing of her life, and I heard no evidence from him that Mrs. Arturi was substantially unable to perform her job on the basis of psychological or mental injuries resulting from this accident. He was not willing to express a position, and it appears it was enough for him that Mrs. Arturi said she was disabled.

Regarding Mrs. Arturi's credibility, a large part of her claim relates to supposed memory problems and poor concentration. I observed that she had no difficulty in remembering and communicating her problems.

On the other hand, Mrs. Arturi had a great deal of difficulty remembering any information that was less than positive for her case. She was often evasive, and denied or claimed not to remember almost every medical entry that suggested that she had problems that predated or followed the truck accident. For instance, when counsel, going through the OHIP records, pointed out that she had over 50 charges to OHIP in the year before the accident, she replied "I don't think so" — an answer I heard to a number of questions arising out of the medical documentation. Further, I note that with regard to the surveillance evidence, she did not call Dr. Newbigging to contradict what was contained in the report. Her family doctors were also available if she had concerns about the accuracy of their notes. In the absence of other credible evidence, therefore, I view the records as accurate. I find Mrs. Arturi was not a very credible witness.

Mrs. Arturi had many problems before the accident, both mental and physical. She developed a number of age-related conditions, including osteoporosis and macular degeneration, after the accident, and continued to suffer from a number of psychological stressors. I find that the accident, if it did contribute to her present problems, did so in a most minor way. In short, the accident was but a drop in her sea of troubles.

Therefore, I find that Mrs. Arturi is not entitled to weekly income benefits beyond October 15, 1993.

Expenses:

Normally, Mrs. Arturi would be entitled to her expenses. However, Mrs. Arturi's evidence was not credible, and the evidence against her is overwhelming. In these circumstances, I exercise my discretion to deny Mrs. Arturi her expenses of this hearing.

Award to State Farm:

Subsection 282(11.2) of the *Insurance Act* states as follows:

If an insured person commences an arbitration that, in the opinion of the arbitrator, is frivolous, vexatious or an abuse of process, the arbitrator may award an amount to be paid by the insured person to the insurer that does not exceed the amount assessed against the insurer in respect of the arbitration under section 14.

When Mrs. Arturi was asked whether, if she was told by her own counsel that her claim was not worth pursuing, she would still pursue it, she replied "Yes." Mrs. Arturi seems to have done precisely that in this case. Her own family doctors did not support her. She had told the one doctor who did support her, Dr. Slyfield, hardly anything about the rest of her life aside from the

accident. During the hearing she contravened my order and sought to influence her daughter's testimony. Mrs. Arturi's testimony was not credible.

In all these circumstances, I find that this arbitration was an abuse of process, and I award to State Farm the amount assessed against it.

Order:

1. Mrs. Arturi is not entitled to further weekly income benefits after October 15, 1993.
2. Mrs. Arturi must pay State Farm the amount of \$2,000.
3. Mrs. Arturi is not entitled to her expenses of this hearing.

David Evans
Arbitrator

January 8, 1997

Date