

*Case Name:*

**Mamaca (Litigation Guardian of) v. Coseco Insurance Co.**

**RE: Ozcan Mamaca, by his Litigation Guardian, Ahmet  
Mamaca, Plaintiff/Respondent, and  
Coseco Insurance Company, Defendant/Appellant**

[2007] O.J. No. 4890

162 A.C.W.S. (3d) 577

55 C.C.L.I. (4th) 233

2007 CarswellOnt 8132

Court File No. 01-CV-215026CM3

Ontario Superior Court of Justice

**J. Macdonald J.**

Heard: November 1 and 28, 2007.

Judgment: December 13, 2007.

(6 paras.)

*Civil procedure -- Discovery -- Examination for discovery -- Range of examination -- Objections and compelling answers to questions -- Appeal by insurer from order requiring it to answer questions regarding its understanding of its obligations to insured dismissed -- Although questions general, general answers could be given -- Insurer's understanding of its obligations to insured could be probed in examination for discovery in action against insurer for bad faith in handling income replacement benefits claim.*

*Insurance law -- Actions -- By insured against insurer -- Appeal by insurer from order requiring it to answer questions regarding its understanding of its obligations to insured dismissed -- Although questions general, general answers could be given -- Insurer's understanding of its obligations to insured could be probed in examination for discovery in action against insurer for bad faith in handling income replacement benefits claim.*

*Insurance law -- Automobile insurance -- Accident benefits -- Income replacement -- Appeal by insurer from order requiring it to answer questions regarding its understanding of its obligations to insured dismissed -- Although questions general, general answers could be given -- Insurer's understanding of its obligations to insured could be probed in examination for discovery in action against insurer for bad faith in handling income replacement benefits claim.*

Appeal by Coseco from order requiring Coseco representative to answer questions refused at examination for discovery -- Mamaca sued Coseco for bad faith in handling claim for income replacement benefits -- Questions refused were about Coseco's understanding of its obligations to Mamaca as its insured -- Counsel for Coseco objected to questions as either too general or too broad -- HELD: Appeal dismissed -- Objections to questions were unfounded -- Mamaca entitled to probe Coseco's understanding of obligations in examination for discovery -- General questions could lead to answers disclosing inadequate understanding of obligations -- Witness entitled to provide general answers to general questions -- If qualification required, witness could so state.

**Counsel:**

*Mr. G. Karahotzitis and Mr. M.L. Bennett for the Plaintiff/Respondent.*

*Mr. T. P. Charney for the Defendant/Appellant.*

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**ENDORSEMENT**

**1 J. MACDONALD J.:**-- The defendant/insurer (appellant) appeals the Master's Order that its representative answer certain questions which were refused at the examination for discovery. The respondent sues the appellant for bad faith in the handling of his claim for income replacement benefits, one of the statutory accident benefits.

**2** After two days of argument on litigation privilege issues, the parties agreed to deliver written submissions in respect of this issue.

**3** In my view, the Master's decision was correct. I wish to add to the Master's reasons.

**4** The discovery questions were about the appellant's understanding of its obligations to the respondent, its own insured. The appellant's counsel objected to each question on the basis that it was too general or too broad. The objections were unfounded, in my opinion. It is neither unfair nor improper for discovery questioning to probe the insurer's degree of understanding of its obligations, including its duty to act with the utmost good faith. General questions may lead to answers which disclose any inadequate understanding of these important obligations. The witness could have

provided general answers to general questions. If the witness thought that some qualification was required, the witness could have said what it was.

**5** The appeal is dismissed.

**6** All costs submissions shall be as directed in my companion reasons.

J. MACDONALD J.

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