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## Decision Allowing Adjuster to Attend Plaintiff's Discovery in Tort MVA Matter

*By Sandra G. Drozd*

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Although there is authority for the proposition that a party may be present during the examination for discovery of the party opposite or of a co-party, the Rules of Civil Procedure are silent on the issue as to who else may be present during an examination for discovery. In fact, until now, there had been no reported cases in Ontario on the issue. Lerner's is pleased to have obtained the following precedent-setting decision whereby for the first time in Ontario, an adjuster was permitted by the court to attend a plaintiff's examination for discovery in a tort motor vehicle accident matter.

In *Purdy v. Isardi* (Superior Court of Justice, September 14, 2012), the plaintiff suffered from soft tissue injuries and the claims adjuster with carriage of the matter wished to attend her discovery. In support of the motion, the claims adjuster deposed in an affidavit that he wished to attend the discovery in order "to observe the plaintiff, hear her testimony and assess her case in terms of settlement possibilities and defence strategies". In response, plaintiff's counsel filed an affidavit stating that she did not want her client to feel anymore undue pressure than that which already exists at an examination for discovery and that she did not believe it to be in the best interest of her client to have another person in the room who is not entitled to be there. An affidavit from the plaintiff herself was not proffered nor was there any medical evidence addressing the issue of the additional stress or anxiety the plaintiff might experience if the adjuster were present for the discovery.

The court found that the plaintiff's concerns were over-stated and that the adjuster's reasons as to why he wished to attend were rationale and reasonable, particularly given the nature of the plaintiff's alleged injuries. A lawyer's report or a copy of the transcript cannot capture subtleties, such as non-verbal communication that personal observation at a discovery affords. Further, there was an absence of compelling evidence that the plaintiff would be upset, feel harassed or intimidated if he were present.

As such, the court permitted the adjuster to attend the plaintiff's discovery. The adjuster, however, was to be an observer only and not participate in the questioning by counsel.

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