

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: DAVID BLOW, Plaintiff

AND:

BRYON BRETHET, HURONIA INSURANCE GROUP LTD., and THE
DOMINION OF CANADA GENERAL INSURANCE COMPANY, Defendants

BEFORE: THE HON. MR. JUSTICE J.R. McISAAC

COUNSEL: P.J. Daffern, Counsel for the Plaintiff

D.R. Service, Counsel for the Defendants, Bryon Brethet and Huronia Insurance
Group Ltd.

HEARD: By written submissions

COSTS ENDORSEMENT

- [1] The plaintiff is seeking a costs award of approximately \$64,000 in a case where he was awarded \$21,218.72, including pre-judgment interest. The action was begun in May 2009, under the *Simplified Procedure*. The trial took place over three days in May 2010, some four months after the monetary jurisdiction of the Small Claims Court was increased to \$25,000.
- [2] In my view, given the principle issue having been one of pure credibility, I am of the view that this is a case that cried out for immediate removal to the Small Claims Court as of January 2010. It was inevitable that the amount claimed for the damaged trailer would be reduced from the agreed valuation of \$25,000 by the salvage amount of \$6,800 resulting in a net award of \$18,500. In addition, the loss of income claim of \$2,400 was doomed to failure in the absence of any basis to justify the plaintiff's claim for income replacement of \$600 per day. That left a claim of approximately \$5,000 for towing and storage charges. This puts the net reasonable claim well below the \$25,000 limit of the Small Claims Court.
- [3] The defendants have asked that I exercise my discretion to award no costs to the plaintiff pursuant to rule 57.05(1) in light of this limited success. I am not prepared to make such a draconian disposition given the fact this trial lasted three days. However, given the need to arrive at a "fair and reasonable" disposition in light of the factors catalogued in

rule 57.01(1), in particular, the amount recovered by the plaintiff, I award him costs in the fixed amount of \$6,000 inclusive of disbursements and HST.

McISAAC J.

Date: November 17, 2010