



Neutral Citation: 2013 ONFSCDRS 5

FSCO A11-004740

**BETWEEN:**

**VANESWARAN VARATHARJAH**

**Applicant**

**and**

**PAFCO INSURANCE COMPANY**

**Insurer**

## **MOTION TO DISMISS**

**Before:** Susan Sapin

**Heard:** December 7, 2012

**Appearances:** No one appearing for Mr. Varatharjah  
Ryan Kirshenblatt for Pafco Insurance Company

### **Issues:**

The Applicant, Vaneswaran Varatharjah, was injured in a motor vehicle accident on September 19, 2009. He applied for and received weekly income replacement statutory accident benefits from Pafco Insurance Company (“Pafco”), payable under the *Schedule*.<sup>1</sup> Pafco terminated the benefits and sought repayment. The parties were unable to resolve their disputes through mediation, and Mr. Varatharjah applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

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

On October 1, 2012, I heard a motion from Mr. Brad Duby, counsel for Mr. Varatharjah, to withdraw from the arbitration proceeding on the basis of a breakdown in communication between solicitor and client. I allowed the motion. The case administrator for the file contacted Mr. Varatharjah, who advised he would attend and represent himself at the pre-hearing scheduled in this matter.

Mr. Vaneswaran did not attend the pre-hearing held on November 19, 2012, despite notification in writing and several telephone calls to his home by the Commission. I note that the address and telephone number on file are in fact correct.

At the pre-hearing, counsel for Pafco brought a motion to dismiss Mr. Varatharjah's arbitration proceeding under Rule 68 of the *Dispute Resolution Practice Code*, on the basis that Mr. Varatharjah has abandoned the proceedings. The motion was scheduled to be heard on December 7, 2012 at 1:00 p.m. and the Commission sent a formal written notice to Mr. Varatharjah.

On the day of the motion, I called Mr. Varatharjah at his home and was advised he was at work. I find Mr. Varatharjah has no intention of pursuing his claims against Pafco.

I further find Pafco is entitled to costs of \$1,000 thrown away, payable by Mr. Varatharjah forthwith.

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Susan Sapin  
Arbitrator

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January 10, 2013  
Date



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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. Varatharjah's application for arbitration and claims against Pafco Insurance Company are dismissed.
2. Mr. Varatharjah shall pay to Pafco Insurance Company its costs thrown away in the amount of \$1,000 forthwith.

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Susan Sapin  
Arbitrator

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January 10, 2013  
Date