

**ALLSTATE INSURANCE/PEMBRIDGE INSURANCE COMPANY (Applicants)  
v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY  
(Respondents)**

Handwritten Endorsement released January 29, 2007 by Mr. Justice G.B. Morawetz

Mr. David Dinner and Ms. Natalie *Mandel* for Allstate/Pembridge  
Mr. Mark *Donaldson* for State Farm

[1] This is an appeal by way of Application of the decision of Arbitrator Robinson.

[2] The Arbitration Agreement provides for a right of appeal on a point of fact, law or a mixed point of fact and law.

[3] Counsel are in agreement that the standard of review is that of correctness.

[4] The issue determined in the arbitration was whether State Farm complied with the procedural requirements for pursuing a priority dispute as against Allstate/Pembridge as stipulated in s.3 of Regulation **283195**.

[5] Arbitrator Robinson found that State Farm did not have sufficient time within 90 days to make a determination that another insurer was liable and that State Farm carried out a reasonable investigation at the time. As such, the Arbitrator found that State Farm is entitled to the benefit of s.3(2) of Reg. **283195** and may proceed with its Arbitration against Allstate.

[6] With all due respect to the Arbitrator, I find myself unable to agree with his conclusion, and for the following reasons, I have concluded that his decision is to be set aside.

[7] The accident occurred October 8, 2002.

[8] State Farm's computer log has a number of references to Mr. **Basquain** as being the **fiancé** of their insured. These references are dated October 8, October 9 and October 28.

[9] Ms. Lennox, the State Farm adjustor, testified that she reviewed the log notes on November 4, 2002.

[10] The Application for Accident Benefits submitted by Mr. **Basquain** is dated October 16, 2002 and is date stamped as received on November 18, 2002. This

Application indicates that **Mr. Basquain** is "married". Ms. Lennox testified that she had come to the conclusion that **Mr. Basquain** was the husband of their insured as a result of his initial contact with Ms. Lennox on October 15, 2002.

[11] In my view, the record establishes that as of November 19, 2002, the date of receipt of the Application, there was a discrepancy as to the marital status of Mr. Basquain.

[12] It is also apparent that the determination of Mr. Basquain's marital **status** impacts on the priority regime under the Insurance Act. The priority regime determines which insurer will be liable to pay the claimed benefits.

[13] In my view, it is necessary to give effect to the plain words of the Regulation. Regulation **3(2)** requires the "insurer" – as an aggregate entity – to make reasonable investigations. The knowledge level of the insurer is not to be restricted to the knowledge of the accident benefit adjuster handling the file.

[14] In the circumstances of this case, it is necessary to consider the entire claim file of State Farm. This includes the computer log entries which were made prior to the receipt of the Application. The log makes numerous references to Mr. Basquain as being the fiance of the insured.

[15] A discrepancy existed as of November 19, 2002 between the log entries and the marital status information contained in the Application. In my view, it is reasonable to expect that State Farm would investigate the discrepancy. It was the responsibility of State Farm to inquire about this discrepancy. State Farm failed to do so. This conflicting information was overlooked during the 90-day period referenced in the Regulation.

[16] The findings of the Arbitrator are not supported by the record. In my view, had State Farm undertaken an investigation to determine the marital status of Mr. Basquain, such investigation could have been completed within the 90-day period. In my view, State Farm did not make the reasonable investigation necessary to determine if another insurer was liable within the 90-day period following November 19, 2002.

[17] In my view, Arbitrator Robinson was in error in concluding that State Farm had satisfied the 2 part test in Regulation **3(2)**.

[18] In the result, the decision of the Arbitrator is set aside.

[19] Consequently, State Farm is not entitled to dispute its obligations to pay benefits.

[20] **Allstate** raised other ground for its appeal, but in view of my findings above, it is not necessary to consider the other points raised by Allstate.

[21] The parties agreed at the hearing on the amount of costs to be awarded to the successful party. In this case, costs are awarded to Allstate, fixed in the amount of \$3,500 inclusive of GST and disbursements. By agreement of the parties, these costs are for the hearing today. The costs of the Arbitration will be dealt with by the parties.



G.B. Morawetz J.

ALLSTATE INSURANCE/PEMBRIDGE INSURANCE COMPANY  
Applicant(s)

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY  
Respondent(s)

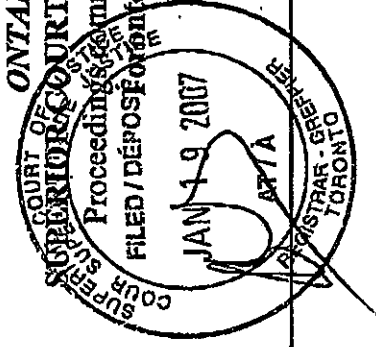
Court File No.: 06-CV-315755 PD3

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Mr. David Danner  
Ms. Nathalie Mandel  
for Allstate / Pembroke  
Mr. Mark Donaldson  
for State Farm.

This is an appeal by way of Application  
of the decision of Arbitrator Robinson.  
The Arbitrator's Agreement provides for  
a right of appeal on a point of fact,  
law or a mixed point of fact and law.  
Council are in agreement that  
the standard of review is that  
of correctness.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceedings commenced at  
FILED / DÉPOSÉ Toronto



NOTICE OF APPLICATION

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Insurance Company/Pembroke Insurance  
Company

The issue determined in the arbitration was whether State Farm complied with the procedural requirements for pursuing a priority dispute as against Allstate/Pembridge as stipulated in § 3 of Regulation 283/95.

Arbitrator Robinson <sup>found</sup> ~~found~~ that State Farm did not have sufficient time within 90 days to make a determination that another insurer was liable and that State Farm carried out a reasonable investigation at the time. As such, the Arbitrator found that State Farm ~~was~~ is entitled to the benefit of § 3(2) of Reg. 283/95 and may proceed with its Arbitration against Allstate.

With all due respect to the Arbitrator, I find myself unable to agree with his conclusion, and for the following reasons, I have concluded that his decision is to be set aside.

The accident occurred Oct 8/02

State Farm's computer <sup>log</sup> ~~logs~~ ~~see~~ has a number of references to Mr. Basquain as being the fiancee of their insured. These references are dated Oct 8, Oct 9 and Oct 24.

Ms. Lannox, the State Farm adjuster testified that she reviewed the log notes on Nov 4/02.

The Application for Accident Benefits submitted by Mr. Basquain is dated Oct 16/02 and is dated stamped as <sup>received</sup> received on Nov 19/02.

This Application indicates that Mr. Basquain is "married". Ms. Lannox <sup>testified</sup> testified that she had come to the conclusion that Mr. Basquain was the husband of their insured as a result of his invited contact with Ms. Lannox on Oct 15/02.

In my view the record establishes that as of Nov 19/02, the date of receipt of the Application, there ~~is~~ <sup>was</sup> a

discrepancy as to the marital status of Mr. Basquian.

It is also apparent that the determination of Mr. Basquian's marital status impacts on the priority regime under the Insurance Act. The priority regime determines which insurer will be liable to pay the claimed benefits.

In my view it is necessary to give effect to the plain words of the Regulation. Regulation 3(2) requires the "insurer" - as an aggregate entity - to make reasonable investigations. The knowledge level of the insurer is not to be restricted to the knowledge of the accident benefit adjuster handling the file.

In the circumstances of this case, it is necessary to consider the entire claim file of State Farm. This includes the computer log entries ~~from~~ which were made prior to the receipt of the Application. The log makes numerous references to Mr. Basquian as being the fiance of the insured.

as of Nov 19 102 between

A discrepancy existed ~~between~~ the log entries and the marital status information contained in the Application. In my view it is reasonable to expect that State Farm would investigate the discrepancy. It was the responsibility of State Farm to inquire about this discrepancy. State Farm failed to do so. This conflicting information was overlooked during the 90 day period referenced in the Regulation.

The findings of the Arbitrator are not supported by the record.

In my view had State Farm undertaken an investigation to determine the marital <sup>status</sup> of Mr. Basquin such investigation could have been completed within the 90 day period. In my view State Farm did not make the reasonable investigation necessary to determine if another insurer was liable within the 90 day period following Nov 19 102.

In my view Arbitrator Robinson was in error in concluding ~~that~~ that State Farm had satisfied



the 2 part test in Regulation 3(2).

In the result the decision of the Arbitrator is set aside.

Consequently, State Farm is not entitled to dispute its obligations to pay benefits.

Allstate raised other ground for its appeal, but in view of my findings above, it is not necessary to consider the other points raised by Allstate.

The parties agreed ~~at~~ at the hearing on <sup>the</sup> amount of costs to be awarded to the successful party. In this case cost are awarded to Allstate, fixed in the amount of \$3,500 inclusive of GST and disbursements. These ~~cost~~ By agreement of the parties, these costs are for the hearing today. The costs of the Arbitration will be dealt with ~~at~~ by the parties.

G. S. Trawetz