



SUPERIOR COURT OF JUSTICE

Case Name: Soobrian v. Belair Insurance Company Inc.
Court File No. : 05-CV-300599

Case Name: Soobrian v. Belair Insurance Company Inc.
Court File No.: 06-CV-306940

Counsel:

Name	Party	Fax
R. Naimark	Garnishment Creditor, Belair Insurance Company Inc.	416-777-2050
R. Brent	Thomson Rogers and plaintiffs	416-868-3134

REASONS FOR DECISION (COSTS)

These reasons relate to the issue of costs of a refusals motion brought by the garnishment creditor, Belair Insurance Company Inc. ("Belair"). In the result, I ordered all three categories of questions answered. I reserved on the issue of costs pending written costs submissions of the parties.

The time for delivery of written submissions was extended on the consent of the parties. I have received and considered the costs submissions of the plaintiff, responding costs submissions of Thomson Rogers and the plaintiffs and reply costs submissions of Belair.

Belair seeks costs in the amount of \$11,349.02 on a partial indemnity basis against Thomson Rogers. These costs are opposed on the basis that the quantum is excessive, that the issues were not complex, that there is some duplication of effort and time between time keepers and that the delegation of the motion to a junior lawyer would have been appropriate.


I find that there was somewhat excessive time spent on motion preparation. The issues on the motion were of some complexity, involving solicitor-client privilege issues. I do not see that there was duplication of effort between time keepers and it is reasonable to delegate some of the motion preparation work to a student at the student's significantly lower hourly rate. I do not see that the motion ought to have been delegated to a more junior lawyer and note the similarity of year of call as between the parties.

I would fix costs in the amount of \$5,000 inclusive of fees, GST and disbursements, on a partial indemnity basis. This amount is fair and reasonable having regard to what an unsuccessful party would expect to pay the successful party. The amount of costs sought by Belair for this refusals motion alone are out of proportion to the amounts claimed in the pending litigation, recognizing that Belair has a judgment against the primary plaintiff for approximately \$45,000 in relation to overpaid SABs and the tort settlement for all plaintiffs totaled \$75,000.

These costs are to be paid within 30 days and in any event by no later than November 3, 2008, in accordance with the general rule and practice, there being no suggestion that a different order would be just.

These costs are properly paid by Thomson Rogers. While it is accurate that the privilege relied upon by Thomson Rogers to avoid the questions was that of the plaintiffs or clients, it remains that Thomson Rogers is the responding party and the party under cross examination who improperly refused the questions. The plaintiffs or clients were entitled to notice of the motion as affected parties and, hence the court's direction to Thomson Rogers to obtain instructions.

Order accordingly.



Master Sproat
October 2, 2008