

2001 CarswellOnt 5130  
Financial Services Commission of Ontario (Arbitration Decision)

Saliba v. Allstate Insurance Co. of Canada

2001 CarswellOnt 5130, [2001] O.F.S.C.I.D. No. 31

**Faraj Saliba, Applicant and Allstate Insurance Company of Canada  
and Progressive Casualty Insurance Company of Canada, Insurer**

Palmer Member

Heard: January 8-10, 2001

Judgment: March 7, 2001

Docket: FSCO A00-000366

Counsel: *David Hayward*, for Mr. Saliba

*Meredith Jackson Donohue*, for Allstate Insurance Company of Canada

*Pamela A. Brownlee*, for Progressive Casualty Insurance Company of Canada

**Headnote**

Insurance

**Palmer Member:**

**Issues:**

Faraj Saliba was injured in motor vehicle accidents on January 28 and May 3, 1992. He applied for statutory accident benefits from Allstate Insurance Company of Canada ("Allstate") and Progressive Casualty Insurance Company of Canada ("Progressive"), payable under the *Schedule*.<sup>1</sup> This arbitration is about the responsibilities of the Insurers for Mr. Saliba's long-term housing needs. The parties could not resolve their disputes about housing through mediation and Mr. Saliba applied for this arbitration under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

The issues in this hearing are:

1. Is Mr. Saliba entitled to the cost of a new home and renovations to that home to meet his own needs and those of his family members, claimed pursuant to paragraph 6(1)(e) of the *Schedule*?
2. Who is liable for the expenses of this arbitration, under subsection 282(11) of the *Act*?

**Result:**

1. Allstate and Progressive shall pay Mr. Saliba \$153,410 for home renovations, plus GST on all non-exempt goods and services, less any monies already advanced on this account, plus \$13,631, plus GST, for the services of Adapt-Able Design as project managers, plus interest.
2. The issue of expenses of the arbitration has not yet been decided.

**Evidence and Analysis:**

**Background:**

Mr. Saliba was injured in two motor vehicle accidents in 1992. More than five years later, in September 1997, he underwent surgery to his spine. The results of the surgery were poor and Mr. Saliba was left in a state of partial quadriplegia. In a previous arbitration decision released on September 16, 1999, Arbitrator Alves ruled that the partial quadriplegia flowed as a result of the injuries Mr. Saliba received in the two motor vehicle accidents. She held that both Insurers were responsible to pay statutory accident benefits to Mr. Saliba. A further arbitration was held before Arbitrator Wilson in May 2000, which resulted in his decision of August 28, 2000. In that decision he held that both Insurers should pay Mr. Saliba's care benefits.

In 1992, at the time of the accidents, Mr. and Mrs. Saliba lived with their three daughters (twins aged two and a three-year old) in a two-bedroom apartment on Longmoor Drive, Burlington. Mr. Saliba worked at Dofasco. By the time of the surgery in 1997, the family (now with four children, including an infant son) had been living in a three-bedroom townhouse at 4105 Longmoor Drive for more than three years. After Mr. Saliba was discharged from McMaster University Medical Centre in May 1998, and from Joseph Brant Memorial Hospital in June 1999, he returned home to the townhouse on Longmoor Drive.

The bedrooms of the townhouse were all located on the second floor. At first, Mr. Saliba had a hospital bed in the family's living room. Later in his recovery, Mr. Saliba required the help of at least one person to navigate the narrow stairs to his bedroom. Eventually, everyone involved with Mr. Saliba's care agreed it was unsafe for him to live in the townhouse. He moved to Palmer Place, an accessible respite care unit in Burlington near his home and also, for a time, stayed overnight at the Holiday Inn in Burlington in a standard room with an accessible bathroom. When he lived away from his family, Mr. Saliba travelled home daily to be with them as much as possible. His goal was always to live permanently with his family, when suitable accommodations were available.

It was impossible to modify the rented, three-bedroom townhouse at 4105 Longmoor to accommodate Mr. Saliba's needs, according to the evidence at the hearing. Ms. Merrill Prudham, the former tenant placement coordinator for the Halton Non-Profit Housing Corporation, testified that it was her understanding that the only modifications that would be permitted by the corporation that owned the townhouse were interior modifications which could be removed at the end of the disabled person's tenancy. No exterior modifications were permitted.

Nevertheless, the amount the Insurers have agreed to pay Mr. Saliba for "home renovations to accommodate the needs of the insured person" is the estimated amount that, notionally, it would have cost to upgrade the townhouse to make it suitable for Mr. Saliba. They estimated this amount at \$135,000. In the alternative, they agreed to pay the cost of what they claim are reasonable renovations to the Maple Avenue home which, coincidentally, also totals \$135,000. The Insurers paid Mr. Saliba \$80,000 in April 2000 plus a further \$55,000 in November 2000. They submitted that the *Schedule* is insurance for the extraordinary costs associated with Mr. Saliba's disability, not for the purchase price of a new family home. The Insurers submitted that everyone needs food, clothing, and shelter. They submitted that the intent of the regulation was not to provide Mr. Saliba with a five-bedroom home, mortgage-free, as a result of the accidents.

Mr. Saliba submitted that the \$135,000 paid by the Insurers is inadequate. He submitted that they should pay him the full cost of the home he bought at 659 Maple Avenue, Burlington, on July 15, 2000, for \$339,000. He submitted they should also pay for renovations of about \$146,000, the legal fees associated with its purchase, and the fees of Adapt-Able Design. Mr. Saliba also submits that the Insurers should pay him a special award under subsection 282(10) of the *Act* because they have unreasonably withheld or delayed paying these benefits to him.

The Insurers also submitted, in the alternative, that if I find that they should have covered the purchase cost of a house for Mr. Saliba, more reasonable alternatives were available for approximately \$300,000. Based on Mr. Saliba's income, the Insurers further submitted that Mr. Saliba would have been able to carry a mortgage of \$148,000 and the \$152,000 balance would be what the Insurers should pay. Since they have already advanced \$135,000, a shortfall of only \$17,000 remains.

Mr. Saliba receives attendant care, paid by the Insurers, 20 hours per day from Monday to Friday, and 17 hours per day on weekends. An attendant is with him all night, every night, to turn him every 1.5 to 2 hours and to assist him with toileting and drinks. Mr. Saliba's bedroom is located on the main floor. Mrs. Saliba has a separate bedroom, upstairs, with the children.

## The Law:

This arbitration must be decided based upon the provisions of the regulation in force at the time of Mr. Saliba's accidents in 1992 — the *Statutory Accident Benefits Schedule — Accidents On or Between June 22, 1990 and December 31, 1993*, Regulation 672 of R.R.O. 1990. The pertinent parts of section six read as follows:

6.-(1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident **all reasonable expenses resulting from the accident within the benefit period** set out in subsection (3) for,

- (a) medical, psychological, surgical, dental, hospital, chiropractic, nursing and ambulance services and the services of physiotherapists;
- (b) prostheses, dentures, prescription eyewear, hearing aids and other medical or dental devices;
- (c) **rehabilitation**, life-skills training and occupational counselling and training;
- (d) transportation for the person to and from treatment, counselling and training sessions, including transportation for an assistant;
- (e) **home renovations to accommodate the needs of the insured person;**
- (f) **other goods and services, whether medical or non-medical in nature, which the insured person requires because of the accident.**

[*emphasis added*]

Despite the fact that this *Schedule* applied to accidents that occurred over a period of about 3.5 years, not many arbitration or court cases have considered an insurer's obligations with respect to accommodations and home renovations.

Since the *Schedule* in question was in force, two subsequent statutory accident benefits schedules have become law. Each has different provisions relating to accommodations. Although the language of these Schedules is not the law under which Mr. Saliba's benefits will be decided, the Insurers argued that their provisions codified or spelled out in detail the obligations they say the Insurers had, even when the *Schedule* was in force.

### ***Evidence of Mr. Saliba's Housing Requirements:***

Ms. Susan Paquette, a registered nurse and registered rehabilitation professional, testified that she was engaged in September 1999 to become involved in Mr. Saliba's rehabilitation. She investigated supportive housing available in the Burlington region with the nursing supervisor of one of the attendant care companies assisting Mr. Saliba. Ms. Paquette received approval from the Insurers to engage Adapt-Able Design to perform a housing assessment for Mr. Saliba and his family. Ms. Paquette testified that she had worked with this company before and found its approach to be reasonable. Ms. Paquette completed Adapt-Able Design's "Functional Assessment Referral Form" on January 31, 2000. This form, comprising four pages, provided an information profile regarding Mr. Saliba.

Ms. Paquette also hired an occupational therapist, Ms. Maike McCaskell, to perform a functional home assessment of Mr. Saliba's abilities. The purpose of Ms. McCaskell's report, dated July 11, 2000, was to determine Mr. Saliba's "functional independence and rehabilitation needs in the areas of self-care, homemaking and housecleaning, as well as needs related to ensuring safety and independence in the home."

Ms. McCaskell reported that Mr. Saliba reported and demonstrated:

physical, and psychosocial problems secondary to his accident related injuries. He has both motor and sensory impairments, problems with bladder control, difficulty with independent bowel movements, temperature regulation difficulties and limited functional mobility. (...)

He requires assistance with most aspects of functional mobility (including transfers, short distance walking - \* uses manual and electric wheel chairs), personal care (requires set up and assistive devices as well as physical assistance with feeding, turning in bed, a bowel program and incontinence aides), homemaking and housecleaning (unable to perform any). (...)

As a direct result of his injuries Mr. Saliba will require the aides/devices and services listed below to maximize his functional independence and ensure his safety in the home environment. It is further anticipated that the provision of the recommended aides, devices and services will improve Mr. Saliba's quality of life, as well as his family's quality of life to a level that more closely resembles that which they experienced prior to the subject accidents and surgery.

Ms. McCaskell adopted the recommendations of Adapt-Able Design's report of March 6, 2000.

She wrote:

Mr. Saliba requires the following to ensure safety and maximize independence:

5 bedroom home

Attached garaged

Paved and level driveway

Accessible primary entrance and mudroom

Accessible secondary exit

Automatic door operators

Accessible means of changing levels, i.e. residential elevator

Accessible main floor bedroom

Private accessible ensuite bathroom

Multi-purpose area

Environmental control system

Family bathroom

Living room

Kitchen eating area

Laundry area

Accessible backyard deck and patio

Ms. McCaskell also continued in her report with a further 42 lines of specific recommendations regarding the home's entrances, doorways, kitchen, bathrooms, living room and family room areas, bedroom, and other considerations such as alarm systems, intercoms, telephones, and environmental control systems. She stated that "to further ensure comfort and independence, consideration must be given to those recommendations."

By the time of Ms. McCaskell's report, the Salibas had already offered to purchase the home at 659 Maple Avenue and the closing was set to take place within days, on July 15, 2000.

Mr. George Bahdi, a real estate agent and home builder, testified at the hearing. Mr. Bahdi, age 34, is the president and owner of Niagara Olympia Homes, a business he began in 1993. He builds about eight houses each year in the Niagara Falls area. Mr. Bahdi employs three people full-time as well as himself, and works with a number of sub-trades. He has also been licenced as a real estate agent for 11 years. Mr. Bahdi is Mr. Saliba's nephew, the son of Mr. Saliba's sister Shamiran Bahdi. Mr. Bahdi, as well as others, testified about the close relationship between Mr. Saliba and his two sisters and six brothers, both before and since his accidents. Four of the siblings and Mr. Saliba live in Burlington. Mr. Saliba's other siblings live in Oakville, Mississauga, Pickering and Oshawa.

Mr. Bahdi testified that his mother is at Mr. Saliba's home every day. Mr. Saliba's brother, Afram Saliba, lives across the street from Mr. Saliba and is a frequent visitor in the evenings. Two other brothers, John Saliba and Habib Saliba, live in the same apartment complex where Mr. Saliba lived at the time of the accidents.

Mr. Bahdi testified that his mother first asked him to help his uncle Faraj Saliba look for a new home in October 1999. Mr. Bahdi first searched in the Longmoor area, since the Salibas liked the neighbourhood and wished their children to continue at the same school. Mr. Bahdi testified he looked for four-bedroom houses that were accessible or could be converted. He felt a main floor washroom was important as well as a two-car garage, so that during the winter his uncle could get into and out of an accessible van inside the garage.

Mr. Bahdi testified that he saw no homes in the Longmoor area that could be converted or were already accessible. He said the changes would cost too much. Although he looked at houses as far away as the Millcroft area, he believed that was too far away for Mrs. Saliba, who had no driver's licence, and who needed easy access to grocery shopping and pharmacies. Mr. Bahdi testified he looked south of New Street in Burlington, but found these houses too expensive, having fewer than four bedrooms, and requiring structural repair. Mr. Bahdi testified he looked at houses in the range of \$200,000 to \$300,000, because that was the amount his uncle could afford with the downpayment he had. He concentrated on houses in Burlington, the city where his uncles lived and where Faraj Saliba had always lived.

Mr. Bahdi testified that before the process was finished, he had looked at 35 to 40 homes. He also looked at lots and found three lots that could support a single-family dwelling. He concluded that the most suitable was a lot on the Guelph Line. However, he believed that with the lot price, development charges, and the cost of building, the total cost for a suitable home would exceed \$550,000. Mr. Bahdi testified that the width of the "building envelope" of a lot on Augusta Crescent, at 29 feet, did not support the size of home that his uncle needed, for under \$500,000. He also made inquiries of builders building subdivisions in the Burlington area.

Mr. Bahdi testified that the resale Maple Avenue home that his uncle eventually purchased was close to his uncle Afram's home. He did not look at the home, initially, when his uncle Afram told him it was for sale, because the listing price was \$339,000. However, later when Mr. Bahdi did look at the home, he felt it would be perfect for the Saliba family, because the main floor family room could become his uncle's bedroom and the plumbing for a main floor accessible bathroom was already there. The basement was also open and accessible, to permit renovations to the main floor to be accomplished more easily. Mr. Bahdi described the number of offers they made for the Maple Avenue home and how his sales commission was eventually reduced to make the deal with the owners.

Mr. Bahdi's firm has carried out the renovations to the Maple Avenue home, working with Adapt-Able design. Approximately \$53,000 in renovations has been carried out so far. The elevator has not yet been installed. Mr. Bahdi detailed the work that remains to be done.

***Analysis:***

Counsel for the Insurers argued that the correct measure of their obligation under the *Schedule* was the cost of the renovations to the townhouse at 4105 Longmoor Drive. In the alternative, they submitted that their expert's estimate of the appropriate renovations to the Maple Avenue home, amounting to the same figure of \$135,000, should be accepted.

In my view, under this *Schedule*, the cost of notional renovations to the Longmoor apartment or the townhouse is not an appropriate measure of the reasonable expenses Mr. Saliba requires for home renovations to accommodate his needs. The preferable approach is to consider Mr. Saliba's specific rehabilitation needs, in the same way as Arbitrator Makepeace did in her decision in *MacMaster*.<sup>2</sup> It makes no sense in the context of the rehabilitation focus of section 6 of the *Schedule* to provide anything different. Nothing in section 6 confines an insured person to a single renovation. If he moves within the benefit period, another set of renovations might have to be undertaken, provided the limits of \$500,000 had not been exhausted.

Most of Mr. Saliba's long-term housing needs were obvious from the time predating his discharge from the Chedoke Rehabilitation Hospital in May 1998. His doctors wrote in support of his application to Halton Non-Profit Housing Corporation for an accessible unit in March 1998. The Insurers submitted that Mr. Saliba rushed into the purchase of the Maple Avenue property in February 2000, without allowing enough time to work in partnership with them on a long-term housing solution, and without allowing time for Mrs. Saliba to gain her driver's licence, and thereby become more independent and more flexible in terms of home location.

Mr. Saliba cannot be faulted for the Insurers' failure to accept any responsibility for assisting with his long-term accommodation needs until after Arbitrator Alves' decision was released in September 1999. He had spent more than 17 months in three hospitals, away from his family, between September 1997 and May 1999. In the fall of 1999, he was anxious to return to live at home with his family, yet was shuttling daily between the unsuitable family home and temporary locations where he could shower in privacy and sleep in safety. I conclude that in the circumstances of this case, Mr. Saliba acted reasonably in offering to purchase the home at 659 Maple Avenue in Burlington in February 2000. I find that neither his home at the time of the accidents (the apartment) or at the time of the surgery (the townhouse) could possibly be altered to accommodate his disabilities.

I find Mr. Saliba is entitled to his reasonable expenses for home renovations to accommodate his needs resulting from the injuries from the accidents. I find Mr. Saliba has extraordinary housing and transportation needs because of his injuries. He is entitled to accommodations with all of the accessibility features noted in Arbitrator Makepeace's decision at pages 18 and 19 in her assessment of Mr. MacMaster's needs.

In *MacMaster*, Arbitrator Makepeace wrote as follows with respect to the obligations of insured persons and insurers on housing issues:

The underlying purpose of section 6 is to return the applicant to his or her pre-accident level of function, to the extent that is reasonably possible. Mr. MacMaster is not entitled to receive a "windfall" as a result of his accident. He is not entitled to hold out for a house and accept nothing less. He must be reasonable in working with the Insurer to reach a solution which, while it may not be ideal, is workable and reasonable. Nor is he required to accept a standard of living he would not have accepted before the accident.

In July 2000, Mr. and Mrs. Saliba purchased a resale home in Burlington for \$339,000 plus \$3,560 in land transfer tax. They paid \$120,000 as a downpayment and have a mortgage of approximately \$220,000, that they repay in monthly payments of \$1,628.34. In 2000, Mr. Saliba received \$17,411.16 in tax-free weekly income benefits from Allstate and \$26,026.68 in taxable CPP disability benefits and long-term disability benefits. Mr. Saliba testified that he was happy with the home because it was nice, close to schools and to shopping. He testified he was not looking for a huge home when he went house shopping, but was looking for something close to family, shopping, and schools. He was not interested in purchasing a home as an investment.

I have no evidence of what Mr. and Mrs. Saliba's hopes and aspirations for future housing for their family were in the days before the 1992 accidents. At the time of the accidents they were living in a two-bedroom apartment — two adults, a daughter aged three, and twin two-year-old daughters. The apartment complex was owned by the Halton Non-Profit Housing Corporation. Mr.

Saliba had been working at Dofasco since 1979, married in 1986 and planned to continue working at Dofasco. Mr. Saliba testified that because the apartment was too small for the growing family, they applied for a larger unit and moved to a three-bedroom townhouse in the same complex in 1993 or 1994. In March 1996, the Saliba's fourth child, a son named John, was born. After John's birth, Mr. Saliba testified that he spoke to the housing office about getting a four-bedroom townhouse. He understood that there was a long waiting list for a larger townhouse and believed he was on the waiting list for one. Merrill Prudham, the former tenant placement coordinator for Halton Non-Profit Housing Corporation, testified that although the Salibas would have been entitled to a four-bedroom unit after John's birth, according to her records they did not request a transfer. However, she also testified that four-bedroom townhouses were a scarce commodity, numbering only eight of 735 housing units she coordinated.

It may be that the Salibas have purchased a home that is much larger and more expensive than the home they would likely have purchased had these motor vehicle accidents never befallen Mr. Saliba. Perhaps they might have continued to live in the Longmoor townhouse for years to come. On the other hand, they may now own exactly the type of home that they have always wished they would have. I heard no evidence about such plans that the Salibas may have had.

The language of the *Schedule* requires insurers to pay "all reasonable expenses ... within the benefit period ... for ... home renovations to accommodate the needs of the insured person." The *Schedule* also provides that the insurer will pay for "other goods and services ... which the insured person requires because of the accident." I agree with Arbitrator Makepeace's observations that:

If, as a result of the accident, he requires a different and more expensive type of housing than he had before the accident, the necessary expenses fall squarely within paragraph 6(1)(f), to the limits set out in the section. (...)

I find that nothing in section 6 precludes entitlement to the purchase and renovation of a house if it is a reasonable and necessary rehabilitation expense required because of the accident.

However, Arbitrator Makepeace made no specific order with respect to the housing issue in the *MacMaster* case. She urged the parties to agree on the issue, and apparently they did so, since the matter did not require further intervention by her.

Unfortunately, in this case, the parties have been unable to agree on the Insurers' responsibility in the area of long-term housing and wish an arbitrator's order to settle the question. Only one other case dealing with housing questions under this *Schedule* has been brought to my attention. It is the case of *Alfred and Allstate Insurance Company of Canada*, (FSCO A98-000559, June 1, 1999), a decision of Arbitrator Hale.

In *Alfred*, Arbitrator Hale ruled on the case of a young woman who was living in a one-bedroom apartment with her three-year-old daughter at the time of the accident. After her discharge from hospital, Ms. Alfred, who was then paralysed below her waist, came to live in a three-bedroom, wheelchair-accessible unit in a new co-operative apartment building. She married a short time later and her husband helped care for her and their daughter.

Mr. Jeffrey Baum of Adapt-Able Designs testified in the *Alfred* case as well. He had prepared a report with respect to Ms. Alfred's housing requirements. Although Ms. Alfred's present apartment did not have a private bathroom for Ms. Alfred's exclusive use, nor an accessible secondary exit, nor a safe waiting area for use in the event of fire, Arbitrator Hale felt that Ms. Alfred's present accommodation addressed nearly all the requirements identified in Mr. Baum's report. Ms. Alfred had a personal alarm for use in an emergency and her circumstances had been made known to fire stations who might respond to a call in her building. Arbitrator Hale wrote:

In my view, on balance, the present accommodations occupied by Ms. Alfred and her family reasonably meet her post-accident needs. While not ideal in every respect, I find that their present circumstances do not warrant the expense of another home and the accompanying renovations which would be required. While Ms. Alfred and Mr. Vyramuthu would prefer to be living in a larger, one-storey, three bedroom and two bathroom bungalow-style home, I cannot agree that such accommodation is reasonably necessary for her treatment or rehabilitation, as is required under section 6(1)(f). In my view Ms. Alfred's present home, with the modifications already made as well as those addressed below, has enabled Ms. Alfred to return as completely as is reasonably possible, to her pre-accident level of functioning. I find that to provide a

modified, single-family home to Ms. Alfred would result in a "windfall" to her which is not required under section 6(1)(f) of the *Schedule*.

The Saliba family, with their own resources, combined with some prepayment from the Insurers, have purchased a large home, for their large family, that is in the process of being made fully accessible to Mr. Saliba, according to his needs and the family's desires. I have already found that the purchase of that specific home was a reasonable one. In my view, the Insurers are responsible for the renovations to this home that are reasonably required to accommodate Mr. Saliba's needs. I find no evidence that persuades me that the Insurers should fund the capital cost of the house itself, as a "good" under section 6(1)(f) of the *Schedule*, because I am not persuaded that Mr. Saliba requires a house "because of the accident." I agree with the Insurers' submission that everyone requires shelter, food and clothing.

Mr. Saliba and his family could have accepted an accessible three-bedroom townhouse unit within the Longmoor complex which was offered to them twice, I find, at the end of March 1998, and on February 1, 2000. I agree that this accommodation would have been less than ideal for Mr. Saliba and his family as it is not a large enough unit, among other deficiencies. The Salibas chose not to accept these offers and have purchased a home instead. That is their right. However, the fact that their 1992 apartment or their 1997 townhouse could not be modified to accommodate Mr. Saliba's needs does not, in my view, translate into the Insurers' obligation to fund the purchase of a freehold home under the terms of the *Schedule*, in this particular case.

I accept the costing submitted by Niagara Olympia Homes for the renovations to the Saliba home, with one exception, as detailed below.

Two different design plans were submitted at the arbitration. The design of the renovations as planned by Mr. Baum's firm, Adapt-Able Design, is different than the design suggested by Accessible Solutions Inc., in Mr. Borthwick's proposal dated June 26, 2000. In my view, although somewhat more costly, at least according to Accessible Solutions' estimate, the Adapt-Able Design plan makes more sense for Mr. Saliba. It provides for his bedroom and bathroom to be conveniently located on the main floor of the family home, in the heart of the family activity, rather than on the second floor. The plan is more practical, given Mr. Saliba's desire to fully participate in his family's homelife and with regard to his need for an accessible bathroom to be readily available. The Adapt-Able Design plan also better addresses Mr. Saliba's need for a safe, secondary exit from his bedroom in the home, rather than providing only a small, second-floor refuge balcony, as proposed in the other design.

The figures provided by Accessible Solutions as the cost of the renovations it proposes are only preliminary estimates. No architectural drawings or specifications were developed to make this pricing as accurate as possible. In addition, Mr. Borthwick of Accessible Solutions could not provide any breakdown whatsoever of the costing. This lack of support for his calculations and lack of detail calls into question Mr. Borthwick's claim that his estimate would likely be accurate to within five percent.

The Adapt-Able design appropriately provides for separate bedrooms for Mr. and Mrs. Saliba so that Mrs. Saliba's privacy and sleep will not be disturbed by her husband's need to be assisted in the night and turned every two hours by an attendant. The Accessible Solutions' design did not consider this issue whatsoever. Further, with attendants in the home on a nearly full-time basis, the Adapt-Able Design plan permits the attendants to remain on the main floor of the home during the night, allowing the rest of the family privacy and the attendant some freedom of movement, without being distant from Mr. Saliba. Since Mr. Saliba's bedroom and bathroom are located on the main floor, this design also provides a main floor accessible bathroom, which is not a feature of the Accessible Solutions design. The Adapt-Able design calls for more changes to flooring than the Accessible Solutions proposal, for example removing the plush carpet in the children's bedrooms, and replacing it with either glued down level loop carpet or hardwood, so that Mr. Saliba can more easily access his children's rooms. This is a reasonable expense. The four-stop elevator proposed by Adapt-Able provides access to the basement where an exercise area is proposed, allows the elevator to rest on the existing concrete basement floor, provides better access to all parts of the home and appears a more reasonable alternative than the three-stop elevator proposed by Accessible Solutions, for little difference in cost. Adapt-Able's garage design is also preferable, since it allows the van to be driven straight into the garage, without requiring the driver to both reverse in and avoid a centre post at the same time.

***Details:***



Mr. Bahdi's quote of total estimated costs, dated August 30, 2000, required some modification. He added \$500 to the cost as a result of additional work required when sewer pipes found under the elevator pit had to be relocated and when wiring behind the new doorway to the washroom had to be rerouted. He added \$800 to the estimate as a result of having to build a new side deck to accommodate a rented wheelchair lift. The side entrance is being used by Mr. Saliba temporarily, until the elevator is installed. The wheelchair lift was rented for the minimum six-month period at a cost of \$2,300. This was also an additional cost. I find the revised costs presented by the Applicant for home modifications to accommodate Mr. Saliba's needs total \$137,810 plus GST where applicable.

I find the largest part of these renovations to be reasonable expenses resulting from the accident to accommodate Mr. Saliba's needs. Although I did not hear much about them, both the Insurers' expert and Adapt-Able Design agreed that Mr. Saliba requires an intercom system and a security system, estimated to cost \$7,000 in total according to Mr. Bahdi's quotation. The rationale for these modifications was explained in Mr. Baum's letter of March 6, 2000, which explanation I find reasonable. The intercom system and monitored security system with inter-linked smoke detectors was also recommended by the occupational therapist, Ms. McCaskell. The cost of these items was included in Accessible Solutions' category of "General Modifications" of \$11,120 and was not broken down. I allow \$7,000 for these goods and services, which I find Mr. Saliba requires because of the accident.

With respect to items numbered 23 and 24 in Mr. Bahdi's quotation, the basement washroom and therapy room, at a cost of \$18,000, the Insurers offered no evidence in objection to this renovation, in principle. However, Allstate's counsel submitted that the evidence provided in support of this renovation was inadequate. The reports and nursing notes of Excel-Care, one of Mr. Saliba's care providers, provided evidence of his most recent undertakings with respect to exercise. The report of November 16, 2000 by Sandra Best refers to Mr. Saliba's consideration of three pieces of equipment which he had not pursued "until further discussions with his O.T. and also until he is settled into his home." Under the heading Goals and Recommendations, Excel-Care recommends:

Goal: To continue to maximize Faraj's ability to be as independent as possible.

Excel-Care recommends to increase or maintain Mr. Saliba's range of motion with daily exercise and walking. If possible look at trying aquafitness again.

Excel-Care recommends to increase independence of activities of daily living by encouraging the use of new equipment and adaptive approaches within his new home.

Ms. Paquette testified that Dr. Catherine Craven, Mr. Saliba's physiatrist, had recently recommended a particular physiotherapist with expertise in spinal cord injuries be engaged. Ms. Paquette testified that this therapist will come to Mr. Saliba's home and recommend equipment that should be purchased and exercises that can be performed within the home setting. Ms. Paquette testified that home exercise would be more beneficial to Mr. Saliba than attending at facilities away from home, three times a week, since Mr. Saliba can more easily pace himself and perform multiple short periods of exercise each day. In addition, inclement weather is not a factor with home-based exercise. "Additional Living Spaces" are required for storage and placement of Mr. Saliba's equipment. I accept Ms. Paquette's evidence on this issue. Ms. McCaskell, the occupational therapist, also recommended in her report a multi-purpose area. The unfinished basement is the logical place for this area to be located. I accept that Mr. Saliba requires a washroom located close to his exercise therapy room, because of his incontinency issues. However, I do not accept that the Insurers should pay for a bathtub in this location, that was not designed for Mr. Saliba's use. According to Mr. Baum, this would reduce the cost by \$1,000 to \$1,500. I accept a figure of \$1,500 as the appropriate reduction in cost. If Mr. Saliba wishes to have a bathtub located in this washroom, for convenience of other family members, then he should pay for this himself.

#### ***Capital Costs:***

I find, as a result of the accident, among other renovations, Mr. Saliba requires an *additional* bedroom, accessible bathroom, and exercise/therapy room, as noted previously. The renovation costs which I have awarded to Mr. Saliba effectively cover the costs of the accessible bathroom and the exercise room and its accompanying washroom in the home that he purchased, but do

not address the extra bedroom requirement. I find an additional bedroom is a "good" that Mr. Saliba reasonably requires as a result of the accident, according to the terms of subsection 6(1)(f) of the *Schedule*.

The purchase price of the Maple Avenue home was \$339,000. This home contains approximately 5,000 square feet of living space on the main floor and second floor. Although the measure is imperfect, I allow \$75.00 per square foot for the capital cost of an additional bedroom for Mr. Saliba, of 12 feet by 19 feet, or 228 square feet for a total of \$17,100.

There are extra costs ongoing annually, from municipal property taxes to utilities required to support this additional bedroom, accessible bathroom, elevator and exercise/therapy room. These are "goods" or "services" reasonably required because of the accidents. I do not have the information necessary to calculate what the Insurers should pay in that regard. In my view, the calculation should be made in a similar way, based on the square footage of the rooms and estimated or actual operating costs.

**Summary:**

In summary, I allow \$136,310 for renovations to Mr. Saliba's home (\$137,810 less \$1,500) plus \$17,100 for the additional bedroom he requires, for a total of \$153,410, plus GST on all goods and services not exempt from this tax.

In addition, I allow a project management fee of ten percent of the cost of renovations, or \$13,631 plus GST to Adapt-Able Design for its expertise and supervision of the renovations.

Mr. Saliba is entitled to interest on the outstanding balance of the renovations, according to the provisions of subsections 24(1) and 24(4) of the *Schedule*.

**Special Award:**

Section 282(10) of the *Act* provides that an arbitrator shall award a lump sum special award to an insured person if an insurer has unreasonably withheld or delayed payments. I do not conclude that the Insurers have unreasonably withheld or delayed payments for home renovations to Mr. Saliba for the following reasons.

In April 2000, the Insurers paid Mr. Saliba \$80,000 towards his home renovations. The purchase transaction on the home on Maple Avenue was to be completed July 15, 2000. In November 2000 they paid a further \$55,000. Mr. Saliba moved into his home in November with only one phase of the renovations completed. The Insurers' prepayment is less than I have awarded Mr. Saliba, but I have awarded much less to Mr. Saliba than he was asking in this arbitration. The total prepayment conforms to the cost at which Accessible Solutions estimated renovations to the Maple Avenue home. It was not an arbitrary figure.

The Insurers have been less than totally forthcoming with funds for Mr. Saliba's housing renovations, but neither have they ignored the situation and waited for this arbitration decision before advancing any funds. I have awarded to Mr. Saliba the extra costs towards the renovations that the two-stage process will require. (The two-stage process was initiated due to Mr. Saliba's financial inability to complete all the renovations in one step.) Mr. Saliba will also receive interest on the outstanding balance of the renovation award. There are very few reported cases on the issues in dispute between these parties and they differed on their interpretation of the *Schedule's* provisions. Taking into account all these factors, I do not find this case to be one where the Insurers can be said to have unreasonably withheld or delayed payments.

**Expenses:**

In compliance with Rule 75 of the *Dispute Resolution Practice Code*, the parties advised me at the close of the hearing that they wish to have an Offer to Settle or a Response to an Offer to Settle considered by me in connection with an award of expenses. If the parties cannot settle the issue of expenses between themselves, a party may apply to the case administrator for the hearing to be resumed before me for submissions on this issue.

**Palmer Member:**

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Allstate Insurance Company of Canada and Progressive Casualty Insurance Company of Canada shall pay to Faraj Saliba \$153,410 for home renovations, plus GST on all non-exempt goods and services, less any monies already advanced on this account.
2. Allstate Insurance Company of Canada and Progressive Casualty Insurance Company of Canada shall pay to Faraj Saliba \$13,631, plus GST, for the services of Adapt-Able Design as project managers.
3. Allstate Insurance Company of Canada and Progressive Casualty Insurance Company of Canada shall pay to Faraj Saliba interest at 2% per month on the outstanding balance of the renovations, according to the provisions of subsections 24(1) and 24(4) of the *Schedule*.
4. The issue of expenses of the arbitration has not yet been decided.

#### Footnotes

- 1 The *Statutory Accident Benefits Schedule — Accidents On or Between June 22, 1990 and December 31, 1993*, Regulation 672 of R.R.O. 1990, as amended by Ontario Regulations 660/93 and 779/93.
- 2 *MacMaster and Dominion of Canada General Insurance Company*, (OIC A-006025, October 26, 1994), especially pages 14 and following.