



FSCO A13-001725

BETWEEN:

THOMAS WALDOCK

Applicant

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Insurer

DECISION ON A PRELIMINARY ISSUE

Before: Arbitrator Knox M. Henry

Heard: May 27, 28, and 29, 2014 at the offices of ADR Chambers, Toronto, ON,
and by written submissions received on July 11, 2014 and completed on
August 1, 2014

Appearances: Leonard H. Kunka, Michael Holden, and Carmen Spano for Mr. Waldock
Anna-Marie Musson and Simon Robertson for State Farm Mutual
Automobile Insurance Company

Issues:

On March 25, 2008, Thomas Warren Waldock, the Applicant, was assisting a motorist who was stuck in the snow when he was struck by a pickup truck (“the accident”) which had lost control while coming down the hill. As a result of the injuries he sustained, he applied for and received statutory accident benefits from State Farm Insurance Company (“State Farm”), payable under the applicable *Schedule*.¹ Issues arose between the parties concerning Mr. Waldock’s entitlement to certain statutory accident benefits. State Farm and Mr. Waldock were unable to resolve their

¹ *The Statutory Accident Benefits Schedule* – Accidents on or after November 1, 1996, Ontario Regulation 403/96, as amended.

disputes through mediation, and Mr. Waldock applied for arbitration at the Financial Services Commission of Ontario (“FSCO”) under the *Act*.²

The Preliminary Issue Hearing:

The Preliminary Issue Hearing lasted three days, followed by written submissions. I heard oral testimony from Mr. Waldock, and the following witnesses on his behalf: Dr. Zohar Waisman (forensic psychiatrist), Dr. Arthur Ameis (physiatrist), Dr. Khalid Ali Syed (orthopaedic surgeon), and Cherie Waldock (the Applicant’s spouse). The relevant portions of their testimony are summarized below. State Farm did not present any medical witnesses, but relied on reports from Dr. Cushman, and Mr. Eric Hey, occupational therapist.

The issues in this Preliminary Hearing are:

1. Did Mr. Waldock’s injuries, as a result of the motor vehicle/pedestrian accident which occurred on March 25, 2008, constitute a “catastrophic impairment” within the meaning of Clause 2(1.2)(f) and (g) of the *Schedule*?³
2. Is Mr. Waldock entitled to his expenses of this hearing?
3. Is State Farm entitled to its expenses of this hearing?

Result:

1. Mr. Waldock’s injuries do constitute a “catastrophic impairment” within the meaning of section 2(1.2) (f) and (g) of the *Schedule*.
2. The parties’ entitlement to their expenses is deferred for consideration by the Arbitrator at the Arbitration hearing in this matter.

² *The Insurance Act*, R.S.O. 1990, c. I.8, as amended.

³ Clause 2(1.2)(f) and (g) states:

(1.2) (f) subject to subsections (1.4), (2.1), and (3), an impairment or combination of impairments that, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993, results in 55 per cent or more impairments of the whole person; or

(g) subject to subsections (1.4), (2.1) and (3), an impairment that, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993, results in a class 4 impairment (marked impairment) or class 5 impairment (extreme impairment) due to mental or behavioural disorder.

Preliminary Motion

At the commencement of the Preliminary Issue Hearing, State Farm brought a motion seeking:

1. An order that the section 44 catastrophic orthopedic assessment of Mr. Waldock is reasonably required;
2. An order that the preliminary issue hearing be stayed by reason of Mr. Waldock's failure to make himself recently available for a further section 44 catastrophic orthopedic assessment; or
3. In the alternative, an adjournment of the preliminary issue hearing in order to allow State Farm time to conduct the section 44 catastrophic orthopedic assessment; and
4. State Farm's costs of this motion.

Result of the Preliminary Motion:

Upon hearing submissions from counsel for State Farm and counsel for Mr. Waldock, I ruled that:

1. The section 44 catastrophic orthopedic assessment is not required at this time;
2. The arbitration proceeding will not be stayed by reason of the Applicant's failure to make himself recently available for a further section 44 catastrophic orthopedic assessment; and
3. An adjournment of the arbitration hearing will not be granted in order to allow the insured time to conduct the section 44 catastrophic assessment; and the hearing will proceed forthwith.

My reasons were as follows:

1. A section 44 catastrophic orthopedic assessment is not required at this time. State Farm has had ample opportunity to request such an assessment many months ago. To require it now will only unnecessarily delay the process;

2. This preliminary issue hearing has been scheduled for some period of time; State Farm could have brought this motion several months ago after the failure of the mediation; witnesses have been arranged and have set aside their time to be available over the following three days; delay of this hearing will, as it is agreed and acknowledged by both parties, greatly increase the costs of the proceeding.
3. It is unfair to Mr. Waldock to further delay the commencement of the hearing on this preliminary issue.

State Farm requested that a further medical assessment of potential catastrophic impairment should be conducted prior to any arbitration in this matter. I find that State Farm has had ample notice that Mr. Waldock's treatment and rehabilitation have been a struggle. Further, it has had the assessments from the Multidisciplinary Designated Assessment Centre (MDAC) for many months, which were tested in cross-examination during the preliminary issue hearing before me. Until that time, State Farm had refuted the MDAC reports, but did not provide any testing of MDAC's reports by its own assessors. I find State Farm has passed up the opportunity to request medical assessments over the past many months. Consequently, I find that State Farm must be denied its request for further medical assessments to determine potential catastrophic impairment and not be granted a stay of this preliminary issue hearing.

State Farm has submitted that a "new" intervening event – that is, an April 2013 slip-and-fall accident – has changed Mr. Waldock's medical condition. Thus, State Farm argues, it is entitled to an updated medical assessment pursuant to section 44 of the *Schedule*. I find that the slip-and-fall accident in April 2013 was not "new" medical evidence. The assessors at MDAC predicted there would be further medical complications. I agree.

Background of the Preliminary Issue:

On March 25, 2008, in the mid-afternoon, Mr. Waldock was driving on Chaffee Road in the Huntsville area. The road was snow-covered. Chaffee Road is hilly and is not heavily travelled on during the winter. Mr. Waldock came upon a motorist who was stuck beside a snowbank on the side of the road and obviously attempting to drive up the hill. Mr. Waldock got out of his vehicle and went to assist the stranded motorist. While he was on the roadway, a pickup truck

coming down from the crest of the hill apparently lost control and struck Mr. Waldock, throwing him approximately five to 10 feet in the air before he landed on the pavement.

Mr. Waldock was transported by ambulance to Muskoka Algonquin Healthcare at the Huntsville District Memorial Hospital in Huntsville where he was stabilized. Later that evening, he was transported by ambulance to the Scarborough Grace Hospital. After developing an infection in his right leg, he was transferred to Toronto Western Hospital (a division of the University Health Network) on April 9, 2008, and placed under the care of Dr. Khalid Syed. While at Toronto Western, Mr. Waldock underwent a prolonged period of recovery, including seven surgeries prior to his discharge to his home on May 8, 2008.

Mr. Waldock submitted a claim for accident benefits by way of an OCF-1, dated May 20, 2008.

Evidence and Analysis:

The issue remaining in this matter is in regard to the first set of catastrophic impairment assessments, more specifically, the differences in the mental/behavioural assessments of the medical team representing Mr. Waldock, who interpret these assessments to meet the catastrophic impairment threshold, and the medical team representing State Farm who opine otherwise.

As part of his accident benefits claim, Mr. Waldock's counsel arranged for a section 24 catastrophic impairment assessment with MDAC. Assessments were undertaken by Dr. Ben Meikle (Physiatrist) on April 7, 2010, and by Dr. Zohar Waisman (Forensic Psychiatrist) on April 14, 2010. Dr. Arthur Amies of MDAC reviewed the assessments undertaken by Dr. Meikle and Dr. Waisman. He then completed the catastrophic assessment calculations and submitted his report, dated July 5, 2010.

An Application for Determination of Catastrophic Impairment (OCF-19), prepared by Dr. Amies and dated July 7, 2010, was submitted to State Farm.

In spite of Mr. Waldock's hospital medical treatments and a further surgery, Mr. Waldock has been left with a permanent impairment to his right leg and knee. This has affected his daily activities, including the duties of his employment, his household duties, social and recreational activities, as well as his relationship with his family and spouse.

As a result of the accident, Mr. Waldock suffered the following injuries:⁴

1. a markedly comminuted fracture of the proximal half of the right tibia with inter-articular extension and disruption;
2. a transverse fracture through the proximal neck of the right fibula with posterior dislocation of the fibula relative to the femur;
3. limited range of motion of the right knee with 85% flexion and a 15% flexion contracture;
4. atrophy of the right thigh (4.5 cm decrease in right thigh circumference);
5. weakness of the right knee (grade 4 strength in both flexion and extension);
6. a 5% reduction in dorsiflexion range of motion of the right ankle;
7. a discrepancy in his right leg length (right leg is 8 mm shorter than the left);
8. a derangement of his gait (antalgic gait with stiff right knee);
9. vascular impairment (persistent swelling of the right leg lower extremity and loss of dorsalis pedis pulse);
10. extensive soft-tissue and muscular injury to the right leg;
11. recurrent infection resulting in necrotic soft tissue and the vitalized bones in the right proximal tibia, resulting in the need for a right femoral artery and vein graft, a right rectus abdominus muscle flap, micro vascular anastomosis and revascularization, and split thickness skin grafts to the muscle flap and fasciotomy wounds;
12. injury to his neck;
13. a hair-line fracture in his back with the resultant calcification; and

⁴ Affidavit of Carmen Spano dated May 22, 2014 (Exhibit 2, Tab 1).

14. psychological injury including difficulty coping with his injuries, depressed mood, loss of interest or pleasure in his daily activities, weight gain, insomnia, fatigue, inability to concentrate and other cognitive dysfunction.

Mr. Waldock's surgeries to correct his multiple injuries included the following: an initial spanning fixator over his right leg and right knee; numerous debridements and efforts to remove infection, necrotic tissue and devitalized bone; repair to the damaged ligaments in his right knee; grafting of arteries and veins into his right leg; micro vascular anastomosis and revascularization; right rectus abdominis muscle flap procedure and split thickness skin grafting to the muscle flap and fasciotomy wounds.

Mr. Tom Waldock's Testimony:

Thomas Warren Waldock is 52 years of age, and at the time of the accident was residing in Whitby, Ontario. I found Mr. Waldock to be a very credible witness. He is a professor at Nipissing University at the Bracebridge campus and developed and taught courses on children's rights and welfare. He commuted from Whitby to Bracebridge an average of three days each week to teach. Occasionally, he was required to travel to North Bay to the university's main campus for meetings.

In mid-afternoon of March 25, 2008, he was traveling on Chaffee Street in the Huntsville area. As he came over a hill, he noticed a gentleman fall while attempting to push his car up the snow-covered hill. Mr. Waldock parked his car at the top of the hill and went to assist the gentleman. He suggested this gentleman turn his car around and drive it down the hill as it was apparent it would be impossible for the driver to proceed up the hill due to lack of traction on the snow. As he was assisting this driver, a pickup truck came over the top of the hill and apparently lost control, hitting Mr. Waldock and throwing him approximately five to 10 feet. Mr. Waldock landed on his back on the pavement resulting in severe injuries.

Mr. Waldock testified that he recalls very little of what happened over the next couple of hours. He stated that he was taken to the hospital in Huntsville for treatment and later transferred to Scarborough Grace Hospital that same evening for more specialized treatment under the care of

Dr. Latham. The morphine that he was receiving to control his pain caused him to occasionally lose consciousness. He testified that Dr. Latham arranged for him to be transferred to Toronto Western Hospital under the care of Dr. Syed. He spent several weeks at Toronto Western Hospital, undergoing seven operations before being discharged home to Whitby on May 8, 2008. Mr. Waldock stated that prior to the accident he was an extremely active person, participating in sports and other outdoor activities; had a high energy level and spent a lot of time with his family doing various activities. He and his wife have five children – four of their own and one adopted. They have been foster parents for over 20 years and sometimes have had as many as four foster children at their home at any one time. Mr. Waldock had been President of the Foster Care Association – a volunteer organization. At the time of the accident, they had two foster children at their home.

They had a very active social life prior to the accident, being volunteers at the Children's Aid Society; attending dinner events with friends as well as having family dinners. He regularly played Triple A hockey and was an avid white-water canoeist, taking an annual solo eight-day canoe trip in Algonquin Park in late April each year, easily paddling his 15-foot canoe six hours each day.

Upon his return home from the hospital in May 2008, Mr. Waldock attempted to grade his students' papers to enable them to complete their university year. He found this task very difficult as he was suffering from constant pain and depression. In September 2008, he attempted to resume some teaching responsibilities at Nipissing. Finding the drive from Whitby to Bracebridge very difficult due to his injuries -- especially to his right leg and hip -- he decided in December 2008 to move to his mother's home in Huntsville to enable him to reduce the driving time to get to and from the University campus in Bracebridge.

Mr. Waldock was eligible to take a sabbatical year from July 1, 2009 until June 30, 2010. He had planned that he would travel to the United Kingdom to study its child welfare system and thus compare it our system here in Canada. Because of the accident, he was forced to spend the sabbatical year undergoing treatments and therapy. He did attempt to do some reading and continue to write a book he was authoring regarding children's rights. However, he found his

ability to concentrate greatly diminished, which was very frustrating to him. He testified that he could no longer recall the names of his students and suspected that the ongoing nagging pain and constant use of painkillers was affecting his concentration and mental capability.

Mr. Waldock confirmed that State Farm had provided many benefits to him, including the provision of a reclining chair and the installation of a railing alongside the steps leading to the house.

Mr. Waldock was obviously a very self-confident individual and I find, from his testimony, quite rightfully so. During his testimony, he recounted how he had an excellent rapport with students at the campus as well as very good relations with his colleagues at the University -- both at the Bracebridge campus and at the North Bay campus. He was obviously well-liked and respected, which was confirmed by the university's extensive actions to accommodate his disabilities.

He now suffers from severe bouts of depression caused by his inability to concentrate and is having to rely on his wife for assistance in trying to cope with the day to day struggle of his injuries. He loathes having to rely on other people. He is very anxious about his future. He claims to be uncomfortable for the onus his injuries have put on his wife and feels their marriage has suffered a complete role reversal. No longer can he be involved in inside and outside household activities and it bothers him to see her take on those roles that he previously performed.

In addition to all this, Mr. Waldock constantly worries about when a surgical replacement of his right knee will be required and what consequences may arise from that operation. Doctors have warned him that infection from surgery could be a very serious possibility and the worst-case scenario is that he may have to undergo an amputation of his leg above the right knee. While the pain in his right knee and leg is almost intolerable, he is determined to delay any knee operation until that pain becomes absolutely intolerable.

In spite of the aggressive exercise therapy he has been undertaking, he still lacks a lot of strength and stability in his right leg. Since the accident, he has had five severe falls due to his right knee

collapsing. He has also stumbled on many occasions. Thus, he must be very vigilant when walking.

For example, on April 11, 2013, Mr. Waldock was returning home from a funeral for a student from the University. It was about 9:30 p.m. and he was negotiating the stairs to his front door. Although he had his left hand on the railing, his right knee collapsed, causing him to slip and fall under the railing. He refused his wife's entreaties to go to the hospital that evening and instead went straight to bed. The next morning he had to be taken by car to the Huntsville Hospital emergency room, where an x-ray revealed that there was a crack above the knee in the femur. On the following Monday, April 15, 2013, Dr. Syed treated him at Toronto Western Hospital. His right leg was placed in a cast from the ankle to the groin and Dr. Syed instructed him not to put any weight on that leg for at least three months.

Since this slip-and-fall incident on April 11, 2013, Mr. Waldock's right knee muscle strength has weakened and he feels he has suffered a very severe setback in his recovery. The cast was removed about six weeks after the slip-and-fall incident and he now uses a knee brace extending from his thigh to his lower leg, ending just above the ankle.

Under cross-examination, Mr. Waldock testified that he had been teaching two courses at Nipissing University prior to his slip-and-fall accident in April 11, 2013. Since that time, and over the past year, he has now been teaching on a modified, reduced level of only one and a half courses. In summary, the slip-and-fall has had a huge impact. Problems in his hip have reduced his ability to spend time driving in the car due to the pain. He is now suffering greater levels of depression and anxiety.

Mrs. Cherie Waldock's testimony:

Cherie Christine Waldock has a Master's degree in social work. She testified that she has been married to Tom Waldock for 29 years. During that period of time, except for his annual canoe trip to Algonquin Park, they have only once been separated. The period of separation occurred

some nine to 10 years ago when she took a three-month sabbatical to study child care in London, England.

When they were living in Whitby she had a full-time position as a social worker and also assisted at the Peterborough dialysis unit. Since moving to Huntsville, she has suffered a significant loss in income.

She confirmed that her husband's general demeanor has changed. Previously he was a kind, considerate individual who was extremely active around the home and socially. Now, he is easily angered and has great difficulty accepting that others must do things for him that he was able to do prior to the accident. She finds that his concentration is now terrible and his memory seems to be failing. He does not sleep well. Prior to the accident, he was writing a new book, but is now unable to put any significant effort into that task.

She suspects that her husband falls more than he admits. She feels his health has been steadily declining since the slip-and-fall incident.

Dr. Khalid Syed's Testimony:

Dr. Syed is an orthopedic surgeon at the University Health Network's Toronto Western Hospital, with a special interest in Hip & Knee Arthroplasty & Ankle Surgery. He testified that he received a telephone call from Dr. Warren Latham, his former student, requesting an acceptance of transfer of Mr. Waldock from the Scarborough Grace Hospital to the Toronto Western Hospital so that Mr. Waldock could be treated by Dr. Syed. Dr. Syed was advised by Dr. Latham that Mr. Waldock had suffered very severe injuries to his right leg, his right tibial plateau, and the tibial shaft. Dr. Latham advised Dr. Syed that when Mr. Waldock arrived at the Scarborough Grace Hospital, he had been taken to the operating room where the wounds were washed out and an external fixator was applied to his right leg in an attempt to hold it out to length. Mr. Waldock was given antibiotics by intravenous to combat the infections. Dr. Latham requested that Dr. Syed take over the management of Mr. Waldock as he felt that Dr. Syed's more extensive experience was necessary.

Dr. Syed testified in detail regarding the treatment that he and Dr. Peter Brady, a Plastic Surgeon at the Toronto Western Hospital, provided to Mr. Waldock. However, I find that the importance of Dr. Syed's testimony lies in his comments that Mr. Waldock is facing significant risk of getting arthritis in his right knee, and that any infection in the right knee might pose a problem in the future.

Dr. Syed further stated that, "the injuries sustained by Mr. Waldock are very significant and will have a long lasting impact on his life and function in the future." He further opined that, "it can be said with some certainty that he will have long-term problems with his right leg as well as with his left leg which is acting as a compensator re-mechanism in the future."

Dr. Kliman's Assessment

Dr. Michael E. Kliman is a certified specialist in orthopedic surgery and on the staff of St. Joseph's Health Centre in the Division of Orthopedics, Department of Surgery, in Toronto. He assessed Mr. Waldock on December 3, 2009, reviewed the extensive medical file and provided a report to Mr. Waldock's counsel dated Decembers 3, 2011.⁵

He opined in his report that:

Over the years ahead, he will likely require knee replacement surgeries. The exact time frame is uncertain. The approximate range is 5 – 15 years, depending on the level of pain and disability related to his progressive knee arthritis. He is currently using a dynamic splint to try and increase his knee range of movement. I think it is unlikely that he will get more than 95° of knee flexion, even with these aggressive treatments.

When the dynamic splinting has ended, he will probably lose some knee mobility. He will probably be left with knee flexion between 80° and 90°. Because of progressive arthritis,

⁵ Exhibit 3-E, Tab 11.

his knee will likely stiffen further. His reduced knee movement will cause difficulties with many positionings. He will have difficulties sitting and getting up out of a low chair. He will have marked difficulties going up and down stairs. He will not be able to squat or kneel. These difficulties will be permanent and will likely progress over time. It is not certain that this man's fracture has fully consolidated beneath the hardware. It is also not certain that there is no latent osteomyelitis (bone infection) along his tibia. He may require further surgical treatment to debride his tibia if there is recurrent swelling, redness or drainage due to osteomyelitis.

At the request of Mr. Waldock's legal counsel, Dr. Kliman provided a further report on December 5, 2011, following his review of Dr. Syed's medical report. He opined that, "future knee replacement surgery is almost a certainty..." and:

Over the upcoming years, there is significant risk that his level of weight bearing activities and pain will affect his long-term work capabilities. Certainly, there will be marked, permanent limitations with regards to leisure activities and general life activities due to persistent pain, stiffness and reduced weight-bearing capabilities.

Dr. Zohar Waisman's Testimony:

Dr. Waisman conducted a psychiatry assessment of Mr. Waldock on April 14, 2010 as a part of the catastrophic impairment assessment being conducted by MDAC. To comply with the preamble to Chapter 14 of the American Medical Association ("AMA") *Guides*, he also interviewed Mrs. Cherie Waldock.

Dr. Waisman found that Mr. Waldock exhibited the following symptoms of mental and behavioural impairment:

1. Psychomotor slowing (moving slowly);
2. Difficulty expressing himself;
3. Tangential responses;
4. Attempts to present himself as better than he actually was;

5. Depression in the severe range, based on the Montgomery Ashberg Scale and the Hamilton Depression Scale;
6. Feelings of hopelessness;
7. Concern about his future, including his financial future, and the future of his family, wife and children;
8. Feeling demoralized.

Based on his assessment, Dr. Waisman provided a diagnosis of the DSM-IV⁶ medical conditions from which Mr. Waldock was suffering. He testified how, in his opinion, these conditions were a direct result of the accident. Dr. Waisman explained that in order to create a meaningful diagnosis, it is important to put any DSM-IV diagnosis in the context of the person's normal life, including their personality, who they are, and their interests. Employing that approach, Dr. Waisman concluded that Mr. Waldock satisfied conditions for the following DSM-IV diagnoses:

1. Major Depressive Disorder – Single Episode – Severe – (In his opinion, Mr. Waldock satisfied eight of the nine criteria for this diagnosis, as set forth below);
2. Pain Disorder associated with both psychological factors and a general medical condition (by satisfying, in his opinion, all of the five criteria for this diagnosis); and
3. Global Assessment of Functioning (“GAF”) score of 55.

Dr. Waisman testified that in his opinion, Mr. Waldock was suffering from the DSM-IV diagnoses of Major Depressive Disorder on the basis that he displayed all but one of the criteria required to make that diagnosis, including:

- a) Depressed mood;
- b) Loss of interest or pleasure;
- c) Depressed mood most of the day, nearly every day;
- d) Markedly diminished interest and pleasure in all, or almost all, activities most of the day, nearly every day;

⁶ Diagnostic and Statistical Manual of Mental Disorders, 4th edition.

- e) Weight loss followed by weight gain;
- f) Difficulty falling asleep and thereafter fragmented, non-productive/non-refreshing sleep;
- g) Psychomotor agitation or retardation (slowing);
- h) Fatigue, hopelessness and worthlessness, which Dr. Waisman equated with worthlessness;
- i) Difficulty with concentration.

Dr. Waisman also emphasized that in his opinion, there were no other factors, such as drug use, organic factors, or bereavement issues which account for Mr. Waldock's condition.

Dr. Waisman testified that these symptoms were causing clinically significant distress or impairment in social and occupational functioning, based on the history given to him by Mr. Waldock and Mrs. Waldock, as well as the information contained in the various medical reports, including the occupational therapy reports.

Dr. Waisman concluded that Mr. Waldock also satisfied the criteria for the DSM-IV diagnosis of "pain disorder associated with both psychological factors and general medical condition". Specifically, Mr. Waldock displayed all of the five criteria required for such a diagnosis. He testified that these criteria were exemplified by:

- a) Pain in one or more anatomical sites which is a predominant focus on presentation (Dr. Waisman felt that there was overwhelming evidence of this from all of the medical reports and from his own assessment);
- b) The pain causes clinically significant distress or impairment in social, occupational or other important areas of functioning;
- c) The psychological factors are judged to have an important role in the onset, severity, exacerbation or maintenance of the pain;⁷

⁷ Dr. Waisman explained that there was overwhelming evidence that the spectrum of chronic pain has developed into a psychiatric disorder as a result of Mr. Waldock's prolonged suffering and the development of clinical depression as a result of Mr. Waldock's unremitting pain.

- d) The symptoms or deficits were not intentionally reproduced – in other words, Mr. Waldock is not malingering;⁸ and
- e) Mr. Waldock’s pain cannot be attributed to any mood, anxiety or a psychotic disorder.⁹

As required by Chapter 14 of the 4th edition of the *AMA Guides*, Dr. Waisman also evaluated Mr. Waldock in regard to each of the four domains of functioning. He made the following findings with respect to Mr. Waldock’s mental and behavioral impairments that have arisen from the accident:

Domain 1: Activities of Daily Living

Dr. Waisman concluded that as a result of the accident, many of Mr. Waldock’s activities of daily living have been seriously compromised by his fluctuating mood, fatigue, pain and cognitive impairment. These activities included self-care, communication, irritability, sleep, sexual functioning, and motivation.

Dr. Waisman assessed this domain at the higher end of moderate impairment (Class 3).

Domain 2: Social Functioning

Dr. Waisman found that Mr. Waldock’s social functioning, since the accident, has been greatly compromised. Prior to the accident, he was a sociable person who engaged in hobbies that involved socialization: he was a professor who taught, he was actively engaged in research, and he performed administrative work and interacted with the students and staff. Since the accident, his social life has become largely non-existent. Due to Mr. Waldock’s reluctance to have people see the changes in him, he has also exhibited significant social withdrawal.

⁸ Dr. Waisman opined there was actually no evidence of malingering recorded by any of Mr. Waldock’s treating doctors or observed during his own assessment.

⁹ Dr. Waisman opined that Mr. Waldock’s pain was real, and arose from his injuries and not from some deep internal psychological conflict.

Dr. Waisman assessed this domain at the higher end of moderate impairment (Class 3), encroaching into a marked impairment (Class 4).

Domain 3: Concentration, Persistence, and Pace

Dr. Waisman found that Mr. Waldock displayed difficulties with attention during his assessment. He also found from the history given by Mr. Waldock and his wife, that Mr. Waldock was having problems maintaining his attention level in his teaching duties. Furthermore, he was unable to return to performing research due to his lack of ability to focus and devote the necessary and appropriate attention to the research.

Dr. Waisman assessed this domain at a moderate impairment level (Class 3).

Domain 4: Deterioration/Adaptation in Work or Work-like Settings

Dr. Waisman found that despite attempting to return to his regular duties as a professor at Nipissing University, Mr. Waldock was unable to fully participate in his normal duties as a professor. He had to cancel one course which he thought he would be able to teach over the summer immediately following the accident. He was unable to participate in his research duties or to produce research papers or publish. He was unable to continue in his administrative duties. Finally, rather than using his sabbatical for publishing, traveling, teaching or learning new skills, he used that time for rehabilitation.

Dr. Waisman assessed this domain at a moderate impairment level (Class 3).

Dr. Waisman opined that, in hindsight, with the benefit of his further experience gained while conducting over 100 assessments of this nature since he originally assessed Mr. Waldock, he would have likely assessed Mr. Waldock as suffering a “Marked Impairment” in at least one and possibly two of the four domains of functioning.

Dr. Waisman rated Mr. Waldock’s mental and behavioral impairments at 35% WPI.

Dr. Waisman attempted to convert the guidelines set out in considering Chapter 14 of the *AMA Guides*, and Table 3 of Chapter 4 of the *AMA Guides*, together with the *Desbiens v. Mordini* case, to calculate the assessed mental and behavioral impairments into the appropriate Catastrophic Impairment Rating (“CIR”) rating for the *Schedule*. Dr. Waisman opined that he found Mr. Waldock to be suffering from a CIR assessment of 35% from a mental and behavioral perspective.

Dr. Waisman explained that he took a balanced approach to establishing his impairment rating. In his testimony, he opined that there is an internal omission in the *AMA Guides*, in that it fails to explain whether an assessor should use Chapter 14 or Table 3 of Chapter 4, when assessing mental and behavioural disorders which are unrelated to a brain injury. Dr. Waisman explained that Table 3 alone could not be used, as that Table applies only to claimants who have a brain injury. In his opinion, Mr. Waldock does not have an apparent brain injury. The first paragraph of Chapter 4 of the *AMA Guides* states:

This Chapter provides criteria for evaluating permanent impairments resulting from dysfunction of the brain, brain stem, cranial nerves, spinal cord, nerve roots and peripheral nerves.

Dr. Waisman testified that due to this omission in the *Guides*, he considered both Table 3 in Chapter 4 of the *Guides* as well as Chapter 14 of the *Guides* to come up with an appropriate impairment rating.

Dr. Waisman testified that he had many criticisms of Dr. Cashman’s report, both in terms of the methodology used as well as the percentage WPI rating that Dr. Cashman applied. He pointed out that:

- Dr. Cashman did not interview Mrs. Waldock as a part of his assessment, contrary to s. 14.2 of the *AMA Guides*.
- Dr. Cashman did not appear to consider the four occupational therapy reports of Tenley Kelly, O.T.

- Dr. Cashman disregarded all of Mr. Waldock's numerous concerns and complaints, by concluding that these were symptoms all related to pain and, as such, he could not assess the score for pain.
- Dr. Cashman failed to assign a category of impairment to Mr. Waldock with respect to each injury.
- Dr. Cashman failed to apply the *AMA Guides* by failing to consider the four domains of functioning as outlined in the *Guides*.
- Dr. Cashman provided a percentage WPI rating of impairment, without providing any explanation of how he arrived at that figure.
- Dr. Cashman found that Mr. Waldock was depressed, but he failed to offer a diagnosis of that condition or explain why he believed that a diagnosis of pain disorder would not be appropriate in the circumstances.
- Dr. Cashman saw Mr. Waldock's condition as worsening, yet he failed to take that into account in his final report.
- Dr. Cashman failed to make a diagnosis of Mr. Waldock's condition. Instead he attempted to dismiss the psychiatric diagnoses of other assessors as "labeling" Mr. Waldock. Dr. Waisman opined that he could not understand these comments because Dr. Cashman's role in the Assessment process was specifically to determine what diagnoses would apply to Mr. Waldock's impairments, and thereafter apply an impairment rating to those impairments.
- Dr. Cashman's report did not support his own conclusion. For example, Dr. Cashman performed the Beck Depression inventory which revealed to him that Mr. Waldock scored in the "severe" range for depression. Using the *AMA Guides*, a severe depression rating would be between 31 to 40%. Instead, Dr. Cashman applied a 10% WPI, without explanation of how he arrived at that figure. In addition, a 10% WPI would correspond to a "mild" level of depression, which is completely contrary to Dr. Cashman's own test results and findings.
- It is unknown whether Dr. Cashman was using Table 3 of Chapter 4 of the *AMA Guides* or Chapter 14 of the *Guides* to come to his WPI rating. Dr. Waisman could not tell which approach Dr. Cashman used or if he used the *AMA Guides* at all, as Dr. Cashman did not indicate whether he was using either of these chapters.

- Dr. Cashman's assessment would correlate to a "mild" impairment. However, Dr. Waisman absolutely disagreed that Mr. Waldock's impairments should be classified as mild, based on all of the medical evidence, his own assessment, and Dr. Cashman's own report, testing and description of symptoms.

Dr. Cashman did not appear as a witness in this matter. Consequently, I find his reports are untested and present less credible evidence than that of Dr. Waisman and his colleagues.

I find that the testimony of Mr. and Mrs. Waldock is consistent with and supports Dr. Waisman's findings and conclusion that Mr. Waldock had at least a moderate impairment under all four domains of functioning, and a WPI of 35% for mental and behavioural impairments.

Dr. Arthur Ameis' Testimony:

Dr. Ameis is a medical doctor who specializes in physiatry. Physiatry is defined as physical medicine and rehabilitation that deals with the evaluation and treatment of patients whose functional abilities have been impaired as a result of injuries or diseases such as stroke, neuromuscular disorders, musculoskeletal disorders, cardiopulmonary diseases, arthritis, peripheral vascular disease, cerebral palsy, etc. The physiatrist's goal is to help people improve their functional capabilities through medical treatment and organizing and integrating the program of rehabilitation therapy. In addition to his physiatry practice, Dr. Ameis is also a medical advisor to Granite Health Solutions and MDAC, where he is the Medical Director. State Farm approved the OCF-22 submitted by MDAC to undertake the physiatry and psychiatric evaluations in order to determine the extent of impairment sustained as a result of the accident.

Dr. Ameis testified that he acted as the Case Co-ordinator and reviewed the multidisciplinary assessments that were carried out by Dr. Waisman and Dr. Meikle as they pertain to the *AMA Guides*, 4th edition, and then applied the findings to the applicable *Schedule*, in order to determine if the findings were indicative of a catastrophic impairment.

In his report, dated July 5, 2010, Dr. Ameis stated:

The *Schedule*¹⁰ offers eight catastrophic impairment criteria, as described within Clauses (a) through (g), with Clause (e) having two sub-clauses, (i) and (ii).

Given Mr. Waldock's combination of accident induced physical and psychiatric impairments, Clause (f) of the Catastrophic Impairment criteria is most applicable as a means of integrating both psychological and physical impairments.

Clause (f) stipulates that when the traumatic impairments are applied to the *AMA Guides*, 4th edition, the combined score must meet or exceed 55% Whole Person Impairment. Triers of Fact have established that an impairment score can be assigned to accident-induced psychological impairment by analogous use of the Chapter 4 guidelines.

According to the pertinent *Schedule*, Clause (f) is not applicable prior to two years after onset, unless clinical stability has been achieved. The accident in question occurred more than two years ago, and therefore, according to the *Schedule*, Clause (f) is applicable at this time.

In his report, Dr. Ameis referred to the reports of Dr. Meikle and Dr. Waisman for their individual scope of practice Clause (f) impairment rating calculations. He pointed out that Dr. Meikle determined that Mr. Waldock's accident induced physical impairments corresponded to a 21% or 32% WPI, the distinction depending upon legal rather than medical considerations: current findings would lead to the former score while the inevitable progression of post-traumatic arthritis in this case would lead to the higher score [his emphasis]. Since the purpose of the Catastrophic Impairment designation is to ensure access to additional funding for individuals with particularly severe injuries, and since such injuries tend to have a natural history of progression, he opined it would appear more reasonable and practical to consider inevitable deterioration within the determination process.

¹⁰ Dr. Ameis used the term 'SABS' in his report, referring to the Statutory Accident Benefits Schedule (i.e., the "*Schedule*"). For consistency in my decision, I have used the word "*Schedule*".

He stated that Dr. Waisman had determined that a 35% rating is applicable for psychiatric impairment.

Continuing in his report, Dr. Ameis stated:

The combination of psychiatric (35% WPI) and physical (21% WPI) impairment ratings results in a final 49% WPI, which would round to 50% WPI.

If Dr. Waisman's 32% WPI physical impairment rating were to be used instead, the result would be 56% WPI.

At present, Mr. Waldock does not have a catastrophic impairment. However, it is inevitable that he will deteriorate so as to eventually meet and then exceed the catastrophic impairment threshold set out under Clause (f) of the applicable *Schedule*.

I find that the report and testimony of Dr. Ameis are compelling and that a minimum WPI rating of 55% would be appropriate.

In his letter of January 13, 2012 to counsel for Mr. Waldock, Mr. Eric J. Hey, Claims Representative for State Farm, stated:

Thank you for your correspondence of January 11, 2012. We have reviewed our S 44 Assessment reports, copies were provided to you previously, and note that if f) and g) were combined the WPI would be 42%. We have also reviewed your S 25 cat assessment report dated July 5, 2010 and further note that at the time of that assessment, the assessors concluded Mr. Waldock had a 49% WPI but if they assumed physical deterioration in future but no change in the psychological status, they were able to reach 56% WPI. Our position regarding impairment therefore, remains as outlined in our OCF-9 dated January 27, 2011.

Unfortunately, Mr. Hey was not called as a witness, thus I find this letter somewhat confusing, for at one point State Farm was accepting that Mr. Waldock has a 49% WPI, then stating that Mr. Waldock's assessors stated, "they were able to reach 56% WPI".¹¹

¹¹ State Farm stated in its OCF-9, dated January 27, 2011 that it was denying that Mr. Waldock had suffered a catastrophic impairment, based on the reports from Dr. Platnick, Dr. Cashman, Dr. French, and Mr. Gauthier, and summarized in the report dated January 14, 2011 from IRSI.

State Farm's Assessors:

Following the receipt of the OCF-1 (dated May 20, 2008), State Farm arranged for Ms. Heather Condello, an Occupational Therapist employed by Complex Injury Rehab Inc., to conduct an in-home assessment of Mr. Waldock at his home in Whitby.¹² This assessment took place on June 16, 2008.

Ms. Condello referred Mr. Waldock to Inter-Action Rehabilitation Inc. for a Physiotherapy assessment. Mr. Waldock participated in in-clinic physiotherapy assessments on August 5 and 14, 2008. A copy of their report dated August 21, 2008 was forwarded to Dr. Robert Paulovic, Mr. Waldock's family physician, at the Taunton Health Centre in Oshawa. The report¹³ does not indicate its author.

On September 5, 2008, Ms. Condello conducted a reassessment of Mr. Waldock at his home in Whitby. Her report,¹⁴ dated September 13, 2008, was forwarded to State Farm.

On December 11, 2008, Ms. Condello provided a report to State Farm providing an update on Mr. Waldock's therapy treatments. She indicated this would be her last report as Mr. Waldock was moving from his then home in Whitby to a residence in Huntsville that would allow him to be closer to his work as a professor at Nipissing University (Muskoka Campus in Bracebridge).

I do not find it necessary to list the various treatment plans (OCF-18) that were submitted to State Farm, some of which were approved in part, or in totality. State Farm initially appeared to be quite diligent in responding to Mr. Waldock's accident benefit claims.

The parties have agreed that for the purposes of the physical impairments, Mr. Waldock's physical impairments shall be assessed at between 32% Whole Person Impairment ("WPI") and 36% WPI, based on the medical and occupational therapy assessments.

¹² Exhibit 3-D, Tab 7.

¹³ Exhibit 3-D, Tab 7.

¹⁴ Exhibit 3-D, Tab 7.

Dr. Cashman's Report:

State Farm submitted Dr. Frank E. Cashman's report, in lieu of his live testimony. The relevant points are as follows.

Dr. Frank E. Cashman is a psychiatrist and Staff Physician at St. Michael's Hospital, and the Clinical Director of Psychiatry at St. Michael's Hospital. State Farm requested that Dr. Cashman undertake an independent medical evaluation of Mr. Waldock. Dr. Cashman assessed Mr. Waldock on November 17, 2010. He also reviewed all of Mr. Waldock's medical documentation to date provided by State Farm. In his report to State Farm, Dr. Cashman provided a very thorough overview of Mr. Waldock's accident and the post-accident history.

Dr. Cashman reported that while Dr. Waisman had reported that Mr. Waldock had difficulty with his concentration and attention, Dr. Cashman did not observe this difficulty during his assessment of Mr. Waldock. Dr. Cashman reported that on the Beck Depressive Inventory scale, Mr. Waldock scored 35 – an indication of the presence of severe pain. On the Fear Questionnaire, Mr. Waldock scored 37/40 on the Agoraphobic subscale, and 18/40 on the Social Phobia subscale – both as a result of Mr. Waldock's difficulty leaving his home and being with others and from his fear of being alone without the aid of his wife or someone else. Dr. Cashman reported that Mr. Waldock:

Presented an intelligent, accomplished man who, before his accident, led an unusually active life. The accident changed his life. He is no longer able to do most of the physical activities that he participated in before the accident. He reported that his career was limited by the accident. He is now able to teach, but not to participate in all of the activities that are required of him as an academic and specialist in children's rights. He does continue to teach, but he feels his pain restricts him from functioning in all the other areas of his professional role (which are research and administration), in the same way that he did before the accident.

Dr. Cashman noted that while Dr. Waisman reported that the psychiatric impairment rating was in the 35% range, Dr. Cashman opined his disagreement with this. In his opinion, Mr. Waldock is depressed, but the primary issues are his pain and the impairment that has resulted from his injury.

Dr. Cashman reported that from a psychiatric perspective, in his opinion, Mr. Waldock does not fulfill the (f) or (g) criterion outlined in the criteria for a Catastrophic Impairment. In his report, Dr. Cashman opined that there is evidence for a 10% permanent impairment due to Psychiatric illness.

Catastrophic Impairment

The Law – the Relevant Threshold Regarding Mental and Behavioural Impairments/Disorders

Under the *Schedule*, section 2(1), “impairment” is defined as “a loss or abnormality of the psychological, physiological or anatomical structure or function”.

“Catastrophic impairment” is defined in section 1.2 of the *Schedule* which states, in part for the purposes of this regulation, a catastrophic impairment caused by an accident that occurs after September 30, 2003 is,

(f) subject to subsections (1.4), (2.1) and (3), an impairment or combination of impairments that, in accordance with the American Medical Association’s *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993, results in 55 per cent or more impairment of the whole person; or

(g) subject to subsections (1.4), (2.1) and (3), an impairment that, in accordance with the American Medical Association’s *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993, results in a class 4 impairment (marked impairment) or class 5 impairment (extreme impairment) due to mental or behavioral disorder.

As the *Schedule* incorporates the AMA’s *Guides*, a brief discussion of the *Guides* is in order.

The *Guides* consider four assessments of functional abilities, when assessing the severity of mental and behavioural impairments. The four assessments are:

1. activities of daily living;
2. social functioning;

3. concentration, persistence and pace; and,
4. deterioration or decompensation in work or work like settings (sometimes referred to as “adaptation”).

Also, independence, appropriateness, and effectiveness of activities must be considered.

The Table at page 301 of the *Guides* provides a guide for “rating mental impairment in each of the four areas of functional limitation on a five-category scale that ranges from no impairment to extreme impairment.” The following are recommended by the *Guides* as anchors for the categories of the scale:¹⁵

“None”	means no impairment is noted in the function
“Mild”	implies that any discerned impairment is compatible with most useful functioning
“Moderate”	means that the identified impairments are compatible with some but not all useful functioning
“Marked”	is a level of impairment that significantly impedes useful functioning
“Extreme”	means that the impairment or limitation is not compatible with useful function (i.e., impairment levels preclude useful functioning)
	this implies complete dependency on another person for care
	in the sphere of social functioning, it implies no meaningful contact, such as in a catatonic state
	in the sphere of concentration, persistence and pace, it means that the person cannot perform any productive task at all
	in the sphere of adaptation, it means that the person cannot tolerate any changes at all to their environment or routine and that the person may completely break down when there are even minor changes. The appeal level of FSCO has ruled in <i>Pastore</i> ¹⁶ that a rating of marked or extreme impairment in any one or more of these four areas of

¹⁵ See pages 300-301 of the *Guides*.

¹⁶ *Aviva Canada Inc. and Pastore* (FSCO appeal P09-00008, December 22, 2009).

function is sufficient to qualify as a catastrophic impairment.

In the case of *M.R. v. Gore Mutual*,¹⁷ Arbitrator Feldman outlined the role of the Arbitrator in assessing the level of mental and behavioural impairment suffered by a claimant. Arbitrator Feldman stated:

I must consider each of the four areas of function, and based upon all of the evidence before me, decide for each area function the degree to which the applicants functioning has been impaired as a result of his mental or behavioral disorders.

In that particular case, Arbitrator Feldman found that the only assessor in the insurer's assessment team, Dr. Shapiro, "did not follow the procedures mandated in the *Guides*. He did not obtain all necessary and relevant medical documentation so that he had a complete and accurate understanding of the history of this case. He did not separately analyze each sphere of function and give examples of where the applicant has demonstrated ability or disability in each area."

I find that Arbitrator Feldman's analysis regarding the shortcomings of Dr. Shapiro is very similar to this matter before me. As Dr. Waisman pointed out, Dr. Cashman's assessment was deficient in several areas. As earlier stated, I find that these deficiencies fail to support the position of State Farm in refusing to accept the assessment that Mr. Waldock is catastrophically impaired. During cross-examination of Dr. Waisman, counsel for State Farm, perhaps inadvertently, emphasized that Dr. Cashman's assessments did not follow the requirements of the *Schedule* and the *AMA Guides*. Thus, I find I must give a little weight to Dr. Cashman's assessments (as expressed in his written report), for there is no evidence offered by the insurer to contradict Dr. Waisman's evidence.

While it is the responsibility of an Applicant to prove his or her case in any proceeding, I find that a Respondent cannot merely rely on untested statements to refute an Applicant's case.

¹⁷ *M.R. v. Gore Mutual Insurance Co.*, [2010] FSCO D.149.

I find that the assessment for catastrophic impairment prepared by MDAC in its report dated July 5, 2010 persuades me that Mr. Waldock has indeed suffered a catastrophic impairment as a result of the March 25, 2008 accident. Thus, it is not necessary for me to consider the later catastrophic impairment assessment completed by Omega Medical, dated July 5, 2010.

I find that Mr. Waldock's treatment and rehabilitation process has been slow with, as he described, some setbacks, in spite of his aggressive attempts to overcome these physical inabilities. His abilities will never be restored to a level anywhere near what he enjoyed before the accident. Unfortunately, I find that he must accept that he will endure these present limitations, and even more limitations in the future.

Further, I find that the slip-and-fall accident suffered by Mr. Waldock in April 2013 can be taken as proof that the opinion of MDAC is valid. In my mind, there is no doubt that that this subsequent accident, causing a fracture in the femur, was a direct result of the injuries Mr. Waldock suffered on March 25, 2008, and the inability of Mr. Waldock's body to completely heal.

Mr. Waldock's counsel referred me to *Kusnierz v. Economical Mutual*.¹⁸ In that matter, there were two issues to be determined by the Court of Appeal.¹⁹ MacPherson, J.A., in a unanimous decision, adopted Spiegel J.'s analysis in *Desbiens*. In summary, Spiegel J., stated:

- the text of the regulation itself indicates that the drafters clearly intended the definition of "catastrophic impairment" to be inclusive rather than restrictive.
- The definition of "impairment"... is extremely broad. Indeed it is difficult to conceive of a more inclusive definition.
- Secondly, Clause (f) ensures that persons who do not suffer any of the specific injuries or conditions described in the other Clauses of ss. 5(1), but nevertheless have an impairment, or a combination of impairments, that is so severe that they are amongst those with the greatest need for health care are able to recover the expenses of that health

¹⁸ *Robert Kusnierz v. The Economical Mutual Insurance Company*, ONCA 823, December 23, 2011.

¹⁹ "The issues are: (1) did the trial judge err by concluding that the SABS do not permit an assessor to assign a whole body impairment percentage value to Chapter 14 mental and behavioral impairments in order to determine whether they, in combination with physical impairments, result in a 55% whole person impairment constituting a catastrophic impairment under 2(1.1)(f). And, (2) if the answer to Question (1) 'No', then did the trial judge err by concluding that Mr. Kusnierz's physical injuries did not result in whole person impairment of 55 per cent, and therefore did not constitute a catastrophic impairment under 2(1.1)(f) of the SABS?"

care. In effect, the Legislature, with Clause (f), included a catch-all provision for the benefit of those who were likely in the greatest need of healthcare.

- Thirdly, in order to ensure that no impairments were overlooked in determining whether the requirements of Clause (f) and (g) were met, the analogous impairment provision, s. 5(3)²⁰ was included. This provision comes into play where an impairment is sustained that is not listed in the *Guides*.
- Fourthly, there is nothing in the text of the regulation that suggests that a combination of physiological and psychological impairments is not permitted. Indeed Clause (f) permits any combination of impairments, both physical and psychological. The only requirement is that these impairments must result in a 55% WPI “in accordance with the” *Guides*. While the definition in Clause (g) does not include mild or moderate psychological impairments, there is nothing in the regulation that prohibits such impairments from being considered under Clause (f). If the intention were to exclude psychological impairments from Clause (f), the insertion of the word “psychological” before the word “impairment[s]” would easily have achieved that purpose. [Emphasis in original.]

I find that the evidence of both Mr. and Mrs. Waldock confirmed that Mr. Waldock had at least a moderate impairment under all four domains of functioning and this is also consistent with Dr. Waisman’s findings. I find that Mr. Waldock’s current WPI rating is, at minimum, 55%, which deems him to be considered as catastrophically impaired, within the meaning of section 2(1.2)(f) and (g) of the *Schedule*. Further, Dr. Waisman’s opinion that, today, after conducting many more assessments since his last assessment of Mr. Waldock, he would have rated Mr. Waldock, in two of the four categories, as markedly impaired, is compelling. This persuades me that a WPI rating of 55% will be surpassed in the future and confirms my opinion that Mr. Waldock is currently definitely catastrophically impaired.

EXPENSES:

The parties’ entitlement to their expenses is deferred to be considered by the Arbitrator at the Arbitration hearing in this matter.

²⁰ Compare *Schedule* s. 2(3).

Knox M. Henry
Arbitrator

November 10, 2014
Date



FSCO A13-001725

BETWEEN:

THOMAS WALDOCK

Applicant

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Mr. Waldock's injuries do constitute a "catastrophic impairment" within the meaning of section 2(1.2) (f) and (g) of the *Schedule*.
2. The parties' entitlement to their expenses is deferred for consideration by the Arbitrator at the Arbitration hearing in this matter.

Knox M. Henry
Arbitrator

November 10, 2014
Date