

**IN THE MATTER of the Insurance Act, R.S.O. 1990,**

**AND IN THE MATTER of Ontario Regulation 283/95,  
made pursuant to the Insurance Act**

**AND IN THE MATTER of the Arbitration Act, 1991,  
R.S.O. 1991, c.17**

**AND IN THE MATTER of an Arbitration;**

**B E T W E E N:**

**JEVCO INSURANCE COMPANY**

**Applicant**

**- and -**

**STATE FARM INSURANCE COMPANY**

**Respondent**

### **DECISION ON PROCEDURAL MOTION**

The parties in this matter have submitted their dispute before me for arbitration pursuant to the *Arbitrations Act*, 1991.

Jevco Insurance Company is an automobile insurer that has paid benefits to its insured as a result of injuries which the insured person sustained arising out of the usual operation of a motor vehicle. Jevco asserts that it is entitled to recover the monies payable from State Farm Mutual Automobile Insurance Company. State Farm is the insurer of Ronza. It is alleged that Ronza was involved in an accident with Jevco's insured which gave rise to the injuries and consequent claims.

There appears to be a dispute between State Farm and Jevco as to whether or not Ronza was actually involved in the accident and there is some issue about whether there is any contact between a vehicle owned or operated by Ronza and the vehicle owned or operated by Jevco's insured.

The purpose of this motion is to determine whether or not Mr. Ronza can be compelled to be examined for discovery prior to the arbitration proceedings in this matter.

Jevco wishes to question Mr. Ronza under oath with respect to his knowledge about the circumstances of the accident. I agree that it is relevant and cost effective for Mr. Ronza to be required to attend for examination under oath in a case of this nature. However, I have asked the parties to consider whether or not I have the jurisdiction to require Mr. Ronza to submit to examination under oath in this process.

Mr. Ronza is not a party to these proceedings. He is a material witness.

In my view the jurisdiction of an arbitrator has to be found under the *Arbitrations Act, 1991*. Section 20 of the *Arbitrations Act* provides that the arbitral tribunal may determine the procedure to be followed in the arbitration, "in accordance with this act".

Section 25 of the *Arbitrations Act, 1991*, deals with the procedural directions that may be necessary to facilitate an arbitration. Subsection 6 of that section provides as follows:

- "The parties and persons claiming through or under them shall, subject to any legal objection, comply with the arbitral tribunal's directions, including directions to,
- (a) submit to examination on oath or affirmation with respect to the dispute;
  - (b) produce records and documents that are in their possession or power."

Section 29 of the Act deals with requiring the attendance of a witness to attend to give evidence at the arbitration. This section of the Act clearly deals only with testimony at the arbitration.

The Act does not grant me any authority to compel the testimony of a witness beyond that set out. I find no authority to compel pre-hearing examination under oath of Mr. Ronza under section 29 of the Act. Under section 25(6) of the Act I could compel a party's examination on oath with respect to the dispute. As section 25(6) is separate and distinct from section 29, I believe it is reasonable to apply section 25(6) to directions with respect to pre-hearing examination on oath or pre-hearing production of records and documents. Accordingly, it is within my jurisdiction to require the parties and persons claiming through or under them to submit to examination on oath.

Mr. Ronza is not a party. He is however a policyholder of State Farm Mutual automobile Insurance Company. State Farm is obliged to protect him in any litigation which asserts his culpability for this accident. However, I do not think that this cloaks Mr. Ronza with the character of being a "person claiming through or under" State Farm. In fact, in this case if there is any person "claiming through or under" one of the parties then it is Jevco's insured, not State Farm's insured.

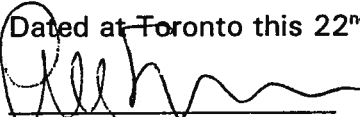
The parties have referred me to the decision of Mr. Stephen Malach in a similar matter. In that decision (*Travelers Casualty and Surety Company (formerly known as Aetna Casualty and Surety Company) and Guardian Insurance Company*, January 13, 1999) Mr. Malach considered whether or not to compel the attendance for examination under oath of an insured person. He did order the attendance for examination under oath of the insured person in that case. I note, however, that the insured person was the person claiming benefits from the insurer and it was the reimbursement of those benefits which was the subject matter of the arbitration. Accordantly, in that decision, it appears that one might consider that the witness was a person claiming through one of the parties.

I am unable to conclude that I have the authority or jurisdiction to compel a non-party to submit to examination under oath prior to the arbitration and therefore I am unable to accede to Jevco's request directing Ronza to attend for examination for discovery.

However, in the circumstances of this dispute I can see that it might be desirable for the parties to have examination, pre-trial, of each other and I do have authority to grant that examination.

Counsel for Jevco indicated a desire to have an examination on oath of State Farm. If counsel for Jevco wishes an examination on oath of a representative of State Farm then that may be arranged by the parties and they are directed accordingly. If State Farm requires an examination on oath of Jevco I would expect this to be arranged by the parties as well.

Dated at Toronto this 22<sup>nd</sup> day of August, 2000.



Lee Samis

