

IN THE MATTER OF SECTION 268 OF THE **INSURANCE ACT**,
R.S.O. 1990, c.1.8,

AND IN THE MATTER OF THE **ARBITRATION ACT**,
S.O. 1991, c.17

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

CITADEL INSURANCE COMPANY

Applicant

and

PEMBRIDGE INSURANCE COMPANY

Respondent

COSTS AND INTEREST AWARD

The Award in this case was delivered May 25, 2006. On July 4, 2006, we resumed by telephone prehearing to address the question of interest and costs in this matter.

The parties, in their arbitration agreement, agreed that "party and party" costs would follow the events. The applicant was successful in the arbitration.

The parties also brought before me the issue of interest on the claims of the applicant. There was general agreement on this issue, but the parties differed on their calculations. During the course of submissions the parties reached an agreement.

The substantial dispute is the award of costs in the context of this case. The amount in dispute is approximately \$28,000. This is a priority dispute based on dependency issues. Disputes of this nature are no longer extraordinary, but in fact are reasonably commonplace events for automobile insurers. The counsel are well informed as to the process and the issues to be adjudicated upon.

In this case the proceedings before me were not lengthy, less than half a day. Prior to the hearing, over which I presided, there were examinations under oath of key witnesses. Those examinations took place in Hamilton and in Toronto. Four or five hours per day was involved in each of those attendances.

No doubt the parties undertook careful preparations for the examinations and the arbitration hearing. The issues in the arbitration did call for a detailed knowledge of many facts that were germane to the household arrangements and the dependency issues. But, this case does not involve issues of great complexity, novel legal issues, or

significant interpretation of legal principles. The applicant's counsel was successful in his presentation of the case. He now asks for an award of costs that is nearly 50% of the amount in issue in the arbitration.

I am mindful of the current jurisprudence from the courts which suggests that costs awards should be reasonable having regard to the nature of the disputes and the expectation of the parties in the circumstances. Having regard to the nature of cost awards in similar proceedings, and bearing in mind the aforementioned factors, I consider an appropriate award of party and party costs to be \$5,000 plus GST and disbursements. The disbursements have been agreed upon at \$1982.83. The interest payable has been agreed upon at \$2750. I award these sums to the Applicant.

Dated at Toronto July 4, 2006.



Lee Samis