

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** LAWRENCE ALLAN BOLAND (Applicant) v. ALLIANZ INSURANCE COMPANY OF CANADA and GERLING GLOBAL GENERAL INSURANCE COMPANY and GCAN INSURANCE COMPANY (Respondents)

**BEFORE:** Justice C. Horkins

**COUNSEL:** *Richard Macklin*, for the Applicant

*Leslie A. Wright*, for the Respondent Allianz Insurance Company of Canada

2006 CanLII 22114 (ON SC)

**COSTS ENDORSEMENT**

[1] On May 19, 2006, I ruled that ING does not have a duty to defend Mr. Boland in the MTCC 1056 action. The parties have not been able to agree on costs. This is my ruling on the issue.

[2] ING requests partial indemnity costs as follows:

(a)	Fees - 47.7 hours	\$9,500.00
(b)	Counsel fee - half day	\$1,000.00
(c)	Disbursements	<u>\$ 372.04</u>
	Total	\$10,872.04

[3] ING's counsel rate is \$250 and she proposes a partial indemnity rate of \$220. Counsel spent 42.4 hours on this matter and a student spent 5.3 hours doing research.

[4] This was an application pursuant to rule 14.05(3)(d) and (h). The applicant filed one affidavit. ING did not file any evidence and no cross-examinations took place.

[5] The applicant agrees that ING is entitled to partial indemnity costs and submits that ING should receive \$6,000 inclusive of GST. The applicant points out that what ING is requesting is close to full indemnity given the difference in the billing rate and the reduction proposed. The applicant also questions the amount of time incurred by ING's counsel. It is submitted that 25

hours would be a reasonable amount of time (17 hours for preparation of the factum and 8 hours to prepare argument).

[6] There were no offers to settle this application that I need to consider.

[7] In awarding costs I must identify an amount that is fair and reasonable in the circumstances. Two decisions from the Court of Appeal emphasize this approach: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291(C.A.) and *Moon v. Sher*, [2004] O.J. No. 3942 (C.A.). As well I am guided by the general principles in rule 57.01(1) of the *Rules of Civil Procedure*.

[8] The amount of time spent by ING falls outside what is considered to be fair and reasonable. Essentially this amounts to 6 solid days of work. While I do not doubt that the work was done, what is allowed for costs must be fair. The legal framework for determining if a duty to defend exists is settled law. As well the material filed on this application was not extensive. The amount requested by ING in these circumstances is not what the applicant could reasonably expect to pay.

[9] In my view, \$6,000 proposed by the applicant is an amount that fairly reflects recovery on a partial indemnity scale and is fair and reasonable. I award this all-inclusive amount to ING, payable in 30 days.

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C. Horkins J.

**DATE:** June 29, 2006