

## **Expert Reports Can be Claimed Against Accident Benefits Carrier, Even if Used in Tort**

**The Background:** When injured in an Ontario car accident, plaintiffs suing in tort (i.e. against the other driver) also have an ongoing claim with their Accident Benefits carrier, which very often turns into a dispute claim.

**The Issue:** Can the cost of an expert report be claimed against the Accident Benefits carrier, even when the report is partially used in the tort lawsuit?

**Why This Matters:** Plaintiffs incur significant expenses (disbursements) when prosecuting their tort lawsuit and/or accident benefits disputes. It is important to seek re-imbusement whenever possible. The accident benefits file very often moves to a partial resolution faster than the tort file, so that the accident benefits file is the “first” opportunity to seek re-payment.

**The Case:** Sanmuganathan Elaiathamby v. State Farm Mutual Automobile Insurance Company, Appeal P-08-00035, decision on April 7, 2011, Director’s Delegate David Evans.

**The Decision:** Full cost of expert reports allowed, dispute their use also in the tort lawsuit arising from the same car accident. As stated in the decision:

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*State Farm submits that cases such as Henri stand for the proposition that arbitrators should fix a reasonable ballpark figure rather than conduct a line by line calculation. While that is generally true, it is incorrect to reduce expenses on a basis that is not supported in the legislation. State Farm also submits that an allowance of half of the amount of the disbursements will prevent double recovery in the event that the disbursements are recovered in the tort action. However, arbitration and appeal decisions are public, so there is no reason to assume there would be double recovery, even aside from the assumption that counsel will act honourably. Finally, while the automobile insurer is the insurer of last resort, that does not apply to legal expenses incurred in arbitration.*

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