

ONTARIO COURT OF JUSTICE  
(GENERAL DIVISION)

**RE:** GUARDIAN INSURANCE COMPANY OF CANADA and  
MARKO GOLIC and MATO GOLIC being a person under  
disability

**BEFORE:** SHARPE, J.

**COUNSEL:** Patrick Mazurek, for the Applicant Guardian Insurance

David A. Payne and Dale A. Herceg, for the Respondents Marko  
and Mato Golic

**DATE:** March 31, 1999

ENDORSEMENT

[1] This is an unusual application brought by Guardian Insurance Company of Canada. It originally came before me in September 1997. As my endorsement dated November 13, 1997 and my subsequent endorsements indicate, there has been substantial difficulty in arriving at an appropriate resolution of the Statutory Accidents Benefits Claim of Marko Golic with respect to home renovations. I do not intend to review the entire history of the matter. Suffice to say that all parties accept that I do have jurisdiction to entertain this application and to make a determination of Marko Golic's entitlement. There is now before me as well a cross-application in which a claim is asserted on behalf of Mato Golic for his

Statutory Accidents Benefits Claims related to home renovations. Again, it is common ground that it is appropriate for me to proceed to deal with that matter at the same time as deciding Marko Golic's claim.

[2] By agreement of counsel, the matter proceeded before me over two days. I heard oral evidence from experts called by both parties.

[3] The claims arise from a motor vehicle accident on August 25, 1995 which rendered Marko Golic a permanent paraplegic. At the time of the accident, Marko was 13 years of age. He is now 16 years of age, and as a result of an order made by me, he is now represented in this application by his brother, the litigation guardian, Damir Golic. The claims fall within the regime established by the *Insurance Statute Law Amendment Act*, 1993 S.O. c.10 which removed the right of an injured person to sue for anything except non-pecuniary general damages, and which establishes, *inter alia*, an entitlement of up to \$1 million for supplementary medical and rehabilitation benefits over the injured party's lifetime. While there are a number of issues outstanding between these parties, I have been advised that it is anticipated that all will be resolved shortly, except for the question of home renovations

[4] The claim arises under section 40 of the Statutory Accidents Benefits Schedule (Ontario Regulation 776/93). That provision provides as follows:

40.(1) If an insured person sustains an impairment as a result of an accident, the insurer shall pay for reasonable measures,

(a) to reduce or eliminate the effects of any disability resulting from the impairment.

(5) The payments required under this section include payment of all reasonable expenses incurred by or on behalf of the insured person as a result of the accident for a purpose referred to in clause (1) (a) or (b) for,

(a) social rehabilitation, including life skills training, family counselling, social rehabilitation counselling, financial counselling, home renovations and home devices to accommodate the needs of the insured person, vehicles, vehicle modifications to accommodate the needs of the insured person, and communications aids for the insured person's home;

[5] There are before me essentially two proposals for home renovations. The proposal favoured by the plaintiff is that of "Easy Access", presented by Mitchell Moshenberg. The costs of the renovations in this proposal is \$251,703.00 which was supplemented by a further claim for \$7,000 for architectural, structural and engineering services, as well as the costs of buildings permits, packing and moving services and hotel rates for the Golic family while the renovations are being accomplished.

[6] The defendants' proposal is that of "Adapt-Able Design" presented by Jeffrey Baum. The costs of the proposal submitted by the defendant is \$76,950.00. The defendants called another home renovation expert, Randy Sora. He, however, did not present his own proposal but merely commented on the Moshenberg and Baum proposals.



[7] In addition to these experts, I heard the evidence of Diane Taylor, called on behalf of the plaintiff. Ms. Taylor is a physiotherapist who has considerable background and expertise in the area of the home modification requirements and needs of seriously disabled individuals such as Marko Golic.

[8] There is clearly a wide discrepancy between these two proposals. There are a number of reasons for these differences. First of all, the Moshenberg proposal does includes renovations which are intended to meet the needs of Mato Golic as well as Marko Golic. The Baum proposal does not contain such renovations. Secondly, the Moshenberg proposal is clearly much more extensive in the nature of the renovations it suggests, a matter upon which I will comment. Third, the Moshenberg proposal is put forth on the basis that Mr. Moshenberg's company would be prepared to undertake these renovations at the price stated. Mr. Baum made it clear that his company was not prepared to undertake the renovations in the circumstances of this case, and his proposal has to be read in that light.

Fourth, the Moshenberg proposal is more closely tailored to the rather unusual circumstances of these parties. Marko resides in the house owned by his father Mato. It is apparent from the history of this file that there have been considerable difficulties encountered in arriving at a plan for renovations that will meet Marko's needs and at the same time satisfy Mato Golic. The witnesses who testified indicated that Mato Golic is a difficult person to deal with on this count. He has certain ideas about his home and he is unwilling to have others tell him

how it should be renovated or how he should deal with his son's present condition. While I do not condone the various positions that have been taken by Mato Golic throughout this rather protracted exercise, I do say that one cannot ignore his important involvement in Marko's future. It seems to me apparent that from the perspective of Marko's best interests, a considerable effort has to be made with a view to accommodating Mato Golic's particular views and approaches to this problem. On a related point, it is apparent that the Moshenberg proposal contemplates work and finishes of a high quality. The uncontradicted evidence before me is that the Golic residence is a finely appointed home of high quality and that the work and finishes proposed by Mr. Moshenberg are commensurate with the Golic's home.

[9] The regulations which govern this claim provide that Marko is entitled to "all reasonable expenses" required for home renovations. He is entitled to have the insurer pay for "reasonable measures to reduce or eliminate the effects of any disability resulting from the impairment".

[10] In determining what is reasonable, I am greatly assisted by the evidence of Ms. Taylor. She was the only witness with expertise in the area of assessing the needs of someone in Marko's condition and accordingly, her evidence is uncontradicted. Ms. Taylor was involved in the development of the Moshenberg proposal. She met with Mr. Moshenberg and she assisted him by identifying

Marko's needs. I accept Ms. Taylor's evidence and find that the following are required as reasonable measures to reduce or eliminate the effects of his disability resulting from the accident:

- (1) independent access to the front door;
- (2) independent access to the rear entrance;
- (3) independent access from the garage which is to be protected for winter months;
- (4) independent access to a full range of cooking facilities;
- (5) independent access to the powder room on the ground floor;
- (6) a wheelchair-accessible bathroom for his needs and his needs alone on the second floor equipped with a Jacuzzi-type bath;
- (7) emergency refuge balcony on second floor;
- (8) independent access to a wheelchair-accessible bathroom in the basement floor adjacent to the exercise facilities;
- (9) independent access to the electrical panel;
- (10) that he should not have to remain within the home during renovations as he needs a clean environment given certain aspects of his medical condition;
- (11) elevator access to all levels of the home.



[11] The Moshenberg proposal is designed to meet each of these needs. The Baum proposal fails to meet several of these needs. In particular, the Baum proposal does not provide for the following:

- (1) independent access to the front door of the home;
- (2) independent access to a full range of cooking facilities;
- (3) independent access to the powder room on the ground floor;
- (4) private bathroom facilities with proper facilities restricted to Marko on the second floor;
- (5) access to the bathroom and shower facilities in the basement adjacent to the recreational room and exercise facilities;
- (6) emergency refuge balcony on second floor;
- (7) it contemplates Marko remaining in the home while the renovations are made.

[12] In addition, the Baum proposal would result in the effective reduction of the living place in the Golic home. Mr. Baum's preferred location for the elevator would eliminate the spare bedroom on the second floor. His alternative position for the elevator would substantially reduce the space available in Marko's own bedroom and would have the further disadvantage of not affording Mato Golic access to the second floor without infringing upon the privacy of Marko Golic.

[13] Accordingly, on the basis on Ms. Taylor's expert assessment of Marko Golic's needs and on the basis of the evidence of the renovations proposed by Messrs. Moshenberg and Bawn, I have no hesitation in concluding that the Baum's proposal does not meet Marko's reasonable needs whereas the Moshenberg proposal does. Mr. Moshenberg was challenged on several aspects of

his proposal as including renovations not required by Marko. In particular, his proposal would result in the addition of some 250 square feet on each of the first and second floors on the Golic's residence. The added space, however, was explained by the need to afford appropriate space to enter and exit the elevator and to compensate for certain reductions in space required by enlarged bathrooms and other areas. Mr. Moshenberg was also challenged on the rather substantial mark up in his costing figures of some 40%.

[14] While I agree with the suggestions that the Moshenberg proposal is a "Cadillac" version, no viable alternative proposal that is adequate to meet Marko's needs has been presented to me. The Moshenberg proposal also has the advantage of being acceptable to Mato Golic and it provides a package that "Easy Access" is prepared to implement for the stated price. In my view, it is significant that the defendants' experts both stated that they would not be prepared to undertake this project for the price they state. I find that unwillingness throws into question the weight to attach to their evidence of what it would cost to accomplish the renovations. There is no question but that the 40% mark-up on the Moshenberg



proposal reflects this difference. I note further that although the costs of the ~~adaptable design~~ <sup>easy access</sup> proposal is some \$250,000, the uncontradicted evidence is that at least one third of that amount should be allocated to meeting the needs of Mato Golic. Accordingly, in so far as Marko is concerned the difference is not between \$75,000 and \$250,000 but rather something more like between \$75,000 and \$165,000.

[15] In my view, it is imperative that there be an immediate resolution to this question. It is now more than three years since the date of Marko's injury and he is still in a home has not been adapted to meet his needs. On the evidence before me and for the reasons given, I find that an appropriate order is that:

- (a) Marko Golic is entitled to receive home modification benefits in the amount of \$165,000 pursuant to section 40 (5) (a) of the Statutory Accident Benefits Schedule;
- (b) Mato Golic is entitled to receive home modification benefits in the amount of \$85,000 pursuant to section (40) (5) (a) of the Statutory Accident Benefits Schedule.
- (c) that \$250,000 be paid to David A. Payne in trust to be released and paid out to Damir Golic as the home modifications are performed

and completed in accordance with the plan submitted by "Easy Access";

- (d) that this payment shall discharge the Guardian Insurance Company of Canada for any obligations it has to date for the home renovation needs of Marko Golic and Mato Golic

[16] I would further order that a careful accounting be kept by Damir Golic of all expenditures for home renovations and that Guardian Insurance Company of Canada is entitled to receive an accounting for such expenditures. To the extent that the home renovations specified in the "Easy Access" proposal are accomplished for a lesser amount than \$250,000, or to the extent the monies are not expended on such renovations, the unexpended monies shall be returned to the Guardian Insurance Company of Canada.

[17] With respect to the costs of this application, I find that both Marko Golic and Mato Golic are entitled to receive party and party costs from the Guardian Insurance Company of Canada, such costs to be assessed and payable forthwith. With respect to Marko Golic, given the unusual circumstances of this case and the difficulties it presented, I find that David A. Payne, Marko Golic's solicitor, is entitled to a further amount to be paid from Marko Golic's Statutory Accident Benefits entitlement, under section 40 of the regulations, namely, the difference

between the party and party costs as assessed and his solicitor/client fee as assessed. This award is to be made pursuant to section (40) (5) (e) as another "service that the insured person requires".

*Robert J. Vargo J.*