

CASE COMMENT ON STATE FARM v. RAMALINGAM

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The decision in *State Farm v. Ramalingam* that came out on January 27, 2009 is helpful in that it clarified two issues, namely:

- CPP disability benefits are deductible from income replacement benefits in accident benefits matters.
- *Liberty v Fernandes* does not extend to precluding insurers from suing their insureds for repayment of benefits.

In *State Farm v. Ramalingam*, the insured was involved in an accident on January 9, 2002. State Farm paid income replacement benefits until July 26, 2002 and was subsequently ordered by FSCO to continue payment of benefits past that date. On March 16, 2007, the insured was informed that he was entitled to CPP disability benefits retroactively back to November 2003 in the monthly amount of \$462.17. The insurer then proceeded with a lawsuit to reclaim the overpayment of income replacement benefits.

The insured's position was that CPP disability benefits were not deductible, and that, in any event, the insurer was precluded from suing in court for repayment of benefits.

As a first step, State Farm brought a summary judgment motion and succeeded in arguing that CPP disability benefits were deductible in accident benefits cases. The summary judgment decision was referred to and relied on in the main action.

The judge in the main action further agreed with State Farm's submissions that the decision in *Liberty v. Fernandez* did not preclude a lawsuit for repayment of benefits in this case. In the 2006 *Liberty v. Fernandez* decision, the Ontario Court of Appeal held that insurer's access to courts in the context of an accident benefits claim must be limited to actions involving the repayment of benefits obtained through fraud or error. The judge specifically referred to the decision in *Citadel General Insurance Co. v. Gogna* which held that the insurer must have access to the courts to enforce repayment by an insured of benefits obtained by fraud or misrepresentation.

The judge went on to conclude that "the reasoning in *Liberty Mutual v. Fernandez* and the strict and narrow application of the principles in the Citadel case permits the Plaintiff in this action to pursue a claim for overpayment of statutory income replacement benefits in this Court".