



Neutral Citation: 2007 ONFSCDRS 134

FSCO A07-000135 and A07-000136

BETWEEN:

ABDUL ZAHER WAHIDPUR

Applicant

and

UNIFUND ASSURANCE COMPANY

Insurer

PRE-HEARING DECISION

Before: Eban Bayefsky

Heard: June 6, 2007, at the offices of the Financial Services
Commission of Ontario in Toronto.

Appearances: Henry Goldentuler for Mr. Wahidpur
Mauro D'Agostino for Unifund Assurance Company

Issues:

The Applicant, Abdul Zaher Wahidpur, was injured in motor vehicle accidents on December 2 and 15, 2005. He applied for statutory accident benefits from Unifund Assurance Company ("Unifund"), payable under the *Schedule*.¹ Unifund denied Mr.

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

Wahidpur's claim for weekly income replacement benefits. The parties were unable to resolve their disputes through mediation, and Mr. Wahidpur applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.1.8, as amended. At the pre-hearing discussion of this case (held on June 6, 2007), Unifund sought written particulars of Mr. Wahidpur's claim for a special award. Mr. Wahidpur requested the adjuster's notes to the date of the Application for Mediation, and thereafter subject to solicitor-client privilege. Unifund consented to providing its adjuster's notes up to the date of the Application for Mediation.

The issues are:

1. Is Mr. Wahidpur required to provide written particulars of his claim for a special award?
2. Is Unifund required to produce its adjuster's notes beyond the date on which Mr. Wahidpur applied for mediation?

Result:

1. Mr. Wahidpur shall provide Unifund with written particulars of his claim for a special award, at least sixty days prior to the arbitration hearing in this matter.
2. Unifund is not required to produce its adjuster's notes beyond the date on which Mr. Wahidpur applied for mediation.

EVIDENCE AND ANALYSIS:

(i) Particulars of Special Award Claim

Unifund sought written particulars of Mr. Wahidpur's claim for a special award, essentially on the basis that it needed to know the case it was required to meet. Mr. Wahidpur declined to provide written particulars, essentially on the basis that Unifund was already familiar with the facts and documents in its file and already knew the case it was required to meet.

Pursuant to section 282(10) of the *Insurance Act*, Mr. Wahidpur is entitled to a special award if Unifund "unreasonably withheld or delayed payments." Pursuant to section 8 of the *Statutory Powers Procedure Act* (the "*SPPA*"), "where the good character, propriety

of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior the hearing with reasonable information of any allegations with respect thereto." Pursuant to Rule 32.3 of the *Dispute Resolution Practice Code*, an arbitrator may order the production of documents or the giving of information considered relevant to the determination of the issues in the arbitration.

The arbitration decision of *Weaver and Certas Direct Insurance Company* (FSCO A05-000852, November 8, 2005) and the appeal decision of *Royal Insurance Company of Canada and Clark* (FSCO P97-00008, September 26, 1997) note the importance of providing an insurer with particulars of a claim for a special award, based on section 8 of the *SPPA*, the principles of natural justice and fairness, as well as the purposes underlying the pre-hearing process, including the need to narrow the issues in dispute, allowing each party to understand the case they must meet and facilitating a fairer, more expeditious and less expensive system of dispute resolution.

Mr. Wahidpur raised the issue of a special award for the first time at the pre-hearing conference. He left the section in the Application for Arbitration on claiming a special award (which advises applicants to "provide particulars") blank. At the pre-hearing, Mr. Wahidpur did not identify the information currently in Unifund's possession that was relevant to his claim for a special award.

In my view, Mr. Wahidpur's claim for a special award puts the propriety of Unifund's conduct (and, specifically, that of its adjusters) in issue in this proceeding, and, pursuant to section 8 of the *SPPA*, Unifund is, therefore, entitled to be furnished with reasonable information of the allegations upon which Mr. Wahidpur maintains his entitlement to a special award. Pursuant to Rule 32.3 of the *Dispute Resolution Practice Code*, I find that this information is relevant to the determination of an issue in the arbitration, namely, Unifund's liability to a special award.

In my view, to allow Mr. Wahidpur to pursue his claim for a special award without providing particulars would be inconsistent with the requirements of the *SPPA*, natural justice and fairness, and the general purposes of the pre-hearing process. I find that Unifund is entitled to particulars of the claim for a special award. Unifund did not ask

that Mr. Wahidpur produce an affidavit or otherwise answer a written interrogatory; nor, as suggested in *Weaver*, would he be required to do so. I find it sufficient if he provides the relevant information through a letter from counsel.

Therefore, pursuant to Rule 32.3 of the *Dispute Resolution Practice Code*, I order Mr. Wahidpur to provide Unifund with written particulars of his claim for a special award, at least sixty days prior to the arbitration hearing in this matter.

(ii) Adjuster's Notes

Mr. Wahidpur sought disclosure of the adjuster's notes to the date on which he applied for mediation, and thereafter subject to solicitor-client privilege. Unifund agreed to provide the notes to the date of the Application for Mediation, but maintained that, beyond that point, the notes were privileged.

Mr. Wahidpur did not indicate the basis on which he sought the adjuster's notes beyond the date of the Application for Mediation, the point to which an insurer's internal notes are generally considered producible.² Nor, as indicated above, did Mr. Wahidpur provide particulars of his claim for a special award. In these circumstances, I am not prepared to find that the disputed materials are relevant to the issues in the arbitration or to proceed to consider whether the notes are privileged. I, therefore, deny Mr. Wahidpur's request for the adjuster's notes beyond the date on which he applied for mediation.

EXPENSES:

Any issues concerning expenses of the pre-hearing are reserved to the arbitrator presiding at the main arbitration hearing.

Eban Bayefsky

June 28, 2007

Date

² See, for example, *Campeau and Liberty Mutual Insurance Company* (FSCO A00-000522, March 12, 2001), *Wilkerson and Allianz Insurance Company* (FSCO A03-000753, January 13, 2004) and *Kaczmarek and Coachman Insurance Company* (FSCO A05-000346, October 7, 2005).

Arbitrator



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ARBITRATION ORDER

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

1. Mr. Wahidpur shall provide Unifund with written particulars of his claim for a special award, at least sixty days prior to the arbitration hearing in this matter.
2. Unifund is not required to produce its adjuster's notes beyond the date on which Mr. Wahidpur applied for mediation.

Eban Bayefsky
Arbitrator

June 28, 2007
Date