

**FINANCIAL SERVICES COMMISSION OF ONTARIO**

BETWEEN:

**XUAN VAN LE**

Applicant

and

**ECONOMICAL MUTUAL INSURANCE COMPANY**

Insurer

**ASSESSMENT OF EXPENSES**

**Before:** Fred Sampliner

**Heard:** Written submissions were received on February 26, 2004.

**Appearances:** Neil Colville-Reeves for Economical Mutual Insurance Company

**Issues:**

In a decision dated February 19, 2004 I dismissed Mr. Xuan Van Le's claims for statutory accident benefits under the *Schedule*,<sup>1</sup> and found him responsible to pay the arbitration expenses of Economical Mutual Insurance Company (Economical), subject to my determination of the amount.

The outstanding issue is:

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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 by Ontario Regulations 462/96, 505/96, 551/96, 303/98, 114/00 and 482/01.

1. What is the amount that Mr. Le must pay Economical for its arbitration expenses?

**Result:**

1. Economical is entitled to \$2,244.93 for its arbitration expenses.

**EVIDENCE AND ANALYSIS:**

Economical submitted a list of docketed time in this arbitration (35.4 hours) and appropriate experience rate (\$79.15/hour) for its two lawyers who worked on this matter (Victoria Fraser and Neil Colville-Reeves). I cannot accept that all of the time is reasonable in this case for the following reasons. The issues in this matter were straightforward, and it is my understanding there was little medical documentation available to Economical initially. Thus, the 8 hours Ms. Fraser docketed to review the file and prepare Economical's response is unreasonable, and I instead allow 2 hours. Preparation of Economical's arbitration brief would normally consume no more than an hour since the issues and evidence were simple, as opposed to the 4.6 hours billed. Finally, I allow half of the 4.8 hours blocked for various correspondence because the schedule does not explain the individual dates or services rendered.

Economical knew that the issues in this case were simple, its evidence would likely be unopposed and the hearing took less than an hour. By deducting the above disallowed 12 hours, I find that the 23.4 hours for Economical's counsel time in this arbitration is reasonable, and it is entitled to \$1,852.11 plus \$129.65 GST. In accordance Rule 78 of the *Dispute Resolution Practice Code* and *Section F-Expense Regulation*, I find that Economical is entitled to \$1,981.76, together with disbursements of \$245.96 and \$17.21 GST for photocopies, postage, faxes, long distance telephone calls, clinical notes and records, courier and process service.

Economical's itemized request for reimbursement of its arbitration expenses includes the \$3,000 fee that all insurers are assessed to participate in each arbitration

proceeding. An arbitrator may award this expense against an insured person provided there is a finding that the proceeding was frivolous, vexatious or an abuse of process.<sup>2</sup>

None of the correspondence from the parties, the pleadings or evidence submitted before the submissions on costs indicate Economical put Mr. Le on notice it claimed this proceeding was frivolous, vexatious or an abuse of process, and claimed return of the \$3,000 assessment fee. Considering that Mr. Le did not have a notice of Economical's claim until the submissions on expenses, I find it is not entitled to an award of its assessment fee.

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Fred Sampliner  
Arbitrator

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April 19, 2004  
Date

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<sup>2</sup> Subsection 282(11.2) of the *Insurance Act*

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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. Le shall pay Economical \$2,244.93 for its expenses of this arbitration.

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Fred Sampliner  
Arbitrator

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April 19, 2004  
Date