

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

FRANK PLANTER

Plaintiff

-and-

ABC INSURANCE COMPANY

Defendant

PRE-TRIAL CONFERENCE BRIEF OF THE DEFENDANT

OVERVIEW

This action arises out of a motor vehicle accident that occurred on March 18, 2015 (“the accident”). The Plaintiff, Frank Planter, was a pedestrian at a cross-walk located near the intersection of Oxford Street and Richmond Avenue in London, Ontario. The Defendant, ABC Insurance Company, is the accident benefits insurer of the insured that was involved in the accident with the Plaintiff.

The Plaintiff issued a Statement of Claim against the Defendant and the accident benefits insurer, ABC Insurance Company.

ISSUES

The Plaintiff has commenced an action by way of Statement of Claim in the Ontario Superior Court of Justice, in the City of London. At issue in the Statement of Claim are the following benefits:

1. Attendant care benefits as follows:
 - a. March 18, 2016 to date and ongoing at the rate of \$6,496.68 per month less any amounts paid.

2. Housekeeping and home maintenance benefits at \$100.00 weekly from March 18, 2016 to date and ongoing less any amounts paid.
3. Medical and Rehabilitation benefits as follows:
 - a. \$1,978.55 for chiropractic, massage and physiotherapy services for a treatment plan dated July 13, 2016 from ABC Rehabilitation Clinic.
4. Interest.
5. Costs.

ATTENDANT CARE

The Plaintiff is claiming attendant care benefits from March 18, 2016 to date and ongoing at the rate of \$6,496.68 monthly.

The rate being claimed by the Plaintiff is based on Form 1 completed by John Doe. Further, it is important to note that ABC Insurance paid attendant care benefits to the Plaintiff at the non-catastrophic maximum of \$3,000.00 per month until August 15, 2016.

Attendant care benefits were then reduced to \$0.00 based on the Attendant Care Assessment conducted by Jane Doe, Occupational Therapist, on July 28, 2016 and dated August 1, 2016.

Further, the Plaintiff testified at his examination for discovery that he is able to dress and undress himself, wash and groom himself, make light meals and take his medication. He can leave the apartment on his own and go for a walk and sometimes does his own laundry.

Therefore, it is the position of ABC Insurance that the Plaintiff no longer requires attendant care assistance.

HOUSEKEEPING AND HOME MAINTENANCE

In his Statement of Claim, the Plaintiff is seeking housekeeping benefits from March 18, 2016 to present and ongoing less amounts paid. It is important to note that ABC Insurance completed a Multi-Disciplinary Insurer's Examination of the Plaintiff by a whole range of different physicians including physiatrist, neurologist, orthopedic surgeon, psychiatrist and occupational therapist. The assessors concluded that the Plaintiff did not meet the definition of catastrophic impairment as per *Statutory Accident Benefits Schedule* ("SABS").

It is the position of ABC Insurance that the Plaintiff is not entitled to housekeeping and home maintenance benefits.

MEDICAL AND REHABILITATION BENEFITS

In his Statement of Claim, the Plaintiff is seeking medical and rehabilitation benefits for the following Treatment Plan (OCF-18):

- i. \$1,978.55 for chiropractic, massage and physiotherapy services for a treatment plan dated July 13, 2016 from ABC Rehabilitation Clinic.

ABC Insurance scheduled an insurer's examination to determine whether the above Treatment Plan was reasonable and necessary. In his report, Dr. Jamie John (Chiropractor) noted that the proposed chiropractic, massage and physical therapy care was not considered reasonable or necessary. He reasoned his conclusion based on the fact that intensive therapy had been provided to the Plaintiff for 6 months and that the Plaintiff was able to perform active care independent of facility-based care. If anything, Dr. Jamie John indicated that independent active care will actually enhance the Plaintiff's independence and allow conditioning for household tasks and other activities of daily living.

Therefore, it is the position of ABC Insurance that the proposed Treatment Plan dated July 13, 2016 is not reasonable or necessary.