



Tribunal File Number: 19-008171/AABS

In the matter of an Application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Wignarajah Nagesu

Applicant

and

Traders General Insurance Company

Respondent

ADJOURNMENT

ADJUDICATOR:

Nathan Ferguson

APPEARANCES:

For the Applicant:

Wignarajah Nagesu, Applicant
David Wilson, Counsel

For the Respondent:

Harkirat Sharda, Representative
Sharla Bandoquillo, Counsel

Held by Videoconference:

March 24, 2021

BACKGROUND

- [1] This proceeding concerns a dispute between an insured person (the applicant) and an insurer (the respondent) about automobile insurance benefits under the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (the “Schedule”)* arising out of a motor vehicle accident on **May 12, 2018**.
- [2] The parties attended a hearing initially in February of 2021 and the matter was adjourned in order to allow the provision of log notes prepared after the date of the application (July 12, 2019), as I found at that time that such notes cannot be presumed to be privileged whole-cloth.
- [3] On March 4, 2021 the parties again attended a videoconference hearing and the applicant moved for full disclosure of unredacted log notes. The respondent objected to this citing litigation and solicitor-client privilege over the redacted portions of the log notes provided to that date. I heard argument and ultimately determined that the unredacted notes ought to be submitted to the Tribunal for review to ensure no potential for procedural unfairness to the applicant.
- [4] The notes have now been reviewed in their entirety. I will not address these line by line, but my key findings are outlined below.

REVIEW OF NOTES/ANALYSIS

- [5] The respondent provided reasons for the redactions made in the *Explanation of Log Notes Redactions* submitted by email March 3, 2021. I have compared the redacted and unredacted versions of the notes along with the explanation for redaction provided.
- [6] There is no dispute between the parties that a reasonable prospect of litigation arose July 12, 2019 at which time the present application was filed.
- [7] The applicant asserts that the content of the notes ought to be disclosed to avoid prejudice to the applicant and to ensure an ability to fully prepare for and meet the onus.
- [8] The respondent argues that the redacted portions of the notes are, and should be, protected by litigation privilege and solicitor client privilege.
- [9] Having reviewed each entry, I agree with the respondent. The notes are redacted only where the content either directly addresses the ongoing litigation, the strategy of the respondent in the same, or the financial details which are not subject to disclosure at this Tribunal. In each instance the respondent’s note primarily references preparation and strategy for this litigation, instructions to counsel, or advice received from counsel. There is no content which would be relevant to the applicant’s claim for award or otherwise influence an adjudicator regarding the outcome of this application. I find that none of the notes redacted in

the respondent's submissions would have been created but for the dominant purpose of the ongoing litigation after July 12, 2019.

RESULT

- [10] The notes as provided by the respondent are sufficient and need not be provided in an unredacted version.
- [11] The parties are directed to contact the Tribunal with three mutually agreeable dates on which this matter may resume for a 3-day videoconference hearing, as initially anticipated. The Tribunal will provide formal notice of the hearing once the dates are set.
- [12] The hearing may proceed before any Member of the Tribunal, I am not seized having determined only preliminary issues.

OTHER PROCEDURAL MATTERS

- [13] Except as varied by this Order, all previous Orders made by the Tribunal remain in full force and effect. The prior and above orders are subject to the hearing adjudicator's discretion.
- [14] Submissions and/or documents/authority briefs, if any, shall be double spaced, 12 point, Arial or Times New Roman font and be indexed, bookmarked/tabbed and consecutively page numbered. Submissions shall make specific reference to the evidence and law by tab and page number. Evidence not so referenced may not be reviewed.
- [15] If the parties resolve the issue(s) in dispute, the applicant shall immediately advise the Tribunal in writing.

Released: September 1, 2021



**Nathan Ferguson
Adjudicator**