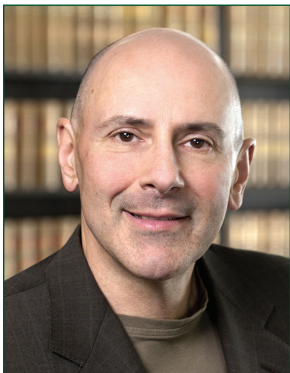


# Accident Benefit Reporter

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## A CASE WORTH FIGHTING FOR!

WRITTEN BY JOSEPH PILEGGI

Thomson, Rogers has always taken great pride in our endeavours to protect the rights of our clients. Recently, Leonard Kunka represented Mr. Waldock, a university professor, in his claim against State Farm Insurance. The main issue at the hearing was whether or not Leonard's client was catastrophically impaired pursuant to the Statutory Accident Benefit Legislation.

Briefly, during a typical winter snowstorm in Northern Ontario, Mr. Waldock helped a stranded elderly couple get their vehicle out of a snow bank. While standing at the rear of the vehicle, neither he nor the stranded motorists heard or saw a car sliding out of control down a hill. It struck Mr. Waldock consequently causing devastating leg injuries. Mr. Waldock was flown by air ambulance to Toronto Western Hospital where doctors performed heroic efforts to save his leg. He was told that despite extensive, complicated surgeries to repair the damage, his leg would never Cont'd

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be the same. Furthermore, due to repeated bone infections and numerous other surgeries, he would also have to deal with the constant possibility of an amputation in the future.

Mr. Waldock followed all of the recommended treatments and rehabilitation programs to the letter. He underwent numerous additional surgeries and procedures to attempt to stop the rampant infections which continued to threaten his leg. He basically did everything he could to get back to his university classroom. In fact, while lying in his hospital bed, he marked his students' papers to make sure they would receive their final marks in a timely fashion. He was described by his doctors and rehabilitation team as nothing short of a model patient.

You would think this model patient would have an accident benefit insurer that would do everything in their power to assist and support him. After all, faced with remedial legislation, insurers want their insured to remain stoic, to fight through the pain, to work diligently on their rehabilitation, and to get back to work as quickly as possible. Unfortunately, State Farm chose to challenge Mr. Waldock rather than support him.



Leonard H. Kunka  
PARTNER | THOMSON, ROGERS

I am proud to say that Leonard Kunka and his team refused to allow State Farm to take advantage of Mr. Waldock.

Arbitrator Henry's decisions found the following:

- a. Mr. Waldock did suffer a catastrophic injury. State Farm relied on a flawed catastrophic assessment that was done by their assessor;
- b. There was a failure of State Farm's medical assessor to follow the accepted Guidelines to determine whether a person is catastrophically impaired;
- c. FSCO confirmed that the inevitable deterioration of injuries suffered in an accident could be taken into account when assessing whether those injuries constituted a catastrophic impairment;



- d. State Farm had the obligation to pay retroactive claims from July 2010, (arising out of the catastrophic determination) which amounts to \$361,520.30, plus interest at 2% per month, compounded from the date of the 1st CAT application – 2010;
- e. State Farm has to pay for the costs of the Arbitration at an enhanced rate; and,
- f. State Farm has to pay a punitive/special award for the non-payment of the benefits in the amount of \$108,456.09, plus interest on the special award at 2% per month from July 2010. This amount is basically a punishment for State Farm relying on the flawed catastrophic assessment that was done by their assessor when, based on the totality of the medical evidence, it should have been obvious Mr. Waldock was, and will remain, catastrophically impaired.

When the monetary payments owed to Mr. Waldock are added up, State Farm will be required to pay over \$1,700,000.00. The Arbitrator's decision confirms the Ontario Accident Benefits Legislation requires an insurer to treat their insured fairly, and not to unnecessarily expose them to unreasonable and costly litigation.

We sometimes forget how much effort goes into presenting a case such as this. Not many firms can afford to spend large amounts of money in order to protect the rights of their clients. Kudos go to Leonard Kunka, Carr Hatch, Carmen Spano, Maggie Marshall and Michael Holden on a job well done.

We want to extend our best wishes to Mr. Waldock and his family. Last but not least, thanks goes out to his medical and rehabilitation team for their professionalism and kindness. ■■■

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