

COURT OF APPEAL FOR ONTARIO

CITATION: Smith v. Allstate Insurance Company, 2017 ONCA 843

DATE: 20171102

DOCKET: C63362

Sharpe, Rouleau and Fairburn JJ.A.

BETWEEN

Tiffany Smith

Plaintiff (Appellant)

and

Allstate Insurance Company

Defendant (Respondent)

Jordan B.R. Palmer, for the appellant

Meredith A. Harper, for the respondent

Heard and released orally: October 30, 2017

On appeal from the judgment of Justice D. Parayeski of the Superior Court of Justice, dated January 13, 2017.

REASONS FOR DECISION

[1] In our view, the motion judge did not err by granting summary judgment dismissing the appellant's claim for SAB benefits on the ground that the limitation period had expired.

[2] The respondent insurer issued an OCF-9 denying benefits in January 2007 and the claim was not commenced until some six years later. The denial of benefits

was unequivocal and, in our view, sufficient to amount to a denial of all income replacement benefits including non-earner or caregiver benefits. Even if the reasons for denial offered by the respondent to justify refusal of non-earner or caregiver benefits were wrong or insufficient, reasons were given and those reasons do not have to be legally correct see: *Turner v. State Farm Mutual Automobile Insurance Co.*, 2005 CanLII 2551. The appellant's denial of benefits was complete and unequivocal and in the circumstances of this case, sufficient to trigger the running of the limitation period.

[3] We see no merit in the submission that the appellant was denied a fair hearing. The motion judge indicated the time each side would have for oral argument at the outset and appellant's counsel did not object. When the appellant's counsel commenced his submissions he indicated that he would be brief. When told that his time for argument had expired, he simply said thank you. There is no merit to the submission that the appellant's counsel was unduly constrained in making his submissions.

[4] Accordingly, the appeal is dismissed.

[5] Costs to the respondent fixed at \$6000, inclusive of disbursements and taxes.

Alto 9/10/05 J.A.
Sant, J.A.
Fisher J.A.