Court File No.: 06-CV-315755PD3

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

<u>Handwritten Endorsement released January 29. 2007 bv Mr. Justice G.B. Morawetz</u>

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.
- 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.
- 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 **Alistate**.
- [6] With all due respect to the Arbitrator, I find myself unable to agree with his conclusion, and for the following reasons, 1 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 adjustor 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 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.
- [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.
- 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.

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for Allotate 195 Natholie Mandel

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NOTICE OF APPLICATION

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Insurance Company/Pembridge Insurance Solicitors for the Applicants, Allstate Company

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