

**Financial Services  
Commission  
of Ontario**

Dispute Resolution Services  
Arbitration Unit  
5160 Yonge Street, 14th Floor  
Box 85  
Toronto ON M2N 6L9

Enquiries: (416) 250-6714  
Fax: (416) 590-8462  
Toll Free: 1-800-517-2332

**Commission des  
services financiers  
de l'Ontario**

Services de règlement des différends  
Unité d'arbitrage  
5160, rue Yonge, 14ième étage  
Boîte 85  
Toronto ON M2N 6L9

Renseignement: (416) 250-6714  
Télécopieur: (416) 590-8462  
Sans frais: 1-800-517-2332



Ontario

March 16, 2007

**Sent via facsimile transmittal and regular mail**

Mr. Alden M. Dychtenberg  
Shekter, Dychtenberg  
Barristers and Solicitors  
390 Bay Street  
Suite 2900  
Toronto ON M5H 2Y2

Mr. David Dinner  
Zarek, Taylor, Grossman & Hanrahan  
Barristers and Solicitors  
20 Adelaide Street East  
Suite 1301  
Toronto ON M5C 2T6

Dear Mr. Dychtenberg and Mr. Dinner:

**Re: Ms. Eleni Kantzavelos and Allstate Insurance Company of Canada  
MVA: January 12, 2001  
Commission File N<sup>o</sup>: A04-000046-MMM  
File N<sup>os</sup>: 2001002 (Applicant) and 7430.0042 (Insurer)  
Claim N<sup>o</sup>: MI241383B83**

On March 9, 2007, I heard a motion brought by Allstate, requesting that the arbitration be stayed unless and until a personal representative was appointed for Ms Kantzavelos. I read the materials filed on behalf of Allstate, and heard submissions from Mr. Dinner, who represented Allstate and Mr. Dychtenberg, who represented Ms Kantzavelos.

I was advised that by way of an order of the court, dated February 13, 2007, a personal representative has been appointed for Ms Kantavelos, subject the requirement of posting a bond. Mr. Dychtenberg advised that this is being currently arranged and a private mediation to resolve Ms Kantavelos' accident benefit claims has been scheduled for July 2007.

As a result of this information, Mr. Dinner advised that the substantive part of the insurer's motion has been dealt with, with the proviso that the bond has not yet been posted.

Mr. Dinner requested further relief in the form of expenses, as well as an order denying Allstate interest for the period of time that has elapsed attempting to have a personal representative appointed.

Mr. Dychtenberg submitted that the order denying interest was not requested in the motion materials, and if the insurer wanted to pursue the matter he would need time to prepare specific response materials. In addition, he noted that there were numerous complications in having a personal representative appointed and that Allstate's solicitor has known about these all along. As a result his view is that expenses are not justified.

Having considered the arguments of counsel, I agree with Mr. Dychtenberg that no specific request for a denial of interest was claimed in the motion and therefore I decline to deal with it today. Although Mr. Dinner observed that the motion included the boilerplate request for "other relief," fairness requires that when a substantive remedy such as this is being requested, the other party needs notice of it and an opportunity to respond. More importantly, in my view, the hearing arbitrator retains jurisdiction to deal with submissions on interest. The insurer is free to make whatever submissions they wish related to an award of interest during the hearing.

Analogously, on the claim for expenses, although I recognize the authority I have to award expenses at this point in time, in my view the matter should be reserved to the hearing arbitrator, who, once again, can take into account any delay or costs occasioned by these interlocutory proceedings if appropriate.

The parties advised that they hope to resolve all of the accident benefits claims during a mediation in July, 2007. Thus they were not inclined to set firm arbitration dates. I was not willing to adjourn the matter *sine die*, and prefer to set a further resumption of the pre-hearing date to update the status of the proceedings if the mediation does not resolve the arbitration issues. Therefore, on consent, there will be a resumption of the pre-hearing, be teleconference arranged by the Financial Services Commission of Ontario, on **Friday, August 24, 2007, at 10:00 a.m.**

If you have any questions or require more information, please telephone this office at (416) 250-6714, or call toll free at 1-800-517-2332.

Yours truly,

  
Robert A. Kominar  
Arbitrator