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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.l.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 - INTEREST

This Supplementary Award will be further to the award issued by me dated
October 18, 2000 and to the Supplementary Award with respect to costs issued by me
on or about December 11, 2000.

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There was an absence of any evidence to support the delay arguments and allegations made by each side.

The authority of an arbitrator to award interest is to be found in Section 57 of the *Arbitration Act*, S.O. 1991, c.17 which incorporates, by reference, Sections 127 - 130 of the *Courts of Justice Act*, R.S.O. c. C.43. In my opinion, the principles to be applied by an arbitrator are essentially the same as those to be applied by a Judge.

No doubt there have been decisions by our courts, both reported and unreported, where, for various reasons, the court has declined to award interest to the successful party. By and large, however, it is my understanding that in the ordinary course of litigation, the refusal by a Judge to award interest is the exception rather than the rule. In most cases, interest is awarded on the damages which are assessed in favour of the successful litigant for a variety of reasons, chief among which are the provisions of the *Courts of Justice Act* earlier referenced.

The question in this case is whether an arbitrator should be bound by similar principles. Having considered the matter carefully, and as earlier stated, my conclusion is that the answer to that question is in the affirmative.

The second question is as to whether the circumstances of this particular case are such as to justify pre-award interest in favour of Pafco.

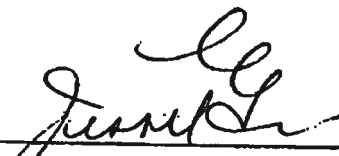
In their respective submissions, each side points the finger of blame at the other with respect to the issue of delay and asserts blameworthy delay on the part of the other. As I apprehend the submissions on behalf of Economical, it seems to be saying that if Pafco had moved more promptly in proceeding with the matter and in providing productions, etc., the entire matter could have been disposed of far sooner and with a resultant substantial savings (to someone) of interest on the amount paid by way of benefits. However, there is no suggestion on the part of Economical that if Pafco had

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Failing agreement, the parties will have to apply the 6 month intervals provisions prescribed by the Rules and arrive at amounts thereby.

In general terms, it is my opinion that the allowance of pre-award interest means exactly that, namely, that interest should be calculated up to the date of my award. Any amount thereafter should properly be characterized as post-award interest in respect of which I make no additional comment nor any award.

Dated at Toronto this 6th day of September, 2002.



Jesse T. Glass