

BETWEEN:

GILLIAN BAPTISTE

Applicant

and

PILOT INSURANCE COMPANY

Insurer

DECISION ON AN ADJOURNMENT REQUEST

Before: Jeffrey Rogers

Heard: October 18, 2004, in Barrie, Ontario.

Appearances: Mr. Andrew Kerr, solicitor for Ms. Baptiste
Ms. Heather Kawaguchi, solicitor for Pilot Insurance Company

The Applicant, Gillian Baptiste, was injured in a motor vehicle accident on August 20, 1998. She applied for and received statutory accident benefits from Pilot Insurance Company (“Pilot”), payable under the *Schedule*.¹ Ms. Baptiste and Pilot disagree about her entitlement to statutory accident benefits. The parties were unable to resolve their dispute through mediation, and Ms. Baptiste applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

The hearing was scheduled to start on October 18, 2004. The Insurer requested an adjournment.

¹The *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.

The principal issue in the hearing is whether Ms. Baptiste sustained a catastrophic impairment within the meaning of section 2 of the *Schedule*. On October 14, 2004, counsel for Pilot was served with a new medical report that assesses an aspect of the Applicant's impairment that was not addressed by the Catastrophic Designated Assessment Centre ("CAT DAC").

Rather than take the position that the report should not be admitted into evidence because it was not served at least 30 days before the first day of the hearing, as required by Rule 39.1 of the *Dispute Resolution Practice Code*, Pilot sought an adjournment to allow the CAT DAC an opportunity to address the additional issue. Counsel submitted that, should the DAC accept the opinion in the new report, there would be no need for a hearing on the issue of catastrophic impairment.

Counsel for the Applicant opposed the adjournment request but did not oppose allowing the DAC to assess the new issue, should the request be granted. It was submitted that the *SABS* does not require the DAC to comment on every aspect of impairment and that the Insurer could elicit any opinion that it may require on the additional issue, during the *viva voce* evidence of the author of the DAC report. Counsel submitted that the delay of an adjournment would be prejudicial to his client. Counsel explained that the new report was produced because the potential for the additional issue to impact the assessment of impairment was only recognized as he was preparing the author of the report to give evidence at the hearing.

RULING:

For oral reasons, I granted the request for an adjournment. I noted that, although the *SABS* does not require that the DAC consider all aspects of impairment, a comprehensive opinion on the applicant's condition would assist in the resolution of the dispute and, in the circumstances of this case, it would be fair to both parties. It did not appear to me to be reasonable to start the hearing in the hope that the author of the DAC would be able to address the new issue, without notice, as he testified.

The circumstances that led to the request for an adjournment were not within the control of the Insurer and, although there had been no misconduct, any blame for the delay would lie with the Applicant.

When the prejudice of delaying the hearing is weighed against the benefit of resolving the dispute without a hearing, the requested adjournment was not unfair to the Applicant.

Counsel undertook to expedite the process of obtaining the further DAC report and to make themselves available for hearing at an early date.

With a view to shortening the hearing, counsel also undertook to make their best efforts to agree to the facts relevant to other issues in the hearing: whether the DAC was conducted at the closest location and whether the DAC had a conflict of interest.

If the facts are agreed, the parties may request that these issues be resolved by way of a written hearing, in advance of the main hearing.

Jeffrey Rogers
Arbitrator

November 18, 2004

Date

FSCO A04-000446

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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. The hearing is adjourned from October 18, 19, 20, 21, 25 and 26, 2004 to March 1, 2, 3, 7, 8, 9 and 10, 2005.

Jeffrey Rogers
Arbitrator

November 18, 2004

Date