

FINANCIAL SERVICES COMMISSION OF ONTARIO

BETWEEN:

HENRY SHEDLETZKY

Applicant

and

UNIFUND ASSURANCE COMPANY

Insurer

DECISION ON EXPENSES

Before: K. Julaine Palmer

Heard: By telephone conference call on March 9, 1999.
Written submissions were received on March 10, 1999.

Appearances: Allen Wynperle for Mr. Shedletzky
Gerald S. George for Unifund Assurance Company

Issues:

Henry Shedletzky was injured in a motor vehicle accident on July 15, 1995. In this arbitration he claimed certain statutory accident benefits under the *Schedule*.¹ A hearing was scheduled for November 12, 1997, but the parties settled their dispute a few days before the hearing was to begin. Only the issue of Mr. Shedletzky's expenses remained unresolved. The parties subsequently cooperated to resolve the issue of outstanding disbursements, leaving only fees to be assessed.

¹ The *Statutory Accident Benefits Schedule — Accidents after December 31, 1993 and before November 1, 1996*, Ontario Regulation 776/93, as amended by Ontario Regulations 635/94, 781/94 and 463/96.

The issue in this assessment is:

1. What amount of legal fees and agent's fees must Unifund pay Mr. Shedletzky?

Result:

1. Unifund shall pay Mr. Shedletzky \$1,819 on account of fee expenses in this arbitration.

EVIDENCE AND ANALYSIS:

The assessment proceeded by teleconference call. The lawyers made submissions based on Mr. Wynperle's document entitled "Memorandum of Time Spent." Mr. George also filed an arbitration brief containing eleven letters dated between April and October 1997. Prior to the assessment Mr. George did not provide Mr. Wynperle with a written response to his "Memorandum," identifying the items in dispute and the reasons for the dispute, as required by section 77.1(b) of the *Dispute Resolution Practice Code-April 15, 1997*. However, he had identified Unifund's principal concern that the time claimed was spent on issues unrelated to the case manager issue which was the subject of this arbitration. Mr. Wynperle provided no dockets or other supporting documentation to Unifund, as required by section 77.1(c) of the *Code* and no such material was filed on the assessment.

The total amount of fees claimed on Mr. Shedletzky's behalf was \$2,678.45. The services had been provided by five people. A senior lawyer's time was claimed at \$87.50 per hour, Mr. Wynperle's time at \$67.00, and the remaining time at \$23.00. Unifund did not dispute the hourly rates claimed. Unifund also did not dispute 0.3 hours claimed by William Morris, 14.4 hours claimed by Mr. Wynperle, 1.6 hours spent by Jill Trites, and 3.0 hours claimed by Randy Morris. Unifund disputed all 12.4 hours claimed for the legal assistant who assembled documents.

Mr. Wynperle submitted that although his office was involved in several proceedings on Mr. Shedletzky's behalf, he himself was only involved in the arbitrations. One arbitration involved a claim for income replacement benefits and this arbitration involved the case

management and rehabilitation claim. During the assessment teleconference, Mr. Wynperle withdrew a claim for a total of 3.9 hours set out on the "Memorandum" for services performed by Randy Morris, acknowledging that the services were not related to this arbitration.

Mr. Wynperle submitted that, in general, the reason his personal claim was restricted to 20 hours with respect to this arbitration was that legal assistants were more economically employed to perform most of the work. He submitted that this was a proper allocation of resources that Unifund should not complain about. When asked what proportion of Randy Morris' total time reviewing medical and rehabilitation reports, claimed at 10.5 hours from September 1996 to December 1997, was attributable to the case manager issue, Mr. Wynperle was unable to answer.

Mr. George submitted that by the end of July 1997, the issue in this arbitration was moot, because Unifund had agreed to pay the case manager and pay the rehabilitation costs identified in the Individualized Written Rehabilitation Plan, dated July 21, 1997. Unifund's only outstanding concern was the identity of the particular case manager. It is clear Mr. Wynperle understood this, because of the tone and content of his August 14, 1997 letter to Mr. George. However, by mid-August, 1997 neither party had taken any step to withdraw or dismiss the arbitration. Correspondence from Mr. George to Mr. Wynperle in late August 1997 suggested the parties consider a strategy of attempting to preserve the November 1997 arbitration date for another issue in dispute between them.

Conclusion

In assessing the fees payable by Unifund to Mr. Shedletzky with respect to the case manager issue, I prefer to take a more global approach than the "line by line" time-spent approach outlined in the "Memorandum" filed.² This arbitration dealt with a single, discrete issue, albeit one that was fairly complex, which would have required extensive medical and rehabilitation documentation to be filed, at the very least, had it proceeded

² A global or "ballpark" approach has frequently been adopted in fixing expenses. See, for example, *Ingold and Pilot Insurance Company* (OIC A-005028, August 22, 1994).

to a hearing. However, from August, 1997, it was clear to the parties that the only remaining stumbling block, if any, was whether a particular case manager would stay on the file, or a new one would be appointed. At the same time, these parties were engaged in other proceedings that required similar preparation. Although I accept the general proposition that use of an assistant's time, rather than a lawyer's, is often more economical, I am not satisfied by the material presented at the assessment that anywhere near 39 hours of Randy Morris' time or 12.4 hours of Pamela Lindeman's time was required to deal with the single issue in this arbitration.

Accepting all of Mr. Wynperle's time related to this arbitration would result in allowing him 20 hours, or \$1,433.80. Mr. Wynperle, however, admitted that a small portion of his time could have been said to have been partly related to the other arbitration. Unifund is now prepared to allow 14.4 hours or \$964.80 for Mr. Wynperle's time plus approximately \$130 for the time of others. In all of the circumstances, I assess \$1,500, plus G.S.T., for fees up to the assessment. I allow a further \$200, plus G.S.T., for Mr. Wynperle's time in preparation in 1999 for the assessment and his attendance on the teleconference, which was of a duration of approximately one hour and forty minutes.

In closing, I note my disappointment with Unifund's position that it would make no offer with respect to fees on this arbitration, until its submissions during the assessment teleconference. This position did not enhance the effectiveness of this alternate dispute resolution system.

K. Julaine Palmer
Arbitrator

March 26, 1999
Date

FINANCIAL SERVICES COMMISSION OF ONTARIO

BETWEEN:

HENRY SHEDLETZKY

Applicant

and

UNIFUND ASSURANCE COMPANY

Insurer

ARBITRATION ORDER

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

1. Unifund Assurance Company shall pay Mr. Shedletzky \$1,700, plus G.S.T. of \$119, for a total of \$1,819 on account of fee expenses in this arbitration.

K. Julaine Palmer
Arbitrator

March 26, 1999
Date