Tab 21

AABS File Number**: "23-015662/AABS"**

Jurisdiction: *Provincial (Ontario)*
Governing Automobile Insurance Legislation*: Insurance Act, R.S.O., 1990,* c I.8 et seq ("*Insurance Act*" or "*Ins. Act*")
Governing Automobile Provincial Regulations*: SABS and Reg 664*
Governing FSRA Rule*: Unfair Deceptive or Act Practices Rule 2022 et seq* Unfair or Deceptive Acts or Practices Rule as amended by Deferred Sales Charge Amendment 2 Approved by Minister of Finance: January 30, 2024 *("**UDAP Rule**")*
Insurance[1] Policy #: #001013511806 (the "Insurance Policy", "**Insurance Contract**"[2] or "Insurance Policy #806")
Insurance Program and Product*: Alumni And Professional Program*
Underwriter/Insurer*: Security National Insurance Company (**FSRA** Insurance Registration **#397**[3])*

Combined Name with two distinct trademarks for two different insurance programs*: "TD Insurance Meloche Monnex"*
Trademark word holder of "TD Insurance": *The Toronto-Dominion Bank ("TD Bank")*
Trademark word holder of "Meloche Monnex": *Meloche Monnex Inc. ("MMI"), a CBCA incorporated company*

"Broker": *Meloche Monnex Financial Services Inc. (the "**Broker**" or "**Agent**", or "**MMFSI**")*
"Named Insureds": *BMW Financial Services Inc. (A Division of BMW Canada Inc.) (defined as "**BMW FS Inc**."; and Nicole Artopoulos (B.A., M.A.) ("**McLean Spouse**" or "**Individual Policyholder**")*
Insured Automobile*: BMW 3 Series Xi Drive 2019 4DR AWD*
Lessee*: Nicole Artopoulos*
Lessor*: **BMW FS Inc.***
Insured Person[4]*: Mr. Kevin A. McLean (B.A., J.D., CIM) ("Artopoulos Spouse", "Insured Person", "Unnamed Insured Person", "Occupant" ,"Appellant", Applicant", or "Claimant"[5])*

***Date of Loss**: August 31, 2022 ("**DOL**" or "**Date Of Loss**")*
***Location of Loss**: 320 to 360 Spadina Road (Northbound) (between Heath Rd and St. Clair Avenue), Toronto, Ontario (multiple postal codes due to involuntary movement of Insured Automobile by force of being rear-ended by the tortfeasor (insured by the tort insurer in Pembridge Insurance Company ("**Pembridge**" or "**Tort Insurer**")*
Police File Number (North York Reporting Collision Centre):** Affidavit #3, **Exhibit "A"
TD Insurance Claim #:**0353257906**[6]
TD Insurance Claim # for Appellant: **03<u>5</u>325790-3** *("**TD Claim #3**")*

Fictitious TD Insurance claim number for Appellant with fictitious "exposure number" (4) (as opposed to the number "5") between the second digit "3" and fourth digit "3": 03<u>4</u>325790-03 ("**Fictitious TD Claim Number**")[7 8]

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPELLANT

AND:

SECURITY NATIONAL INSURANCE COMPANY

RESPONDENT

Re: In a matter of an **Appeal** (also defined as "**Application**", "**Application Of Injured Person**" or "**Application**") by the **Appellant** (also defined as "**Applicant**", "**Claimant**" or "**Beneficiary**") under the *Insurance Act*, RSO 1990, c I.8 *et seq* (the "*Insurance Act*") in the above-noted **AABS Claim Number** (also defined as "**SNIC Proceeding**")

Re #2: NOM #14

Re: Written Argument for NOM #14

APPLICANT/APPELLANT (PARTY)	RESPONDENT PARTY

Mr. Kevin A. McLean (B.A., J.D. CIM) 410-775 King Street West, Toronto, Ontario, M5V 2K3 **Telephone**: 647.513.1270 **Email**: **MCLEANSNICLAT@GMAIL.COM**	**Security National Insurance Company** **FSRA** Registration Number #353
	Physical Address for Service in the **SNIC Response**
	101 McNabb Street, **Markham**, Ontario, L3R 4H8 (“**SNIC Markham**”)
	AND TO: The Lawyer Licensee Representative for **SNIC** as of June 28, 2024
	Mr. Matthew Nieuwland Barrister and Solicitor at TD Insurance Staff Legal 66 Wellington West Street Toronto, Ontario, Matthew.nieuwland@tdinsurance.com
	AND TO: The sole signatory and filer of the **SNIC Response**
	Mr. David Karat ADR Specialist for **SNIC** David.karat@tdinsurance.com

Volume #1: Facts

1. The Appellant is a disabled individual residing in Toronto, Ontario. At the time of the **Accident**, he was 39 years old with a G2 license. At the time of these submissions, he is 41 years old with a G license.[9]

2. Security National Insurance Company ("**SNIC**") was incorporated under the *CBCA* in 1934, then continued under the federal Insurance Act with its head office in Montreal, Quebec. At the time of the **Accident**, **SNIC** was licensed with the **FSRA** to provide six (6) classes of insurance in Ontario and its **FSRA** registration number is 397. From 2018 to the time of the **Accident** and thereafter, **SNIC**'s Ontario office has been the **Markham McNabb Building** in Markham, Ontario (also defined as "**SNIC Markham**").[10] In October 2023, upon the Appellant's return to Canada after obtaining requisite[11] MRIs, examinations, assessments and reports, the Appellant learned that **SNIC** had *purported* to change its physical address and fax number to: (i) the **Burlington Address**; and (ii) **905 Fax Number**.[12] The "*Ontario Business Directory*"[13] lists the **Burlington Address** and **905 Fax Number** as being the business of "TD Insurance". The "*Ontario Business Directory*" also lists the 'head office' associated with the **Burlington Address** as the **Victoria Park Building**[14].[15] In the **SNIC Response**, **SNIC** did not list the **416 Fax Number** as a fax number for service. With the benefit of hindsight and labrythinian investigations, the only factual contact information that **SNIC** provided to the Appellant was its *mailing address* at the **Markham McNabb Building**. Neither the **416 Fax Number**[16] nor the **905 Fax Number** were fax numbers for **SNIC** as a recipient.[17]

Volume #1(A): TDHA

3. TD Home And Auto Insurance Company ("**TDHA**") is an insurance company that is licensed, by the **FSRA**, to provide three (3) classes of insurance including automotive insurance. **TDHA**'s **FSRA** registration number is 1063. At the time of the **Accident**, the lead tenant(s) at the **Victoria Park Building** were denoted as "TD Insurance" by the property manager at the **VP Building** in Colliers International. From 2018 to present, the "*Ontario Business Directory*" has listed the fax number of 416-774-3120 (the "**416 Fax Number**") as the fax number for **TDHA**. The **416 Fax Number** is a landline, owned by Bell Canada Inc., which is *grounded* at the **Victoria Park Building**. In the HCAI portal, the Appellant's TD

Claim #3, contrary to the information he provided in good faith, based on representations made to him by SNIC, to his physiotherapists as the *return mailing address* for SNIC, *prima facie*, sent to him by **SNIC**, auto-populated the name of different adjusters and a branch address for **SNIC [sic]** of 304 The East Mall, 6th floor, Etobicoke, Toronto, Ontario, M9B 6B7 (the "**Etobicoke East Mall Address**").[18] YELP, another online business directory, <u>**EXCLUSIVELY**</u> lists the **Etobicoke East Mall Address** as the address for one insurance company and one insurance company only: **TDHA**.[19] While **SNIC** never, in letter to the Appellant, represented that its address was the **Etobicoke East Mall Address**, it is now clear that said address was independent of **SNIC**, and an address for **TDHA**.

Volume #1(B): Other Relevant Facts

4. On or around September 1, 2022, the Appellant notified **SNIC** of his *intention* to apply for **Accident** benefits. Due to an immediate address error in his postal code by SNIC, the Appellant did not receive an application benefits package from **SNIC** until late September 2022. On October 13, 2022, the Appellant fax delivered his OCF-1 (also defined as "**Completed Application**") to the **416 Fax Number**. The Appellant also delivered the OCF-2, on his behalf by his employer, to the **416 Fax Number**. On November 3, 2022, his attending physician for his post-**Accident** impairments, completed and signed his portions of the **OCF-3**, and he [Prime Medical] faxed the completed OCF-3 to the **416 Fax Number** after the Appellant paid the *SABS*, section 25 expense. 90 days from October 13, 2022 was January 10, 2023. The Appellant did not receive any dispute notice, pursuant to *Reg 283*, from **SNIC** or any other insurance company by January 10, 2023. From January 11, 2023 to October 2023, the Appellant continued to fax the **416 Fax Number** with all confidential correspondence and other OCF forms regarding TD Claim #3. In October 2023, the Appellant attempted to fax some of his documents to the **905 Fax Number**, with a copy to the **416 Fax Number**, but the **905 Fax Number** would more regularly than the **416 Fax Number**, block his faxes. In November 2023, the Appellant fax delivered the completed **OCF-19** and the *letter response*, allegedly on behalf of SNIC, was that he was required [sic] to submit the OCF-19 through HCAI [sic][20] by an "*Appropriate Ontario Health Practitioner*" [sic][21] – which would have been received by <u>**TDHA**</u> at the **East Mall Address**. On December 24, 2023, the Appellant filed this Appeal and served

the duly signed Appeal to the **416 Fax Number**. For some context along the way, in March 2023, the Appellant received a request from **SNIC** via mail *wishing* to communicate exclusively via email. The Appellant faxed the **416 Fax Number** with his decline regarding the same with the reasons therein[22]. In April 2023, the Appellant received the “**Spam Faxes**” wherein an unknown person or company represented to him that it (after its receipt of faxes at the **416 Fax Number** and reference to the same but it did not send the “Spam Faxes” from the **416 Fax Number**) had *no record* of his TD Claim #3. The Appellant promptly faxed the **416 Fax Number** (attention: Ms. Nurse) to alert **SNIC** to the issue of the “**Spam Faxes**” and his dismay that the recipient at **416 Fax Number** had no record of his TD Claim #3. In early May 2023, the Appellant received the purported attempt by **SNIC** to partially approve and partially reject the **Dhaliwal OCF-18** (April 6, 2023) with the **Forged Nurse Signature**. After being successful in his **NOM #8**, by order on June 21, 2024 of the Tribunal, the Appellant filed his NOM #13 for non-party production and disclosure by the **Fictitious Respondent** (TDGIC) on July 9, 2024. On July 11, 2024, the Appellant hand-delivered the **NOM #13** hearing brief to the listed address, as it was, for the **Fictitious Respondent** in this **SNIC Proceeding** which was the **Victoria Park Building** - which only became known to the Appellant *allegedly* for TDGIC in February 2024[23]. He then learned that TDGIC had misrepresented its address to the Tribunal as it had not been a tenant or occupier at the **VP Building** for over a year [24] and it had moved to the **Markham McNabb Building**. The building manager for the **VP Building** did NOT represent that TDGIC had moved to any of the following addresses: (i) the **Burlington Address**; or the (ii) the **Etobicoke East Mall Address**. From July 26 to July 31, 2024, the Appellant provided notice to **TDHA**, with a copy to **SNIC**,[25] that the evidence was uncontroverted that the **416 Fax Number**, the **905 Fax Number**, the **Burlington Address**, and the **East Mall Address** were contact information *exclusively* for **TDHA**. Neither **TDHA** nor **SNIC** denied the same. From August 1 to 2, 2024, the Appellant sought the consent of **SNIC** and **TDHA** to add **TDHA** as a party, and neither **TDHA** nor **SNIC** responded. **TDHA** has *never* responded to the Appellant despite the Appellant sending faxes to the **416 Fax Number**, **905 Fax Number**, and through authorized submissions to HCAI, to the unalterable **East Mall Address** – albeit misrepresented to him as an address for SNIC.

Volume #2: Issues

5. The questions of fact to be answered in NOM #14 are on a balance of probabilities:

> (a) *who was the owner of the* ***416 Fax Number****, which is a landline grounded at the* **Victoria Park Building** *in Toronto, in October 2022? (b) was the address of 304 The East Mall, 6th Floor, Etobicoke, Toronto, Ontario (the "***East Mall Address***"), which is denoted by auto-population in HCAI after TD Claim #3 is inputted therein, an address for TDHA or SNIC? and (c) which insurance company holds the file (including all documents therein) for the* ***Fictitious TD Claim Number****?*

6. The issue of law to be answered in this **NOM #14** on a balance of probabilities is:

> *whether* ***TDHA*** *was and is the* ***First Insurer*** *(i.e. the FSRA licensed insurance company, in the area of automotive insurance, to first receive the Appellant's* **Completed Application** *on October 13, 2022)?*

Volume #3: Argument

7. The substantial amendments to *Reg 283* became effective in September 2010. *Reg 283* is designed to keep priority disputes out of the courts.[26] *Reg 283* is also purposed to prevent *SABS* claims, including vital treatments and income benefits, from being delayed while insurers fight over priority dispute.[27] *SABS* and *Reg 283*, having undergone major amendments in 2010 after being submitted to industry consultations and draft amendments before proclamations, they reflect important policy choices to ensure order and stability in regulated industries.[28] As a matter of principle, there is NO difference between an insurer's failure to pay under section 2 of *Reg 283* and a failure to pay under any provision of *SABS* (see: *Zurich 2024*, paragraph 54). While a **First Insurer** may have never received insurance premiums from a claimant. it may seem *intuitively* wrong that the **First Insurer** is required to *respond* and pay benefits pending its section 3 notice but the Legislature and LGIC's intent must be respected.

8. The provisional "first insurer rule" (the "**First Insurer Rule**") under the regulation and priority regime under the statute operate *differently* (see: *Zurich 2024*, paragraph 8). As long as a claimant for accident benefits completes all required 'fields' (see: *SABS*, ss. 66 and 67), duly signs the OCF-1 and then sends via mail or fax, the **First Insurer** that *receives* an OCF-1 application MUST benefits in accordance with *SABS* (see: *Reg 283*, ss. 2.1(6)). If the **First Insurer** does not take any issue, within ten business days[29] of receipt of the **Completed Application**, the **First Insurer** has approximately 75 days from then to provide a notice of dispute that it is required to pay the benefits of the claimant in which it received a

Completed Application. Irrespective of whether the claimant is an "insured person" or not in the *subjective mind* of the **First Insurer**, the **First Insurer** must *respond* to the **Completed Application** and the claimant (see: *Reg 283*, ss. 2.1(6)). Acceptance during the 90-day period is merely provisional (see: *Zurich 2024*, paragraph 29). If the **First Insurer** does not dispute, within 90 days, its liability to pay any and all benefits, in accordance with *SABS*, of the claimant, there is no other process for the **First Insurer** to transfer, dispute and recover any paid *or* to be paid benefits to the claimant. A **First Insurer's** calculus to not accept a claim for whatever subjective reason can turn out to be a costly and permanent mistake.[30]

9. As of 2015, in *Zurich 2015*, the SCC held that Chubb ought to have responded to the *SABS* claim immediately on a '*pay first and dispute later'* basis (see: *Zurich 2024*, paragraph 12). As long as the **Completed Application** by the claimant was <u>not</u> arbitrary, there is a "nexus" between the claimant and the **First Insurer** (i.e. the one to receive the **Completed Application**) (see: *Zurich 2024*, paragraph 14). In *Zurich 2015*, the SCC (see: 2015 SCC 19) restored Goldstein J's decision (ONSC (Divisional Court)) in adopting the dissent of Juriansz J.A.: *2014 ONCA 400*. A vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require a '**First Insurer**' (Chubb in *Zurich 2015*)) to step into the shoes as a "**First Insurer**" for the purposes of section 2(1) of *Reg 283* (see: *Zurich 2024*, paragraph 15). As long as the **First Insurer** providers automobile insurance in Ontario at the time of receipt of the **Completed Application** there is a sufficient nexus between a claimant and the **First Insurer** (see: *Zurich 2024*, paragraph 16). The policy behind the inflexible rule that an insurer who fails to pay benefits and *fails* to put other insurers on notice after receipt of a **Completed Application**, when there is *SOME* nexus between the claimant and the **First Insurer**, being permanently responsible for the claimant's benefits is to *promote compliance* with the statutory and regulatory scheme.

Volume #4: Answers to the Issues of Fact and law; and Orders Sought

10. **TDHA**'s permanent liability to pay benefits was a self-inflicted consequence of its failure to adhere to the requirements of both sections 2 and s. 3 of *Reg 283*. The combination of provisions in *Reg 283* transformed **TDHA**'s provisional liability into a permanent one (see: *Zurich 2024*, paragraph 64). For **TDHA** to not be declared as the **First Insurer** would mean that there were no consequences for the conduct (or inaction)

of **TDHA** after receipt of the **Completed Application** and by continuing to have its former branch office address (**East Mall Address**) auto-populated in **HCAI**. It would defeat the legislation's public policy: "*pay now and dispute later*".[31]

11. "**Arbitrary**" means: determined by impulse rather than reason; a random choice or personal whim. The Appellant faxed the **Completed Application** *for one reason only:* **SNIC** represented that *its* fax number was the **416 Fax Number** when it could not have been based on **SNIC**'s physical location at **SNIC Markham**. Therefore, the Appellant did not make an "arbitrary decision" to fax his **Completed Application** to the **416 Fax Number**. Therefore, there was a "nexus" between the Appellant and **TDHA**.

12. "**Receipt**" means: "to get possession of". **TDHA** got possession of the **Completed Application** as the **First Insurer** on October 13, 2022. There is now no dispute that the **Spam Faxes**, which **SNIC** could not produce in the face of a demand (May 2, 2024) from the Appellant for the same, were *on behalf* (as per) of **TDHA** and its unlawful attempt to *steer* the Appellant away from the **416 Fax Number** and its representation that it [**TDHA**] had no record of his claim. **TDHA** would NOT have had a "record" of the Appellant's TD Claim #3 as it the TD Claim #3 was likely created by **SNIC** but when the Appellant faxed[32] the **Completed Application** to the **416 Fax Number**, **TDHA** became the **First Insurer**.

13. The **416 Fax Number** was the fax number for **TDHA** in September and October 2022. **TDHA** has been the *independent* (not "one and the same" as SNIC) adjusting insurance company, by reference to the **East Mall Address** which has been exclusively represented to the public as **TDHA**'s address since it was so denoted in the HCAI portal as such.[33]

14. Our ONSC in *Zurich 2024*, with the benefit of the SCC in *Zurich 2015*, has settled the law in the above regards as follows: (i) breach of section 2 of *Reg 283*, according to the case law, does not result in the recipient, at first instance, insurer being required to pay benefits to the claimant permanently; BUT, (ii) the failure *TO AVAIL* itself of section 3 of *Reg 283* does.

15. All of which is respectfully submitted on August 3, 2024:

Endnotes

[1]"**Insurance**" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event, and includes life insurance (see: s.1(1) of the *UDAP Rule*);
[2]*UDAP Rule*, 1(1)(v)(c): "Contract of insurance" means:(c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to "contract" in s. 1 of the Act; see: section 1(1) of Insurance Act (Ontario): "contract" means a contract of insurance, and includes a policy, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and a binding oral agreement;
[3]See: *SPPA*, section 1(1) definition of license: registration or similar form of permission required by law;
[4]See: *Insurance Act*, ss. 279 (incudes does not exclude); see: section 3(1) of SABS which includes the Spouse of the **Individual Named Insured** (Artopoulos)
[5]As defined under *UDAP Rule*, ss. 1(1): "Claimant": "means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,
[6]See: **SNIC** Response on January 25, 2024
[7]The "file number provided in the Andy Gera response" that was approved by TDI Legal which denoted the incorrect file number which I swear is the "TDGIC internally denoted file number" which it had and has possession and control of the same
[8]I shall be relying on jurisprudence in any to be heard motions and this SNIC Proceeding or future proceedings between SNIC and I where other insurers have had "two files" (one authentic and another not as authentic or not part of the assigned claim number for an insured person or injured person)
[9]The Appellant is the spouse of the individual insured (Nicole Artopoulos) and the Insured Automobile was leased from the lessor BMW Financial Services Inc. Since April 2018, the Appellant and Ms. Artopoulos have resided at 775 King Street West, Toronto, Ontario, M5V 2K3. Ms. Artopoulos, in Spring 2018, obtained an exclusive automotive insurance policy through SNIC as her being a University Of Toronto alumnus for a previous BMW leased vehicle. In October 2019, the same insurance policy was transferred to the Insured Automobile.
[10]The primary area code for phone and fax lines in Markham is "905". At the time of the Accident, SNIC provided the return mailing address of the Markham McNabb Building but, in error, provided a "416 area code" fax number. The head tenants at the Markham McNabb Building are: (i) TD Bank; and (ii) General Motors. SNIC and Primmum Insurance Company ("Primmum") (FSRA reg. #1396), by virtue of them not having "TD" in their corporate names, operate under the colloquial business name of "TD Insurance Meloche Monnex" under two licensed trademarks from TD Bank and Meloche Monnex Inc. in: (i) "TD Insurance"; and (ii) "Meloche Monnex". SNIC, through TDIMM, issues policies under the "Professionals and Alumni Program" and Primmum, through TDIMM, issues policies under the "Employer Group Program".
[11]As it could not obtain a brain MRI in Canada until end of 2023 and early 2024
[12]The Burlington Address is 91 km from SNIC Markham (McNabb Building), where Meloche Monnex Inc. has its registered records office (and had since 2018).
[13](see: **Tab 20**, page 498 to 500 and Tab 18, page 285)
[14]See: Affidavit #30, Exhibit "C"; Tab 18, pages 294 to 309
[15](see: Affidavit #29, Exhibit "A", page 1 and 2)
[16](which is the material mistake as it relates to whom is the **First Insurer**)
[17]Also, the **Burlington Address** was not an physical address for receipt of documents for **SNIC**.
[18](see: Affidavit #21, Exhibit "A", page 20 to 22 for "branch names" as being "independent" of the licensed insurer).
[19](see: Tab 18, page 340 to 343).
[20]There is no requirement under SABS to submit an OCF-19 through HCAI because not all "physicians" or "neuropsychologists who have been registered to practise as such in Canada (not necessarily in Ontario) for five years" are registered with HCAI or even inclined to do so. Certainly, HCAI has its numerous efficiency and record keeping benefits (but for some of the factual issues caused by SNIC or some insurance company purporting to be SNIC) but there is no requirement for a physician to be registered with HCAI.
[21]An unknown legal test created by SNIC
[22](i.e. PIPEDA issues and absence of compliance by whom he presumed was SNIC)
[23](as it was not in the **SNIC Response** as an address for **SNIC** or previously).
[24](i.e. since on or around July 2023).
[25]See: Affidavit #30, Exhibit "A"; Tab 18, pages 236 to 282
[26](see: *Zurich 2024*, paragraph 6).
[27](see: *Zurich 2024*, paragraph 16).
[28](see: *Bristol-Myers Squibb v. Canada (AG)*, 2005 1 SCR 533 at paragraph 99-100)
[29]Approximately 15 calendar days
[30](see: *Zurich 2024*, paragraph 10).

[31]Unless the amounts paid to the Appellant in his Beneficiary Bank Account statements were misrepresented or manipulated (i.e. not in fact "SNIC") and the amounts received by health practitioners, via cheque (under investigation still), were from TDHA, TDHA cannot pursue a priority dispute (see: Tab 5, page 56, Economical Insurance). Moreover, hypothetically speaking, TDHA could not meet the requirements for providing a notice under section 3 of Reg 283 past the 90 days from October 13, 2022 which was January 10, 2023.

[32]as opposed to mailing it to **SNIC** Markham

[33]The **905 Fax Number** and the **Burlington Address** were, at the material times post receipt of the Appellant's OCF-1, OCF-2, OCF-3, OCF-6's and OCF-18 (Dhaliwal), address for receipt of documents of the Appellant (albeit unbeknownst to him) by **TDHA**.