

Case Name:

**McNaughton Automotive Ltd. v. Co-operators General Insurance
Co.**

Between

**McNaughton Automotive Limited, Applicant/Appellant, and
Co-operators General Insurance Company, Respondent/Respondent,
Proceeding under the Class Proceedings Act, 1992, S.O. 1992,
c. 6.**

[2009] O.J. No. 3240

2009 ONCA 598

75 C.P.C. (6th) 1

76 C.C.L.I. (4th) 56

255 O.A.C. 362

2009 CarswellOnt 4443

179 A.C.W.S (3d) 779

Docket: M34895 (C40376)

Ontario Court of Appeal
Toronto, Ontario

J.I. Laskin, J.M. Simmons and R.P. Armstrong JJ.A.

Heard: February 14 and 15, 2008.

Judgment: July 23, 2009.

(40 paras.)

*Civil litigation -- Civil procedure -- Parties -- Class or representative actions -- Procedure -- Costs
-- Assessment or fixing of costs -- Considerations -- Particular circumstances -- Interlocutory
proceedings -- Determination of costs -- Insurers, successful in defending consolidated motion by*

plaintiffs in 37 class proceedings for leave to appeal from costs orders, were awarded \$141,645 of \$345,349 in costs sought for the motion -- Although insurers were successful and underlying action was of significant importance to them, bills submitted were excessive for two-day motion where ultimate issue was whether plaintiffs met test for leave to appeal.

Determination of costs payable following 42 unsuccessful applications by the plaintiffs and the Law Foundation of Ontario for leave to appeal from costs orders arising from 37 class proceedings. The costs orders were imposed following several successful preliminary motions by the defendant insurers. Most were on a partial indemnity scale, save for motions where the insurers established that the plaintiffs had persisted with unsubstantiated allegations of fraud. Substantial indemnity costs were ordered in relation to these motions. The 42 motions for leave to appeal were consolidated into a single court proceeding. The plaintiffs and Law Foundation submitted that the motions judge, in awarding costs to the insurers, erred in principle by failing to consider the underlying goals of class action legislation, by failing to properly consider the relevant legislation and rules and by awarding certain costs on a substantial indemnity scale. The consolidated motion for leave to appeal was heard over two days and dismissed. The insurers submitted 19 separate bills of costs, totaling \$345,349. Each individual insurer filed a bill of costs based on the application of rates times hours docketed. The plaintiffs submitted that the appropriate total award was \$69,500, arguing that the Foundation had prepared the motion materials, the issues had already been researched and argued and were similar for all the insurers, and did not involve the merits of the cases.

HELD: The insurers were awarded total costs of \$141,645. Although the insurers were successful in the motion in actions that were of significant importance to them, their bills of costs were excessive given that they were arguing a short motion in which the ultimate issue was whether the test for leave to appeal had been met. The discrepancies between the bills of costs submitted by different insurers were too great, in the court's opinion. Counsel for the insurers should have taken a step back and reviewed the bills they submitted in the context of the motion rather than simply billing on a rates times hours docketed basis. The two insurers that took the lead in defending the motion were entitled to greater costs than the other insurers, but their bills of costs were nonetheless reduced by approximately fifty percent to arrive at more reasonable figures. Each of the two lead insurers was entitled to \$25,000 in costs. Other insurers were each awarded between \$4,000 and \$7,000 in costs, save for those insurers that had to address different issues.

Statutes, Regulations and Rules Cited:

Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 31(1)

Ontario Rules of Civil Procedure, Rule 20, Rule 21, Rule 57.01(1)

Appeal From:

An application for leave to appeal from the orders of Justice Roland J. Haines of the Superior Court of Justice dated January 19, 2005, September 16, 2005, and September 14, 2006, awarding costs to the respondents, with reasons reported at (2005) 74 O.R. (3d) 216 and 2005 CanLII 5865 (On S.C.), [2005] O.J. No. 179.

Counsel:

Kirk Baert, for the applicant/appellant.

Alan L.W. D'Silva and Adrian C. Lang, for the respondents The Economical Insurance Group and Liberty Mutual Insurance Company.

Kevin L. Ross and Ian F. Leach, for the respondents AXA Insurance (Canada), Allianz Insurance Company of Canada, The Personal Insurance Company of Canada, Trafalgar Insurance Company of Canada, Royal & SunAlliance Insurance Company of Canada, and Middlesex Mutual Insurance Co.

Howard B. Borlack and Lisa La Horey, for the respondent Zurich Canada.

Michael Eizenga and Matt Baer, for the respondents Co-operators General Insurance Company and The Guarantee Company of North America.

Annie M.K. Finn, for the respondents The Dominion of Canada General Insurance Company, The Wawanesa Mutual Insurance Company, Belair Insurance Company, and ING Halifax Insurance Company.

Kevin S. Adams, for the respondents Pilot Insurance Company and CGU Insurance Company of Canada.

Sheldon A. Gilbert, Q.C., for the respondent Allstate Insurance Company.

Theodore P. Charney, for the respondents Security National Insurance Company, Primmum Insurance Company (formerly known as Canada Life Casualty Insurance Company), Cosesco Insurance Company and TD General Insurance Company.

Catherine A. Bruder, for the respondent The Citadel General Assurance Company.

Deanna M. Stea, for the respondent York Fire & Casualty Insurance Company.

Jean-Marc Leclerc, for the respondent State Farm Insurance Company of Canada.

Russell M. Raikes and John D. Goudy, for the intervener the Law Foundation of Ontario.

COSTS RE MOTION FOR LEAVE TO APPEAL

The following judgment was delivered by

THE COURT:--

I. INTRODUCTION

1 The appellants (the "plaintiffs") and the Law Foundation of Ontario sought leave to appeal certain costs orders arising out of 37 class action proceedings. There were 42 motions for leave to appeal, which this court dismissed on August 29, 2008.

2 The Law Foundation and the respondents (the "insurers") filed written submissions in respect of the costs for the motions for leave to appeal.

II. BACKGROUND

3 Justice Haines of the Superior Court of Justice was designated as the case management judge for the 37 actions. The insurers brought several preliminary motions pursuant to Rules 20 and 21 of the *Rules of Civil Procedure*. The insurers succeeded in all of their motions and were awarded costs. Cross-motions by the plaintiffs to add or substitute another representative plaintiff in three of the actions were dismissed with costs in favour of the insurers. The motions judge's decisions on costs were limited to entitlement and scale. The assessment of costs in each action was adjourned to be considered at a future date.

4 The costs awards were on a partial indemnity scale, except for certain Rule 20 motions where the insurer showed that there was no genuine issue for trial relating to the limitation period and the plaintiffs had "persisted with unsubstantiated allegations of fraud, dishonesty and deceit". In the latter cases, the costs awards were on a substantial indemnity scale.

III. THE MOTIONS FOR LEAVE TO APPEAL THE COSTS AWARDS

5 There were 42 motions for leave to appeal, which were consolidated into a single proceeding in this court. See Schedule A for a list of the motions for leave to appeal.

6 The plaintiffs and the Law Foundation submitted that the motions judge, in awarding costs to the insurers, committed the following errors in principle:

- (i) the motions judge failed to give proper consideration to the underlying goals of the *Class Proceedings Act* (the "CPA");
- (ii) the motions judge failed to give proper consideration to the factors in s. 31(1) of the *CPA*;
- (iii) the motions judge failed to give proper consideration to the factors in rule 57.01(1) of the *Rules of Civil Procedure*;

- (iv) the motions judge erred in awarding costs on a sub-substantial indemnity scale in those summary judgment motions where the limitation period defence was successful; and
- (v) the motions judge erred in awarding costs on a sub-substantial indemnity scale in the *Japetco and Barash v. Allstate* proceeding.

7 We dismissed the consolidated motion for leave to appeal in respect of all of the alleged errors in principle.

IV. THE COSTS SUBMISSIONS IN RESPECT OF THE MOTION FOR LEAVE TO APPEAL

(a) The Insurers

8 The insurers seek costs on a partial indemnity scale. They have filed 19 separate bills of costs, which are summarized in Schedule B. The plaintiffs do not oppose awards of costs on a partial indemnity scale in favour of the insurers. However, the parties are far apart on the issue of quantum. The total award sought by all of the insurers is \$345,349.36. The plaintiffs submit that the appropriate total award is \$69,500.00. In support of their submission for costs, the insurers assert:

- (i) the motion for leave was without merit and costs should follow the event;
- (ii) the motion was complex and the issues were important, involving 42 motions consolidated into a single proceeding in the Court of Appeal and requiring several defence counsel and many insurers; and
- (iii) the insurers proceeded in a co-ordinated and cost-effective manner. In respect of the co-ordinated approach adopted by the insurers, they submit that they filed one joint factum and one counsel made the majority of the oral submissions on the leave application. Stikeman Elliott LLP, on behalf of Liberty Mutual Insurance Company and The Economical Insurance Company, took the lead in drafting the consolidated factum, preparing the brief of authorities, preparing and making oral submissions, and drafting the consolidated submissions in respect of costs of the motion for leave.

9 Stikeman Elliott filed two identical bills of costs for Economical Insurance and Liberty Mutual for a total claim of \$92,155.86. I am assuming that they simply took the total time docketed on the two files and divided by two. Stikeman Elliott employed four lawyers, five articling students, two law clerks and a librarian on these two files.

10 The insurers delegated Lerner's LLP to organize communications between the court and counsel, and among counsel in respect of administrative matters, including joint filings and submissions. Lerner's filed six bills of costs for six different insurance companies totalling \$106,831.65:

AXA Insurance (Canada)	\$17,547.24
Allianz Insurance Company of Canada	\$17,546.71
Royal & SunAlliance Insurance Company of Canada	\$17,322.54
Trafalgar Insurance Company of Canada	\$17,151.91
The Personal Insurance Company of Canada	\$17,299.96
Middlesex Mutual Insurance Co.	\$19,963.29

1 Leners employed two senior lawyers, two junior lawyers and a law clerk on each of the files. Each of the six bills of costs is very similar. Each bill represents approximately one-sixth of the total time docketed by the firm.

11 Gilbert, Wright & Kirby LLP, on behalf of Allstate Insurance Company, addressed distinct issues relating only to Allstate in the *Japetco and Barash v. Allstate* action and delivered its own factum and brief of authorities. It seeks costs in the amount of \$20,387.53 for services provided by two lawyers.

12 The remaining bills of costs for the insurers range from \$25,448.92 for Siskind, Cromarty, Ivey and Dowler LLP, on behalf of Co-operators General Insurance Company, and \$5,257.88 for Osler, Hoskin & Harcourt LLP, on behalf of State Farm Insurance Company of Canada. A summary of the bills of costs is contained in Schedule B.

(b) The Plaintiffs

13 Counsel for the Law Foundation filed a responding submission on its own behalf and on behalf of the plaintiffs. Counsel submits that the insurers' combined request for \$345,000.00 in costs for a two-day consolidated motion for leave is excessive and objectively unreasonable. In support of this position, he argues:

- (i) the Law Foundation prepared and organized all of the motion materials;
- (ii) the motion for leave to appeal involved issues already researched and argued before the motions judge, except for the test for leave to appeal;
- (iii) the issues were similar for all respondents except one, such that they were able to advance their arguments in one 30-page factum; and
- (iv) the issues on the leave motion did not involve the merits of the cases.

V. ANALYSIS

14 Much of the written submissions filed by the insurers related to their entitlement to costs. Counsel for the Law Foundation and the plaintiffs do not challenge the right of the insurers to a costs order in their favour. We agree that costs should follow the event and so there is no need to enter into an analysis of whether this is an appropriate case for a costs order. The issue is quantum and how much is too much. When it comes to costs, the question is rarely how much is too little.

15 In support of the quantum sought by the insurers, they submit that the complexity of the proceeding involving 42 motions consolidated into a single motion is a significant factor for the court to consider. There is no doubt that there was a major organizational component to the motion beyond what one would ordinarily anticipate. Unquestionably, it involved the co-operation of a number of law firms, which produced a great number of docketed hours by lawyers, law clerks and students. Also, given what was at stake for the insurers, in terms of the expense of defending these class actions, the orders for costs were important and significant to them.

16 The insurers submit that since they have proceeded in a co-ordinated and cost-effective manner, the bills of costs produced as a result of this effort are fair and reasonable and ought to be recoverable without substantial amendment or reduction.

17 We have two problems with the bills of costs submitted by the insurers. First, each of the bills of costs filed by the individual insurers is based on the application of rates times hours docketed. There is no effort to step back and take an objective look at what is produced by the application of simple multiplication.

18 Second, the kind of complexity which is present in this case is not related to either the facts or the law. The complexity arises because of the number of actions, motions and law firms. While the circumstances called for co-ordination and consolidation by the counsel for the insurers, for which they are to be commended, the complexity that needed to be addressed was essentially procedural as opposed to factual and legal. The task at hand was how to deal with 42 motions for leave to appeal in a sensible and efficient manner. We accept that counsel for all parties did an exceptional job. The task for the court was simplified. Due to an enormous amount of work, the grounds of appeal were succinctly articulated. The relevant cases were cited and the arguments on both sides were advanced with clarity. That said, one has to bear in mind that the insurers were responding to a two-day motion for leave to appeal in which the ultimate issue was whether the test for leave to appeal costs had been met.

19 In *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), this court made it clear that while it is appropriate to consider the calculation of hours times rates in assessing a bill of costs, it is not the governing factor. At para. 24 of *Boucher*, the court said:

... it is also necessary to step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable. This approach was sanctioned by this court in *Zesta Engineering Ltd. v. Cloutier*, [2002] O.J. No. 4495, 21 C.C.E.L. (3d) 161 (C.A.) at para. 4 where it said:

In our view, the costs award should reflect more what the court views as a fair and reasonable amount that should be paid by the unsuccessful parties rather than any exact measure of the actual costs to the successful litigant.

20 We turn to the individual bills of costs with the above direction in mind. However, we must say at the outset that this task is not easy. While the insurers presented a united front in their response to the motion for leave to appeal the costs awards, there is no unanimity in respect of the quantum of costs, which they individually seek. As indicated above, the range of costs sought here is "all over the map".

21 It is expected that Stikeman Elliott's and Lerner's bills of costs on behalf of their respective clients would be greater than the others, given their different roles on the leave motion. As far as the remaining bills are concerned, we would have thought that they would fall within a much narrower range. This is particularly so when, with one or two exceptions, the insurers took the same position and followed the lead of Stikeman Elliott. However, this is definitely not the case.

22 There are likely explanations for this, given the difference in seniority of some of the lawyers involved and the differing hourly rates that they have applied to their bills. Also, different lawyers have different work habits. Some work with only one other lawyer, while others use a team approach which inevitably increases the number of hours docketed. Some lawyers are more efficient than others. However, when the response to the motion is virtually the same for all and the position taken in oral argument was to have a single lawyer take the lead with other counsel providing a modest supporting role, it is not reasonable to assess the costs on a highly variable basis. While one would not expect the bills to be identical, the kind of fluctuation that one finds here does not make sense.

(a) Economical Insurance and Liberty Mutual - Stikeman Elliott

23 As already indicated, Stikeman Elliott filed identical bills of costs for these two insurers, which totalled \$92,155.86. The position of each of the two insurers on the motion for leave was identical. We recognize and accept that Stikeman Elliott took the lead in the argument of this case. However, we do not agree that responding to an application for leave to appeal at a cost of \$92,000

is fair and reasonable. As we have already said, the legal and factual issues were not complex. The complexity lay in the organization of the material to be presented to the court. Stikeman Elliott also had some assistance from Lerner in the necessary communications with other counsel.

24 The \$92,000 figure is the product of rates times hours. In our view, a fair and reasonable costs award would be \$50,000. In the result, we would fix the costs of Economical Insurance and Liberty Mutual at \$25,000 each inclusive of disbursements and GST.

(b) AXA, Allianz, Royal & SunAlliance, Trafalgar, The Personal Insurance Company and Middlesex Mutual - Lerner

25 The total claim for costs of the above six insurers is \$106,831.65. Five of the insurers have submitted bills that are roughly \$17,000 each. The sixth bill is for approximately \$20,000. In assessing the bills of these insurers, we bear in mind that Lerner took on the role of communicating with other counsel. That said, it does not put them in a similar position to Stikeman Elliott, even accounting for the fact that Stikeman Elliott acted for two insurers and Lerner for six. There must have been economies of scale in respect of the six. We can see no basis upon which Lerner's six clients should receive a costs award which is in excess of an award of costs for the clients of Stikeman Elliott given the greater role played by Stikeman Elliott. We do not mean to diminish the role played by Lerner. However, it is a simple fact that the role played by Stikeman Elliott was as lead counsel. There must be an element of proportionality in respect of Lerner's role when compared to that of Stikeman Elliott.

26 We conclude that a fair and reasonable costs award for the clients of Lerner would be a total \$24,000. In the result, each of the six insurers shall have their costs fixed at \$4,000 inclusive of disbursements and GST.

(c) Co-operators and The Guarantee Company of North America - Siskind, Cromarty, Ivey & Dowler

27 Counsel for Co-operators has filed a bill of costs for \$25,448.92. The same counsel submitted a bill of costs for \$16,997.15 on behalf of The Guarantee Company. The bills include services performed by a senior counsel and two junior counsel. The description of services in each bill is identical:

Review of and Revisions to Motion Materials, including Research; Telephone Conversations and Correspondence with Opposing Counsel, as well as Co-Counsel; Attendance at Case Management Conferences, Co-Counsel Meetings, and Court of Appeal Hearing.

2 The only real difference between the two bills, apart from a modest change in the hourly rate for the senior counsel, is the number of hours docketed.

28 Given the supporting role that counsel played on behalf of their clients, we cannot discern that it was much different from the role played by other counsel who have charged much less for similar services. While there were different issues addressed in respect of each of the two insurers, it is not clear to us why there is such a significant difference in the claims for costs between the two.

29 We conclude that a fair and reasonable award of costs is \$4,000 for each of Co-operators and The Guarantee Company inclusive of disbursements and GST.

(d) Allstate - Gilbert, Wright & Kirby

30 Counsel for Allstate submitted a bill of costs for \$20,387.53. As indicated above, counsel addressed distinct issues relating to Allstate in the *Japetco and Barash* action, particularly whether costs of the action on a substantial indemnity scale were appropriate. Allstate delivered its own factum and book of authorities. These are relevant considerations. However, we note that counsel still had the benefit of the general submissions made by lead counsel and the assistance of counsel co-ordinating communications.

31 We therefore award Allstate its costs fixed in the amount of \$10,000 inclusive of disbursements and GST.

(e) Zurich Canada - McCague Peacock Borlack McInnis & Lloyd LLP

32 Counsel for Zurich submitted a bill of costs for \$15,601.98. Counsel for Zurich also filed a separate factum on the leave motion concerning an issue raised in *Kerr v. Danier Leather Inc.*, [2007] 3 S.C.R. 331. As it turned out the *Danier Leather* case did not play a significant part in the motion for leave. In our view, the *Danier Leather* case issue does not provide a basis for an increase in the costs recoverable by Zurich Canada. We fix the costs of Zurich Canada at \$7,000 inclusive of disbursements and GST.

(f) Pilot Insurance Company and CGU Insurance Company of Canada - Rogers Partners LLP

33 Rogers Partners submitted a bill of costs for Pilot in the total amount of \$6,565.86, which includes the work of one lawyer with 9 years of experience. A second lawyer with 17 years of experience is credited with 0.2 hours on the file. There is also a small amount of time credited to a law clerk. We award costs in favour of Pilot Insurance in the amount of \$4,000 which includes disbursements and GST.

34 Rogers Partners submitted a bill of costs for CGU in the total amount of \$16,690.46. This includes services provided by five lawyers with experience of 6, 9, 15, 17 and 34 years. Most of the work appears to be done by the lawyer with 9 years of experience who appeared on the motion for leave in this court. We are unable to discern from reading the bills of costs of Pilot and CGU why much more work was required on the CGU file. Both bills of costs describe the services provided by the lawyers in generic terms. In each case, counsel played a supporting role on the motion for

leave to appeal. We assume that before oral argument in the Court of Appeal, there were issues that needed to be addressed in the CGU file that did not arise in the Pilot file. However, this is not apparent from the CGU bill of costs. We fix the costs for CGU in the amount of \$4,000 including disbursements and GST.

(g) The Dominion of Canada General Insurance Co., Belair Insurance Company Inc., ING Halifax Insurance Company and The Wawanesa Mutual Insurance Company - Fasken Martineau DuMoulin LLP

35 Fasken Martineau DuMoulin have filed a joint bill of costs on behalf of the above four insurers. The services were provided by two lawyers with 20 and 11 years of experience. Only the lawyer with 11 years of experience appeared on the motion for leave. The total claimed in the joint bill of costs is \$15,192.19. We would fix the costs of each of the four insurers in the amount of \$2,500 inclusive of disbursements and GST for a total of \$10,000.

(h) The Citadel General Assurance Company - Adair Morse LLP

36 Counsel for The Citadel General submitted a bill of costs for \$11,832.50, which covers the services provided by a lawyer with 14 years of experience. Given the supporting role played by counsel in the application, we would reduce the bill to \$7,000 and make a costs award in the aforesaid amount inclusive of disbursements and GST.

(i) Security National Insurance Company, Primum Insurance Company, Coseco Insurance Company and TD General Insurance Company - Falconer Charney LLP

37 Falconer Charney filed a joint bill of costs on behalf of the above four insurers in the amount of \$6,790.88. The services appear to have been provided by one lawyer. No disbursements are claimed. When the total of \$6,790.88 claimed in the bill of costs is divided by four, it works out to \$1,697.72 per insurer. We fix the costs of each of the four insurers in the aforesaid amount inclusive of GST.

(j) York Fire and Casualty Insurance Company - Dutton Brock LLP

38 Counsel for York Fire and Casualty submitted a bill of costs for \$5,596.50. The bill covers services provided by two lawyers with 23 and 6 years of experience. No disbursements are claimed. We make a costs award in favour of York Fire and Casualty in the aforesaid amount inclusive of GST.

(k) State Farm - Osler Hoskin & Harcourt LLP

39 State Farm submitted a bill of costs for \$5,257.88, which covers the services provided by a lawyer with 7 years experience and a senior law clerk. No disbursements are claimed. We make a costs award in the aforesaid amount inclusive of GST.

CONCLUSION

40 The total of the above awards is \$141,645.26. This is still a very large total award for a motion for leave to appeal. However, we believe that the individual amounts, which make up that total, are fair and reasonable.

J.I. LASKIN J.A.

J.M. SIMMONS J.A.

R.P. ARMSTRONG J.A.

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SCHEDULE "A"

**MOTIONS FOR LEAVE TO APPEAL COSTS WHERE APPEAL
AS OF RIGHT ALREADY PENDING**

Court file number **C-40376**

1. **McNAUGHTON AUTMOTIVE LIMITED, *Appellant* v. CO-OPERATORS
GENERAL INSURANCE COMPANY, *Respondent***

Court file number **C-40426**

2. **BOYD JOHNSTON, *Appellant* v. FEDERATION INSURANCE COMPANY
OF CANADA, *Respondent***

Court file number **C-40910**

3. **BOYD JOHNSTON, *Appellant* v. FEDERATION INSURANCE COMPANY
OF CANADA, *Respondent***

Court file number **C-40416**

4. **LAURIER DUCLOS, *Appellant* v. THE WAWANESA MUTUAL
INSURANCE COMPANY, *Respondent***

Court file number **C-40408**

5. **ANNE EMPKE**, *Appellant* v. **SECURITY NATIONAL INSURANCE COMPANY**, *Respondent*

Court file number **C-40894**

6. **ANNE EMPKE**, *Appellant* v. **SECURITY NATIONAL INSURANCE COMPANY**, *Respondent*

Court file number **C-40418**

7. **SHARON FARQUHAR**, *Appellant* v. **LIBERTY MUTUAL INSURANCE COMPANY**, *Respondent*

Court file number **C-40911**

8. **SHARON FARQUHAR**, *Appellant* v. **LIBERTY MUTUAL INSURANCE COMPANY**, *Respondent*

Court file number **C-40399**

9. **GIUSEPPE GIULIANO**, *Appellant* v. **ALLSTATE INSURANCE COMPANY**, *Respondent*

Court file number **C-41947**

10. **GIUSEPPE GIULIANO**, *Appellant* v. **ALLSTATE INSURANCE COMPANY**, *Respondent*

Court file number **C-40504**

11. **LEONARD GROSS and ILENE GROSS, Appellants v. THE GUARANTEE COMPANY OF NORTH AMERICA, Respondent**

Court file number **C-40508**

12. **KEVIN HAYNER, Appellant v. TRAFALGAR INSURANCE COMPANY OF CANADA, Respondent**

Court file number **C-40420**

13. **LORRI HORNICK, Appellant v. TD GENERAL INSURANCE COMPANY, Respondent**

Court file number **C-40409**

14. **EVELINE JAMES, Appellant v. AXA INSURANCE (CANADA), Respondent**

Court file number **C-42480**

15. **EVELINE JAMES, Appellant v. AXA INSURANCE (CANADA), Respondent**

Court file number **C-42478**

16. **JAPETCO CORPORATION and CHERYL BARASH, Appellant v. ALLSTATE INSURANCE COMPANY OF CANADA, Respondent**

Court file number **C-40407**

17. **GARY JORY, Appellant v. PRIMMUM INSURANCE COMPANY, Formerly known as CANADA LIFE CASUALTY INSURANCE COMPANY, Respondent**

Court file number **C-40895**

18. **GARY JORY**, *Appellant* v. **PRIMUM INSURANCE COMPANY**,
Formerly known as CANADA LIFE CASUALTY INSURANCE
COMPANY, *Respondent*

Court file number **C-40403**

19. **MARY ANN LUPSOR**, *Estate Trustee without a Will of the Estate of*
Earnest Eugene Lupsor, *Appellant* v. **MIDDLESEX MUTUAL INSURANCE**
CO., *Respondent*

Court file number **C-43715**

20. **MARY ANN LUPSOR**, *Estate Trustee without a Will of the Estate of*
Earnest Eugene Lupsor, *Appellant* v. **MIDDLESEX MUTUAL INSURANCE**
CO., *Respondent*

Court file number **C-40509**

21. **JOSEPH MARRA**, *Appellant* v. **THE PERSONAL INSURANCE**
COMPANY OF CANADA, *Respondent*

Court file number **C-40510**

22. **RENALDA MATTHEWS**, *Appellant* v. **BELAIR INSURANCE COMPANY**
INC., *Respondent*

Court file number **C-40419**

23. **WILLIAM McALISTER**, *Appellant* v. **PILOT INSURANCE COMPANY**,
Respondent

Court file number **C-40423**

24. **ROGER MORREEL**, *Appellant* v. **YORK FIRE & CASUALTY INSURANCE COMPANY**, *Respondent*

Court file number **C-40412**

25. **BETTY MROZINSKI**, *Appellant* v. **ALLIANZ INSURANCE COMPANY OF CANADA**, *Respondent*

Court file number **C-42476**

26. **BETTY MROZINSKI**, *Appellant* v. **ALLIANZ INSURANCE COMPANY OF CANADA**, *Respondent*

Court file number **C-40404**

27. **RYAN O'DONNELL**, *Appellant* v. **CAA INSURANCE COMPANY (ONTARIO)**, *Respondent*

Court file number **C-42477**

28. **RYAN O'DONNELL**, *Appellant* v. **CAA INSURANCE COMPANY (ONTARIO)**, *Respondent*

Court file number **C-40424**

29. **DAVID POLOWIN REAL ESTATE LTD.**, *Appellant* v. **THE DOMINION OF CANADA GENERAL INSURANCE COMPANY**, *Respondent*

Court file number **C-40506**

30. **JOHN ROSS**, *Appellant* v. **COSECO INSURANCE COMPANY**, *Respondent*

Court file number **C-40414**

31. **STEVEN JOHNSON**, *Appellant* v. **STATE FARM INSURANCE COMPANY OF CANADA**, *Respondent*

Court file number **C-40631**

32. **STEVEN JOHNSON**, *Appellant* v. **STATE FARM INSURANCE COMPANY OF CANADA**, *Respondent*

Court file number **C-40425**

33. **SANDY BIG CANOE**, *Appellant* v. **THE ECONOMICAL INSURANCE GROUP**, *Respondent*

Court file number **C-40413**

34. **PETER SEGNITZ**, *Appellant* v. **ROYAL & SUNALLIANCE INSURANCE COMPANY OF CANADA**, *Respondent*

Court file number **C-42146**

35. **PETER SEGNITZ**, *Appellant* v. **ROYAL & SUNALLIANCE INSURANCE COMPANY OF CANADA**, *Respondent*

Court file number **C-40417**

36. **A. GORDON SHAW**, *Appellant* v. **ZURICH CANADA**, *Respondent*

Court file number **C-42479**

37. **A. GORDON SHAW**, *Appellant* v. **ZURICH CANADA**, *Respondent*

Court file number **C-40402**

38. **GORDON VELEY**, *Appellant* v. **CGU INSURANCE COMPANY OF CANADA**, *Respondent*

Court file number **C-40428**

39. **THOMAS WHITE**, *Appellant* v. **THE CITADEL GENERAL INSURANCE COMPANY**, *Respondent*

Court file number **C-40405**

40. **ROBERT WOODS**, *Executor of the Estate of WAYNE ROBERT WOODS*, *Appellant* v. **ING HALIFAX**, *Respondent*

Court file number **C-40427**

41. **927417 ONTARIO INC.**, *Appellant* v. **OLD REPUBLIC INSURANCE COMPANY OF CANADA**, *Respondent*

MOTION FOR LEAVE TO APPEAL COSTS FOR WHICH THERE IS NO ACCOMPANYING APPEAL AS OF RIGHT

Court file number **M-33003**

42. **SHARON FARQUHAR**, *Appellant* v. **LIBERTY MUTUAL INSURANCE COMPANY**, *Respondent*

SCHEDULE "B"

**SUMMARY OF BILLS OF COSTS/COSTS OUTLINES OF THE
RESPONDENTS/DEFENDANTS**

Tab. No.	Law Firm	Client(s)	Amount (\$CDN)
1.	Stikeman Elliott LLP	The Economical Insurance Group	46,077.93
2.	Stikeman Elliott LLP	Liberty Mutual Insurance Company	46,077.93
3.	Siskinds, Cromarty, Ivey & Dowler LLP	The Co-Operators	25,448.92
4.	Siskinds, Cromarty, Ivey & Dowler LLP	The Guarantee Company of North America	16,997.15
5.	Osler Hoskin & Harcourt LLP	State Farm Insurance Company of Canada	5,257.88
6.	Adair Morse LLP	The Citadel General Assurance Company	11,832.50
7.	McCague Peacock Borlack McInnis & Lloyd LLP	Zurich Canada	15,601.98
8.	Dutton Brock LLP	York Fire & Casualty Insurance Company	5,596.50
9.	Falconer Charney Macklin LLP	Security National, T.D. General, Premium, Cosesco	6,790.88
10.	Gilbert, Wright & Kirby LLP	Allstate Insurance Company	20,387.53
11.	Fasken Martineau DuMoulin LLP	Dominion of Canada General Insurance Co., Belair Insurance Company Inc., ING Halifax Insurance Company, Wawanesa Mutual Insurance Company	15,192.19
12.	Lerners LLP	AXA Insurance (Canada)	17,547.24
13.	Lerners LLP	Allianz Insurance Company of Canada	17,546.71
14.	Lerners LLP	Royal & Sunalliance Insurance Company of Canada	17,322.54
15.	Lerners LLP	Trafalgar Insurance Company of Canada	17,151.91
16.	Lerners LLP	The Personal Insurance Company of Canada	17,299.96
17.	Lerners LLP	Middlesex Mutual Insurance Co.	19,963.29
18.	Rogers Partners LLP	Pilot Insurance Company	6,565.86
19.	Rogers Partners LLP	CGU Insurance Company of Canada	16,690.46
Total Costs of the Respondents/Defendants			345,349.36

cp/e/qlaim/qlmxb/qlced/qljyw/qlcal