

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: AXA INSURANCE COMPANY v. CO-OPERATORS INSURANCE
COMPANY

BEFORE: NORDHEIMER J.

COUNSEL: *David F. Murray*, for the Appellant

Philippa G. Samworth, for the Respondent

HEARD: May 3, 2001

ENDORSEMENT

[1] The appellant, AXA Insurance, appeals from the determination of Arbitrator Rudolph dated May 1, 2000 wherein he concluded that the appellant did not give notice of a dispute to Co-operators within the 90 day time period required by s. 3(1) of Reg. 283/95 under the *Insurance Act*, R.S.O. 1990, c. I.8. and that the appellant could not bring itself within the exception provided by s. 3(2).

[2] The appellant received a claim for benefits on or about April 23, 1996. The appellant already had underway investigations as to whether there was any other insurance policy that might answer for this claim. In June, 1996, the appellant was advised of the fact that the respondent had a policy in favour of the injured parties but that the respondent had advised that the policy had lapsed as of January 24, 1996.

[3] The appellant did not pursue the matter until more than a year later when, in the Fall of 1997, it received new information which suggested that the respondent's policy was in force at a subsequent period of time. This lead the appellant to believe that the respondent's policy might in fact have been in force at the time of the accident in question. Consequently, the appellant then delivered a notice of dispute asserting that the respondent might be liable to pay the claims.

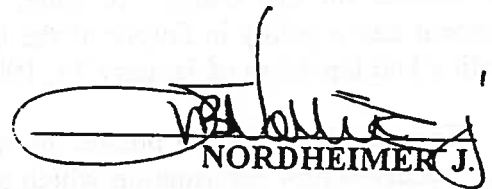
[4] I have concluded that Arbitrator Rudolph was correct in the principal decision that he made that the appellant had failed to establish that it could rely on s. 3(2) of the regulation in order to pursue its dispute. The arbitrator found that the appellant had conducted reasonable investigations and further found that the 90 day period was sufficient time for the appellant to conduct those investigations.

[5] The fact is that in June 1996, the appellant accepted the representation of the respondent that its policy had lapsed at face value. It did not ask for any proof of that fact. This situation is to be contrasted with what happened in the Fall of 1997. On October 15, 1997 the appellant wrote a letter to the respondent in which it demanded complete disclosure of the policy including a copy of the agent's file and all notes to determine whether the respondent might be the primary insurer. There is no reason that appears from the record why such a letter could not have been written in June 1996.

[6] The appellant submits that to permit such a result to stand does not encourage insurers to be candid and forthright with each other although I note that it is not suggested here that the respondent was not so in communicating the information that it did in 1996. Indeed, the respondent maintains its position that its policy does not answer for these claims.

[7] While that may be the result of the arbitrator's decision, the converse is that by allowing the arbitrator's decision to stand, it encourages insurers to fully and completely investigate these issues promptly and expeditiously which has been said to be the fundamental purpose behind the requirements of s. 3 of the regulation. The appellant had the opportunity to do so but chose not to avail itself of that opportunity. Instead it took the information that it had regarding the respondent's policy and did nothing more. In my view, s. 3 of the regulation places the burden on the insurer who intends to dispute its liability to take a more proactive approach to these issues and that the appellant, having failed to do so, cannot now invoke the exception provided for in s. 3(2) to extricate itself from the effect of that decision.

[8] The appeal is therefore dismissed. The respondent is entitled to its costs of the appeal payable forthwith by the appellant and fixed in the amount of \$1500.


NORDHEIMER J.

DATE: May 3, 2001

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MAY-3/01. *[Signature]*

May 3, 2001

For reasons in typed endorsement attached, appeal is dismissed. Costs to the respondent payable forthwith by the appellant and fixed in the amount of \$1500.

[Signature]
JUSTICE NORDHEIMER

IN THE MATTER OF AN APPLICATION
FOR ACCIDENT BENEFITS OF
SABARATNAM SIVARAJAN AND
AMISOVA SIVARAJAN

15-12-2000

APPEAL RECORD

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