



FSCO A11-003371, A11-003377  
and A11-003378

**BETWEEN:**

**JULIET BOACHIE, MICHELE AGYEMANG DUAH  
and ANDREA FORDJOUR**

**Applicants**

**and**

**BELAIR INSURANCE COMPANY INC.**

**Insurer**

## **REASONS FOR DECISION**

**Before:** Deborah Pressman

**Heard:** May 13, 2013, at the offices of the Financial Services Commission of Ontario in Toronto

**Appearances:** No one appearing for Ms. Boachie, Ms. Duah, and Ms. Fordjour  
Marni Miller for Belair Insurance Company Inc.

### **Overview:**

Ms. Boachie, Ms. Duah, and Ms. Fordjour (applicants) claimed that they were injured in an automobile accident on January 21, 2010, and sought benefits pursuant to the *Statutory Accident Benefits Schedule — Effective September 1, 2010* (the “*Schedule*”). Disputes arose between the applicants and their insurer, Belair Insurance Company Inc. (“Belair”) concerning their entitlement to benefits and the applicants filed Applications for Arbitration at the Financial Services Commission of Ontario (“FSCO”) under the *Insurance Act*.<sup>1</sup>

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<sup>1</sup>R.S.O. 1990, c.I.8, as amended.

**Issues:**

1. Should Ms. Boachie's, Ms. Duah's, and Ms. Fordjour's Applications for Arbitration be dismissed?
2. Are Ms. Boachie, Ms. Duah, and Ms. Fordjour liable to pay Belair's expenses in respect of their arbitrations under subsection 282(11) of the *Insurance Act*?

**Result:**

1. Ms. Boachie's, Ms. Duah's, and Ms. Fordjour's Applications for Arbitration are dismissed.
2. Ms. Boachie, Ms. Duah, and Ms. Fordjour are liable to pay Belair's expenses, fixed at \$1,000.00 each, inclusive of HST.

**EVIDENCE AND ANALYSIS:**

Ms. Boachie, Ms. Duah, and Ms. Fordjour failed to participate in the arbitration process and despite notices, did not attend their arbitration hearings. As a result, they failed to prove their claims for accident benefits and their Applications for Arbitration are dismissed. They are liable to pay Belair's expenses, fixed at \$1,000.00 each, inclusive of HST.

Although the applicants participated in the first pre-hearing discussion on June 26, 2012, they seem to have lost interest in pursuing their arbitrations.<sup>2</sup> In my letter dated April 4, 2013, I warned the applicants that their non-attendance at their hearings scheduled for May 13, 2013 may result in the dismissal of their case and expenses awarded against them.<sup>3</sup>

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<sup>2</sup>During the first pre-hearing discussion on June 26, 2012, the applicants were represented by counsel but subsequently consented to their counsel to be removed as their solicitor of record. Ms. Boachie did not attend a resumption of pre-hearing discussion on March 12, 2013 and Ms. Fordjour and Ms. Duah requested to withdraw their matters at that time. The applicants did not attend a further resumption on April 3, 2013.

<sup>3</sup>"In the event that Ms. Duah, Ms. Fordjour, Ms. Boachie do not attend, then, as noted above, the **hearings may proceed in their absence and their Applications for Arbitration may be dismissed and Belair's expenses of the arbitration proceedings may be awarded against them.**" My letter dated April 4, 2013.

I am satisfied that the Notices of Hearing complied with the requirements of Rule 9.1(c) of the *Dispute Resolution Practice Code* (the “Code”) and section 6 of the *Statutory Powers and Procedures Act* (“SPPA”).<sup>4</sup> All correspondence, including the Notices of Hearing were sent to the applicants at the addresses they provided to us. Notwithstanding the notices and my letter dated April 4, 2013, the applicants did not appear at FSCO on May 13, 2013 for their arbitration hearings.

Both the *SPPA* and FSCO’s *Code* speak to the effect of non-attendance at a hearing after due notice. Where Notice of Hearing has been sent to a party and a party does not attend, the tribunal may proceed in the party’s absence. Pursuant to Subsection 7(1) of the *SPPA* and Rule 37.7 of the *Code*, the hearing proceeded in the applicants’ absence.

Turning now to the merits and Applications for Arbitration, in order to establish entitlement to benefits, the applicants must provide evidence supporting their claims and prove their claims on a balance of probabilities. As Ms. Boachie Ms. Duah and Ms. Fordjour, did not attend to present any evidence, they failed to establish their entitlement to the benefits. As a result, I dismiss Ms. Boachie’s, Ms. Duah’s and Ms. Fordjour’s claims for accident benefits listed in their Applications for Arbitration.

**EXPENSES:**

Belair made submissions with respect to its legal expenses of the arbitration proceedings and provided a Bill of Costs for \$8,999.84 (for Ms. Boachie), \$8,732.56 (for Ms. Duah) and \$8,795.08 (for Ms. Fordjour), inclusive of HST.

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<sup>4</sup>Rule 9.1(c) of the *Code* provides that “the Dispute Resolution Group is entitled to rely upon the last known address, telephone number and electronic transmission (if any) contained in its records.” Section 6 of the *SPPA* states that parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. s.22, s. 6(1).

When assessing expenses, arbitrators at FSCO determine entitlement and quantum by applying criteria dictated by the legislation.<sup>5</sup> I find that only the first criterion, “each party’s degree of success in the outcome of the proceeding,” is relevant in this case. The applicants did not succeed in asserting their claims for benefits and are not entitled to their expenses. Belair, as the “successful party”, is entitled to its reasonable expenses.

Belair particularized over 30 hours spent on each applicant’s file in preparing and attending for these arbitrations. I accept that given the number of applicants, the three attendances for pre-hearing discussions, and bringing forward a motion, the number of hours is not unreasonable.

However, I am not prepared to accept that each file warrants separate and somewhat duplicate hours and expenses because it is reasonable to assume that there was considerable overlap in counsel’s preparation and attendance for these files. In addition, I was not convinced that the applicants brought frivolous and vexatious claims that would justify the return of the \$3,000.00 Arbitration filing fee.

Bearing in mind the overriding principle of reasonableness,<sup>6</sup> I fix Belair’s expenses at \$3,000.00 (inclusive of HST) to be divided equally by the applicants. This amount takes into consideration the time counsel spent preparing the responses to the Applications for Arbitration, consulting with her client, preparing for and attending at the pre-hearing discussions and attending at the hearings on May 13, 2013 for which it was not required to prepare, as well as its disbursements.

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<sup>5</sup>Under subsection 282(11) of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, an arbitrator may award expenses to either party according to criteria prescribed in subsection 12(2) of the *Expense Regulation*, R.R.O. 1990, Regulation 664.

<sup>6</sup>For reasonableness, see *Henri and Allstate Insurance Company of Canada* (OIC A-007954, August 8, 1997) and *Ragulan and Security National Insurance Co./Monnex Insurance Management Inc.* (FSCO A05-002940, July 16, 2008).

Therefore, pursuant to subsection 282(11) of the *Insurance Act*, I find that Ms. Boachie, Ms. Duah and Ms. Fordjour are liable to pay Belair's expenses fixed at \$1,000 each, inclusive of HST.

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Deborah Pressman  
Arbitrator

August 1, 2013

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Date



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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. Ms. Boachie's, Ms. Duah's and Ms. Fordjour's Applications for Arbitration are dismissed.
2. Ms. Duah to pay Belair's expenses at \$1,000.00, inclusive of HST, in respect of her arbitration under subsection 282(11) of the *Insurance Act*.
3. Ms. Fordjour to pay Belair's expenses at \$1,000.00, inclusive of HST, in respect of her arbitration under subsection 282(11) of the *Insurance Act*.
4. Ms. Boachie to pay Belair's expenses at \$1,000.00, inclusive of HST, in respect of her arbitration under subsection 282(11) of the *Insurance Act*.

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Deborah Pressman  
Arbitrator

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August 1, 2013  
Date