

Case Name:

Kirkham v. State Farm Mutual Automobile Insurance Co.

**Between
Kirkham, and
State Farm et al.**

[1998] O.J. No. 6459

1998 CarswellOnt 2811

No. 510/97

Ontario Court of Justice (General Division)
Divisional Court

O'Leary J.

March 31, 1998.

(6 paras.)

Insurance -- Automobile insurance -- Bodily injury and death benefits -- Termination of -- Judicial review -- Limitation period.

Application by Kirkham for judicial review of the dismissal of his proceedings against the insurer with respect to its notice of refusal to pay further no-fault benefits. The notice was given by the insurer more than two years before the application was brought.

HELD: Application dismissed. Pursuant to section 281(5) of the Insurance Act, proceedings in respect of no-fault benefits had to be commenced within two years after the insurer's refusal to pay the benefit claimed. The section was unambiguous, and Kirkham's application was statute barred.

Statutes, Regulations and Rules Cited:

Insurance Act, s. 281(5).

Counsel:

No counsel mentioned.

1 O'LEARY J. (endorsement):-- Section 281(5) of the Insurance Act provides:

a proceeding in a court or an arbitration proceeding in respect of no-fault benefits must be commenced within two years after the insurer's refusal to pay the benefit claimed or within such longer period as may be provided in the No-Fault Benefits Schedule.

2 The first principle of statutory interpretation is; "if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense" (Chief Justice Tindal in the *Sussex Peerage Case* 1844 11 cl and F. 85).

3 In our view the words in Section 281(5) are precise and unambiguous. An injured insured must commence his proceeding within two years after the insurer's refusal to pay, or his claim is statute barred.

4 Even if the insured can be said to have a separate claim for benefits for each weekly period, all such claims are barred beyond the two-year limitation period by the insurer's notice of refusal to pay any further benefits. Such a notice was given by the insurer in this case. We agree with, and adopt the reasons given by the Director's Delegate, David R. Draper in concluding that the claim of Mr. Kirkham is out-of-time.

5 While the Director's Delegate came to the correct decision as to the limitation period created by Section 281(5) we feel it important to note had he reached the wrong decision, such decision would not have been protected by curial deference. The Legislature gave an injured insured the choice of pursuing a benefits claim in either the court or by arbitration under the Insurance Act. The Legislature could not have intended that the limitation provision set out in Section 281(5) could vary dependent on where the claim was made. The court in interpreting the limitation provision is restricted to a standard of correctness. For consistency and fairness the Ontario Insurance Commission must be bound by the same standard.

6 In the result the application for judicial review is dismissed with costs payable to State Farm fixed at \$1,500.

O'LEARY J.

---- End of Request ----

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