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## **THE BIG BANG: MANITOBA COURT OF APPEAL SAYS POLICY COVERS INJURIES CAUSED BY SMOKING IN A CAR CONTAINING A PROPANE STOVE**

Reported Case:	Constantin v. Manitoba Public Insurance Corp.
Citation:	2008 MBCA 5
At Issue:	Is the explosion of a propane stove while being transported in a car an accident arising out of the use or operation of an automobile?
The Court:	Manitoba Court of Appeal
Judgment Rendered:	January 22, 2007
Factual Summary:	The plaintiff transported a propane stove in her car. She stopped to let her dogs out, and decided to reposition the stove in the back seat. She had a lit cigarette in her mouth, and when she turned around to reach for the stove, it exploded, throwing her from the vehicle. Insurer denied her claim for Part 2 benefits because injuries were caused by the plaintiff's smoking in the presence of propane gas, and not by the use of an automobile. That decision was upheld by a Insurer's review officer.
Disposition By Lower Court:	Manitoba's Automobile Injury Compensation Appeal Commission ("Commission") overturned the decision of the review officer. The Commission found the plaintiff's injuries were caused by the "use of an automobile or by a load" because the automobile was being used to convey both the plaintiff and the stove. The Commission sought leave to appeal.
Appellate Decision:	Leave denied. Insurer argued the location of the propane stove at the time of the explosion was merely fortuitous, and the Commission had erred in finding a link between the explosion and the use of the vehicle. Insurer asked the Court of Appeal to consider the recent decisions in <i>Herbison v. Lumbermens Mutual Casualty Co.</i> , 2007 SCC 47 (S.C.C.) and <i>Vytlingam (Litigation Guardian of) v. Farmer</i> , 2007 SCC 46 (S.C.C.). The Commission had understood and correctly applied the legal principals.