

Count: -2

**Azad, Bedros, and Vayranosh and Nordic**Decision Date: **2015-08-05**, Adjudicator: **Marvin Huberman**, Regulation: **403/96**, Decision: **Arbitration, Expenses, FSCO 4605**.Cases cited: [Halim and Security National Insurance - Appeal](#) [Halim and Security National Insurance - Appeal Expenses](#) [Henri and Allstate Insurance](#) [Henri and Allstate Insurance-2](#) [Lunn and State Farm - Expenses](#) [Lunn and State Farm -1](#) [Reid and ING Insurance](#) [Reid and ING Insurance - Expenses](#) [Hurmez and Wawanesa Mutual](#) [M.T. and RBC General](#) [Hurmez and Wawanesa Mutual](#) [Azad, Bedros, and Vayranosh and Nordic](#) [M.T. and RBC General](#)

FSCO A12-003253, A12-003336 and A12-003469

**BETWEEN:****GHARRIB AZAD, AREN BEDROS and SEPAN VAYRANOSH**

Applicant

and

**NORDIC INSURANCE COMPANY OF CANADA**

Insurer

**DECISION ON EXPENSES****Before:** Arbitrator Marvin J. Huberman**Heard:** By written submissions due June 14, 2015 and in person at ADR Chambers on June 15, 2015**Appearances:** Mr. Joseph Nguyen for Mr. Gharrib Azad, Mr. Aren Bedros, and Mr. Sepan Vayranosh  
Mr. Andrew McKague for Nordic Insurance Company of Canada**Issues:**

The Applicants, Mr. Gharrib Azad, Mr. Aren Bedros, and Mr. Sepan Vayranosh claimed that they were injured in a motor vehicle accident on February 8, 2010. They applied for statutory accident benefits from the Insurer, Nordic Insurance Company of Canada ("Nordic"), payable under the *Schedule*.<sup>[1]</sup> Nordic denied their claims for accident benefits on the grounds that they were not injured in an "accident" within the meaning of section 2(1) of the *Schedule*.<sup>[2]</sup> The parties were unable to resolve their dispute through mediation, and the Applicants applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

At the Pre-Hearing discussion held on December 17, 2013, it was determined that it would be expeditious to proceed by way of a Preliminary Issue Hearing, combining all three applications.

The issue in the Preliminary Hearing was:

1. Were the Applicants injured in an "accident" as defined in section 2(1) of the *Schedule*?

In a decision, dated January 19, 2015, I dealt with the Applicants' claims for statutory accident benefits under the *Schedule*, and made the following Arbitration Order under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended:

"1. The Applicants were not involved in an "accident" as defined in section 2(1) of the *Schedule*. Their Applications for Arbitration are dismissed with costs to Nordic."

**EXPENSES:**

If the parties are unable to resolve the issue of the amount of the expenses, either party may make an appointment for me to determine the matter in accordance with Rules 75-79 of the *Dispute Resolution Practice Code*."

The parties were unable to resolve the issue of the amount of expenses and an appointment was made for me to determine the matter in accordance with Rules 75-79 of the *Dispute Resolution Practice Code* ("the Code"). The Applicants have appealed the Arbitration Order, dated January 19, 2015. [3]

The issue in this Expense Hearing is:

1. What is the amount of the expenses incurred in respect of this Arbitration proceeding to which Nordic is entitled?

**Result:**

1. Nordic is entitled to expenses incurred in respect of this Arbitration proceeding, including the Expense Hearing, in the total amount of \$16,481.12, representing \$11,381.11 for legal fees plus \$1,479.54 for HST thereon, and \$3,620.47 for disbursements, inclusive of HST, forthwith.

**EVIDENCE AND ANALYSIS:**

**Authority to Award Expenses**

Subsection 282(11) of the *Insurance Act* provides that:

The arbitrator may award, according to criteria prescribed by the regulations, to the insured person or the insurer, all or part of such expenses incurred in respect of an arbitration proceeding as may be prescribed in the regulations, to the maximum set out in the regulations.

Rule 75.1 of the *Code* provides that:

An adjudicator may award expenses to a party if the adjudicator is satisfied that the award is justified having regard to the criteria set out in Rule 75.2. The items and amounts which may be awarded are in Rule 78 and the Schedule to the Expense Regulation found in Section F of the *Code*.

Rule 75.2 of the *Code*, which sets out the criteria to be considered in awarding expenses, states the following:

The adjudicator will consider only the criteria referred to in the Expense Regulation found in Section F of the *Code*. These criteria are:

- a. Each party's degree of success in the outcome of the proceeding;
- b. Any written offers to settle made in accordance with Rule 76;
- c. Whether novel issues are raised in the proceedings;
- d. The conduct of a party or party's representative that tended to prolong, obstruct or hinder the proceeding, including a failure to comply with undertakings and orders;
- e. Whether any aspect of the proceeding was improper, vexatious or unnecessary;
- f. Whether the insured person refused or failed to submit to an examination as required under section 42 of Ontario Regulation 403/96 (*Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996*) made under the Act or refused or failed to provide any material required to be provided by subsection 42 (10) of that regulation; and
- g. Whether the insured person refused or failed to submit to an examination as required under section 44 of Ontario Regulation 34/10 (*Statutory Accident Benefits – Effective September 1, 2010*), made under the Act, or refused or failed to provide any material required to be provided under subsection 44(9) of that regulation.

**Entitlement to Expenses**

The pertinent criteria for the award of expenses in this case are: (1) Each party's degree of success in the outcome of the proceeding, and (2) Whether any aspect of the proceeding was improper, vexatious or unnecessary. Nordic was entirely successful in the outcome of this proceeding which involves three claims for accident benefits. Although the Applicants have appealed the Arbitration decision, dated January 19, 2015, that appeal has not yet been determined, and, in any event, the appeal does not stay this expense proceeding.

In my decision, dated January 19, 2015, I made the following findings:

...I agree with counsel for Nordic, and find, that following the examinations under oath of the Applicants, Nordic's ongoing investigations revealed numerous inconsistencies and near impossible commonalities with respect to the two motor vehicles allegedly involved in the subject accident and their drivers leading up to and following the reported incident, as indicated above.

I find on the totality of the expert and non-expert evidence before me that the motor vehicle accident alleged to have occurred on February 8, 2010, did not occur as alleged but rather was the result of actions taken to give the appearance that an accident took

place where none had, and that the February 8, 2010, incident does not meet the definition of an accident as defined in section 2(1) of the *Schedule*.

The Applicants' claim that an "accident" occurred as reported deserves little weight, especially given the considerable weight of the evidence in respect of the accident/damage profiles of the vehicles, the accident benefit claims of the third party, the vehicle and insurance registrations, the purchase of Mr. Azad's Intrepid, and the safety certifications of the vehicles.

#### CONCLUSION

For these reasons, I conclude that the Applicants were not involved in an accident as defined in section 2(1) of the *Schedule*. Their applications for arbitration are therefore dismissed.

Nordic submits that, in defending these claims that were found to have been falsified, it was put through a number of "unnecessary" steps which included extensive investigation, all of which were needless expenses occasioned only by the Applicants submitting claims that were not *bona fide*.

Nordic further submits that a claim based upon falsified information is by its nature "improper", "vexatious" and "unnecessary". I agree with these submissions. On that basis, Nordic is entitled to its reasonable expenses incurred in respect of this Arbitration proceeding.

#### Quantum of Expenses

The overriding consideration in fixing legal expenses is reasonableness.<sup>[4]</sup> A line-by-line assessment of the expenses claimed is not required.<sup>[5]</sup> The task involves taking a pragmatic, broad-strokes approach with a view to fixing an amount that is reasonable. This may involve applying a ratio of Pre-Hearing preparation time to Tribunal Hearing time in the range of 1:1 to 4:1.<sup>[6]</sup>

In *Reid and ING Insurance Company of Canada*,<sup>[7]</sup> Arbitrator Killoran held, with respect to Arbitration legal expenses, that:

The relationship between insurer and insured is a contractual one. The insured is entitled to access the dispute resolution process at FSCO as a result of that contract. The *Insurance Act* and its regulations must be interpreted in such a way as to uphold the protective and remedial nature of the legislation of which it follows.

In *Halim and Security National Insurance Co./Monnex Insurance Mgmt. Inc.*, Director's Delegate, Lawrence Blackman held:<sup>[8]</sup>

I find that these expense criteria do not exist in a vacuum segregated from the overall legislative intent. Rather, the criteria are defined by and help define the broader, overarching legislative intentions, including consumer protection, as set out by the Supreme Court of Canada in *Smith v. Co-Operators General Insurance Co.*, [2002] 2 S.C.R. 129, which encompasses a fair and reasonable measure of access to justice.

This Arbitration proceeding involved a two-day Hearing and the testimony of six witnesses, including the three Applicants. In its revised Bill of Costs, the Insurer claims \$11,381.11 for legal fees, being 48.5 hours at various Legal Aid Tariff Rates. Based on 12 hours of Tribunal Hearing time and 36.5 hours of preparation time, the ratio of preparation to Hearing time is 3.04:1.

Based on the evidence before me, and having considered the submissions of the parties, I find that a reasonable number of total hours for all legal services in respect of this Arbitration proceeding, including the Expense Hearing, is 48.5 hours. At the various Legal Aid Tariff Rates sought by the Insurer and not objected to by the Insureds, this totals \$11,381.11, exclusive of HST.

#### Disbursements

A party to an Arbitration proceeding at the Financial Services Commission of Ontario is only entitled to the expenses set out in the *Expense Regulation*.

In its revised Bill of Costs, the Insurer claimed disbursements in the amount of \$3,620.47, inclusive of HST, for the types of disbursements that can be permitted under the *Expense Regulation*. The Insureds do not object to nor do they dispute as unreasonable or excessive any specific disbursement claimed by the Insurer.

I find that the disbursements claimed by the Insurer, including those relating to courier charges, clinical notes and records, and Mr. Rob Seaton, specifically, his Expert Report and attendance at the Hearing as an expert witness, are all reasonable and were required for the Hearing.

I find that the disbursements claimed by the Insurer are of a type and in amounts permitted under the *Expense Regulation*; that they are reasonable in the circumstances of this Arbitration proceeding; and are in line with other expense awards.

#### Conclusion

For the reasons set out above, I award, according to the criteria prescribed by the *Insurance Act* and the regulations made thereunder, Nordic its expenses incurred in respect of this Arbitration proceeding, including the Expense Hearing, in the total amount of \$16,481.12, representing \$11,381.11 for legal fees plus \$1,479.54 for HST thereon, and \$3,620.47 for disbursements, inclusive of HST, forthwith.

**EXPENSES:**

Nordic is entitled to its expenses in the total amount of \$16,481.12 representing \$11,381.11 for legal fees, plus \$1,479.54 for HST thereon, and \$3,620.47 for disbursements, inclusive of HST, forthwith.

_____	August 5, 2015
Marvin J. Huberman	_____
Arbitrator	Date

FSCO A12-003253, A12-003336 and A12-003469

**BETWEEN:**

**GHARRIB AZAD, AREN BEDROS and SEPAN VAYRANOSH**

**Applicant**

and

**NORDIC INSURANCE COMPANY OF CANADA**

**Insurer**

**ARBITRATION ORDER**

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

1. Mr. Gharrib Azad, Mr. Aren Bedros, and Mr. Sepan Vayranosh shall jointly and severally pay the expenses of Nordic Insurance Company of Canada in the total amount of \$16,481.12, representing \$11,381.11 for legal fees plus \$1,479.54 for HST thereon, and \$3,620.47 for disbursements inclusive of HST, forthwith.

_____	August 5, 2015
Marvin J. Huberman	_____
Arbitrator	Date

[1] Effective September 2010, the *Statutory Accident Benefits Schedule* - Effective September 1, 2010 (the "*New Regulation*") came into force. The transition rules in the *New Regulation* provide that, subject to certain exceptions, benefits that would have been available pursuant to the *Statutory*

*Accident Benefits Schedule - Accidents on or after November 1, 1996 (the "Old Regulation") shall be paid under the New Regulation, but in amounts determined under the Old Regulation. As a result, both the Old Regulation and the New Regulation are applicable to accidents that occurred on or after November 1, 1996 and before September 1, 2010, and both should be considered.*

[2] *The Statutory Accident Benefits Schedule, Accidents on or after November 1, 1996, Ontario Regulation 403/96, as amended.*

[3] FSCO Appeal Nos: P15-00015, P15-00016 and P15-00017.

[4] *Henri and Allstate Insurance Company of Canada, (OIC A-007954, August 8, 1997), Arbitrator Makepeace; Hurmz and Wawanesa Mutual Insurance Company, (FSCO Appeal P13-00022, May 30, 2014), Lawrence Blackman, Director's Delegate.*

[5] *Lunn and State Farm Mutual Automobile Insurance Company, (OIC A-013860, March 15, 1996), Arbitrator Kirsch.*

[6] *M. T. and RBC General Insurance Company, (FSCO A11-001877, March 26, 2015), Arbitrator Sudabeh Mashkuri.*

[7] *Reid and ING Insurance Company of Canada, (FSCO A05-002870, May 22, 2008), Arbitrator Killoran.*

[8] *Halim and Security National Insurance Co./Monnex Insurance Mgmt. Inc. (FSCO P07-00035, November 21, 2008).*