

ONTARIO
SUPERIOR COURT OF JUSTICE
TORONTO SMALL CLAIMS COURT

B E T W E E N:

NAVEED SHEIKH

Plaintiff

– and –

SECURITY NATIONAL INSURANCE

Defendant

Transcribed Endorsement Record / Order of the Court

Representative of the Plaintiff: Mr. Rooz

Representative of the Defendant: Mr. Barnes

Event Type: Motion on notice

Date: December 11, 2014

The plaintiff moves essentially for partial judgment on the claim under Rule 12.02 on the basis that the defendant has not complied with Section 38 of the Statutory Benefits Schedule. The plaintiff claims that the failure of the defendant to comply with the section gives rise to the right to assert there is no reasonable defence. There appears to be no doubt that the plaintiff was injured in a motor vehicle accident and submitted claims for SAB to the defendant insurer. The response of the insured is found at Tab H to the exhibit list of the Affidavit of Aaron Wachna. In that letter the insurer declines to pay “for the medical reasons and all other reasons known as of the date of this notice as follows: *“Based on documentation on file to date, injures fall under the definition of a Minor Injury.”*”

The plaintiff submits this is a failure to comply with section 28(8) which provides that the insurer is to provide “*the medical reasons and all of the other reasons why the insured considers the any goods, services assessments and examinations ... not to be reasonable and necessary.*” The plaintiff relies on a decision of Arbitrator Sapin in **Augustin v. Unifund Assurance Company** for the proposition that the letter does comply with the compulsory requirements of Section 38. I am not persuaded at this

stage of the action that the letter fails to comply. It is certainly vague but does state that the decision is based on the documentation supplied and with which the plaintiff is obviously familiar.

The burden of proof that the plaintiff is entitled to coverage remains with the plaintiff. (See the decision of The Office of the Director of Arbitrations in ***Belair Insurance v. Scarlett***). There is no binding decision that compels me to find that at this stage of the action that there is no defence. In addition this would require bifurcation of the action which is not appropriate. Motion dismissed. Costs reserved.

Deputy Judge Christopher Ashby

Our file no. 2511724