

IN THE MATTER OF THE **Arbitration Act**, 1991 S.O. 1991 c.17
and in the matter of the *Insurance Act*, R.S.O. 1990 c.1.8

AND IN THE MATTER OF an Arbitration between
Pafco Insurance Company Limited,
Economical Mutual Insurance Company,
The Motor Vehicle Accident Claims Fund and
Jacob Unger

BETWEEN:

PAFCO INSURANCE COMPANY LIMITED

Applicant

and

ECONOMICAL MUTUAL INSURANCE COMPANY

Respondent

and

THE MOTOR VEHICLE ACCIDENT CLAIMS FUND

Respondent

and

JACOB UNGER

Insured

SUPPLEMENTARY AWARD - COSTS

This Supplementary Award will be further to the Award issued by me dated
October 18, 2000. The determinations which I reached were set out at page 32.

With the exception of Mr. Brown, I invited the other three counsel to make
submissions as to costs. Each counsel has now written to me in that regard.

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COSTS

Paragraph 16 of the Arbitration Agreement reads as follows:

"16. The parties further agree that the costs of the parties to this Arbitration shall be paid as directed by Arbitrator Glass."

For purposes of clarity, it should be noted that the costs of the Arbitration were not intended to include the costs of the Arbitrator or any costs associated with the administration of the Arbitration. Paragraph 15 of the Arbitration Agreement makes it clear that those costs are to be shared equally between Pafoo and Economical Mutual.

In connection with my determination in this matter, I have also reviewed and considered the provisions of the *Arbitration Act*, S.O. 1991, c.17 and in particular Section 54 thereof. I have also considered Section 9 of Ontario Regulation 283/95 which provides that costs of the parties may be paid by the unsuccessful party.

What is the position and authority of an Arbitrator with respect to the issue of costs? In Orkin's publication "*The Law of Costs, 2nd Ed.*" at Section 231, the author states the following:

"The Ontario *Arbitrations Act* confers a discretion on arbitrators to award costs on the same basis that costs are awarded by a court ..."

Section 131, ss. 1, of the *Courts of Justice Act*, R.S.O. 1990, c.43, provides the following:

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and Economical.

This case involved complicated and difficult issues of fact and of law. As earlier stated, I have no doubt that the position of each party was strongly held. In other words, it was a contest resulting from honest differences produced by unusual facts and, in the case of the effect of Section 236 of the *Insurance Act* on a binder resulting from a novel point of law.

Having carefully considered all of the facts and circumstances as well as the submissions made by counsel for the parties, I have concluded that this is an appropriate case wherein I should exercise my discretion not to award costs to any party. My opinion is that in the particular circumstances of this case, it is equitable to rule that each party should absorb its own costs.

DATED at Toronto, this day of December, 2000.

JESSE T. GLASS, Q.C.