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CASE SUMMARY: ARBITRATION AGREEMENT IS ENFORCEABLE DESPITE INSURER'S FAILURE TO SIGN IT WHERE THERE WAS A CLEAR INTENTION OF THE PARTIES TO ENTER INTO AN AGREEMENT

An arbitration agreement was enforceable even though an insurer failed to sign it where there was a clear intention of the parties to enter into an agreement.

Insurance law – Automobile insurance – Priority coverage; Arbitration; Practice – Leave to appeal

[Travelers Insurance Co. v. CAA Insurance Co.](#), [2017] O.J. No. 4929, 2017 ONSC 5659, Ontario Superior Court of Justice, September 22, 2017, L.G. Favreau J.

Travelers applied to appeal an arbitrator's decision that it was the priority insurer in relation to the payment of accident benefits for a motor vehicle accident.

Section 45(1) of the *Arbitration Act*, 1991, S.O. 1991, c.17 states that where an arbitration agreement does not address the issue of appeals, parties are required to obtain leave to appeal to the Superior Court and the appeal can only proceed on a question of law. The *Act* allows parties to agree that they can appeal the decision without leave on questions of law or on questions of mixed fact and law.

The parties prepared an arbitration agreement that permitted questions of law and questions of mixed fact and law to be appealed; however, Travelers failed to execute the arbitration agreement.

Travelers argued that it instructed its counsel to sign the agreement and assumed he had done so and thus the agreement should be enforced. CAA Insurance argued there was no agreement permitting Travelers to appeal the decision without leave on questions of mixed fact and law and that the issues raised in the appeal were not issues of law and thus leave could not be granted. The Court disagreed with CAA Insurance and found that the parties had intended to enter into an arbitration agreement that provided for a right of appeal on issues of law and mixed fact and law. Accordingly, Travelers was entitled to appeal by way of right.

This case was digested by [Raylene M. Smith](#) and first posted on Quicklaw and published in the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact [Raylene M. Smith](#) at rsmith@harpergrey.com.

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