

**IN THE MATTER** of a loss transfer dispute between insurers pursuant to s. 275 of the *Insurance Act*, R.S.O. 1990, c. I.8 and Ontario Regulations 664 & 688/90 thereunder and the *Arbitration Act*, S.O. 1991, c.17;

**AND IN THE MATTER** of an Arbitration;

BETWEEN

INTACT INSURANCE COMPANY

Applicant

-and-

AIG INSURANCE COMPANY OF CANADA formerly CHARTIS  
INSURANCE  
COMPANY OF CANADA

Respondent

**DECISION**

**COUNSEL:**

Rohit Sethi and Sivan Bune for the Applicant

Michael Blinick for the Respondent

**ISSUE:**

1. Is Intact entitled to reimbursement from AIG for accident benefits paid to or on behalf of Mr. Ryan Main in the amount \$949,857.74?

**RESULT:**

1. Intact is entitled to reimbursement for accident benefits paid to or on behalf of Mr. Ryan Main in the amount of \$924,857.74 as a result of injuries suffered by Mr. Main in the accident of November 23<sup>rd</sup>, 2014.

**BACKGROUND:**

This matter arises out of a motor vehicle accident that occurred on November 23<sup>rd</sup>, 2014. At that time the vehicle Mr. Main was driving was insured by Intact and was struck by a heavy commercial vehicle insured by AIG. Pursuant to the Insurance Act of Ontario and the Statutory Accident Benefit Schedule ("SABS") as well as the Fault Determination Rules ("FDRS"), Intact paid accident benefits to or on behalf of Mr. Main including a full and final settlement of Mr. Main's claim.

The parties have agreed that pursuant to the loss transfer provisions of the Insurance Act and the regulation passed thereunder AIG is 100% at fault for the accident.

AIG previously challenged the reasonableness of the accident benefit payments made to or on behalf of Mr. Main. By way of a hearing held on July 30<sup>th</sup>, 2019, I held that the payment of \$50,000.00 for the non-catastrophic limits of the policy were

properly reimbursable to Intact as well as \$64,000.00 for income replacement benefits from 7 days post-accident until December 31<sup>st</sup>, 2017.

On the eve of a LAT hearing in this matter, Intact made a full and final settlement of the remainder of Mr. Main's claim (sometimes referred to in the industry as a "lump out") in the amount of \$900,000.00. Intact has made requests for reimbursement in the amount of \$949,857.74. AIG has taken the position that Intact had so grossly mishandled the claim that the amount claimed should not be reimbursed. That is the issue before me.

#### **THE LAW:**

The law in this area is quite clear and the parties are not in significant disagreement in this regard. The first party insurer is expected to act reasonably, in administering the accident benefits claim where the payments will be substantially reimbursed by a second party insurer through loss transfer. The second party insurer is obligated to reimburse the first party insurer except where the first party insurer (1) acted in bad faith; (2) made payments not covered by the SABS in existence at the time of the loss or; (3) so grossly mishandled the claim that the payments were greatly in excess of that which the insured would have been entitled to had the file been managed by a reasonable claims handler. (Jevco Insurance Company v. Gore Mutual Insurance (2014) ONSC 3471).

It is important to note that a second party insurer is not permitted to resist reimbursement simply because another adjuster would have adjusted the claim differently (see: Aviva Insurance Company of Canada v. Royal Sunalliance Insurance Company of Canada, unreported decision of Arbitrator Novick). In addition, the law is clear that when determining the reasonableness of actions taken by the first party insurer, the analysis should consider the facts known to the decision maker at the time this decision was made to pay or deny benefits (see: Jevco Insurance Company v. Gore Mutual Insurance, above).

In our case there is no allegation that the first party insurer acted in bad faith or made payments that were not recoverable under the SABS and loss transfer provisions. Thus, the second party insurer must show that the first party insurer was so grossly negligent in its handling of the file that it resulted in payments made grossly in excess of that which would have been paid had the file been handled by a reasonable claims adjuster.

It is also important to note that when reviewing the actions of the first party insurer, the arbitrator is not to review the handling of the file after the fact with a fine-tooth comb.

As this new claim involved primarily the amount paid out by way of a full and final settlement or a "lump out" a question arises as to whether the amount of the settlement should be broken down or determined on a subject matter by subject matter basis, and

if so, was one in hindsight to look at the amount stated in the Settlement Disclosure Notice signed by the insured and first party insurer or by the amount the first party insurer calculated in its own internal evaluation of the claim, or some other factor. I am of the view that the amount set out in the Settlement Disclosure Notice is not determinative of the matter. This breakdown figure is often dictated by the insured's counsel with a view to how it may impact an outstanding tort action, and the breakdown will not be of concern to the first party insurer. Similarly, I am of the view that a breakdown of the first party insurer of the amount paid by individual category during internal discussions is not necessarily determinative of what is recoverable in loss transfer. Many of the full and final settlements or "lump outs" that are made with a view of what the overall settlement amount is, rather than a breakdown of each benefit. In essence, if the overall number is same as the insured's proposed settlement, the individual breakdown is not necessarily important. I am of the view that negotiated settlements are to be encouraged, and if one were to insist that the amount for each individual category be the same for both the insured and first party insurer, this would not encourage settlements and indeed would make them extremely difficult.

### **THE FACTS:**

The facts of this case are ably set out in the "Agreed Statement of Facts", attached as schedule "A" of this decision. Counsel are to be complimented on having done a thorough job in summarizing the facts and documents so that I will only refer to the particularly relevant ones in my decision.

As mentioned above, Intact is seeking to recovery \$949,847.74 by way of loss transfer. This amount is arrived at as follows:

Benefit Type	Paid to Claimant	Amount Reimbursed	Still Outstanding
Income Replacement (IRB)	\$377,000.00	\$64,000.00	
Medical	\$371,467.28	\$50,000.00	
Attendant Care	\$312,500.00	\$0.00	
Cost of examination	\$3,658.92	\$0.00	
Rehabilitation/Other	\$1,204.54	\$0.00	
		Deductible	\$2,000.00
		Total	\$949,857.74

As noted above, Mr. Main's vehicle was hit by a heavy commercial vehicle on November 23<sup>rd</sup>, 2014. He suffered a number of significant injuries in the collision, including lacerations to his face, fractured teeth, bruises, swelling and laceration to his arms, legs, a concussion, loss of memory and possible loss of consciousness. In addition, he suffered a left shoulder injury for which surgery has been contemplated. An MRI revealed a partial thickness tear. A further MRI revealed a number of small bulging disc protrusions in the cervical and thoracic spine with possible nerve root involvement, and a traumatic disc herniation could not be excluded. Mr. Main received a number of types of treatment including physiotherapy, massage, chiropractic care as well as medications.

As noted in my previous decision, Mr. Main made considerable progress and was able to do some activities. The first party insurer, relying on medical reports, found that he was unable to work and paid \$64,000.00 of income replacement benefits ("IRBs") as well as medical rehabilitation benefits of \$50,000.00, being the full non-CAT limits for that benefit. In my previous decision, I noted that while another adjuster might have handled the file differently, it was not handled so negligently as to allow the second party insurer to refuse payment. The remainder of the claim involves the monies paid out primarily for the full and final settlement or lump-out, as set out above.

While the submissions made by AIG revolve primarily around whether Intact should have had further IMEs and provided some more of the medical reports to their IME and CAT report doctors, as well as provided surveillance report to their doctors, there are sufficient differences regarding some of the benefit categories that I will deal with them separately. Before doing so, however, I will outline some of the most relevant reports and how they were dealt with as it relates to the issues at hand. As mentioned above, a more complete listing of the various reports can be found in the Agreed Statement of Facts (Schedule "A").

In May of 2016 the Intact adjuster handling the file decided not to do IME's pending the MRI report and Mr. Main was continuing to report ongoing complaints. It was decided to schedule the post-104 IRB report for September or October or near the 2-year anniversary of the accident. At around this time, Mr. Main retained counsel Ms. Wendy Sokoloff and Intact received a retroactive monthly attendant care benefit

application in the amount of \$6,022.12. A neuropsychiatric assessment was performed at Mr. Main's counsel's request, which found that Mr. Main suffered from a cognitive disorder, major depression disorder and a post traumatic distress disorder. A further assessment was obtained by Ms. Sokoloff from the treating psychologist, Dr. Mermigis, dated October 13<sup>th</sup>, 2016, who found the along with his physical injuries, Mr. Main suffered from chronic suicide ideation as well as a major depressive disorder, post-traumatic stress disorder, somatic symptom disorder, agoraphobia, panic attacks and occasional auditory hallucinations, and a cognitive disorder.

On October 19<sup>th</sup>, 2016, Dr. Reinders, completed an OCF-19 stating that Mr. Main had sustained a catastrophic impairment as per criteria 7.

In response to the above, Intact arranged a number of post-104 assessments for the purpose of determining ongoing entitlement to IRBs. The following assessments were obtained: a job site analysis, a functional abilities evaluation, a transferable analysis, a labour market survey, a neurological assessment by Dr. Waddel, an orthopedic assessment by Dr. Feilden and a psychological assessment by Dr. Clewes. While the other assessors felt Mr. Main could do some job, as per the post-104 test, Dr. Clewes found that Mr. Main was suffering from a pain disorder associated with both psychological factors and a general medical condition. In addition, Mr. Main presented with a major depressive disorder as well as a post-traumatic stress disorder. From a psychological perspective he was found to be completely unable to engage in any employment or self-employment for which he was reasonably suited by education,



training, or experience. Dr. Clewes did note, however, that his prognosis was excellent should he successfully complete appropriate long term cognitive behavioural treatment from a psychologist.

Intact also had Mr. Main seen by an orthopedic surgeon, Dr. Ahn who reported on March 23<sup>rd</sup>, 2017, that Mr. Main suffered from a complete inability to do any occupation after the two year mark, based on his limited education, training, and work experience.

In response to the OCF-19, Intact set up a number of assessments to determine if he had suffered a catastrophic impairment. These included reports by Dr. Seki-Oyu, an orthopedic surgeon, Dr. Zakzanis, a neuropsychologist, Ms. Freedman, an occupational therapist, and Dr. Gnam, a psychologist. While some physical limitations were found by the assessors, it was the conclusion of the psychologist, Dr. Gnam, that Mr. Main suffered four moderate (class 3) impairments. Based on the above, Intact took the position that Mr. Main was not catastrophically impaired. Dr. Gnam did note, however, that based on Mr. Main's performance on the neuropsychiatric testing, that he had significant impairments in attention and memory.

In response, Mr. Main's counsel had Mr. Main examined by another psychiatrist, Dr. Gerber, who found that Mr. Main had suffered from two moderate (class 3) impairments and two marked (class 4) impairments and was therefore catastrophically impaired.

Intact did not conduct any further examinations prior to the settlement of this matter, although did conduct a number of surveillance investigations which will be discussed later in my decision.

**AIG's POSITION ON THE VARIOUS BENEFITS PAID:**

While there is some overlap in the reasons why AIG takes the position that it ought not to be responsible for payment to Intact, there are sufficient differences so that I will deal with each benefit separately.

**INCOME REPLACEMENT BENEFITS:**

As noted above, I previously ordered AIG to pay Intact \$64,000.00 in IRBs up to January 1<sup>st</sup>, 2018. At the time of the settlement of the entire claim Intact estimated that their total exposure for IRBs for life was approximately \$300,000.00 plus, if Mr. Main became entitled to CPP and this amount was allocated to the settlement in internal Intact discussions prior to the settlement. It was felt by Intact that the full CPP discount for the uncertainty as to whether Mr. Main would get CPP plus a small amount for contingencies was more advantageous than taking a simple percentage off the full non-CPP exposure.

AIG's reasons for why the IRB payments should not be paid were essentially three-fold. They argue that Intact was grossly negligent in failing to have Mr. Main

reassessed for continuing IRBs after Mr. Main had completed the psychotherapy recommended by Dr. Mermingis, especially given Dr. Clewes' comments regarding potential recovery after treatment. While I agree that another examination might have been reasonable in these circumstances, that is not the test. It was not, in all the circumstances, grossly negligent to not have a further post-104 examination at this point, given all the reports suggesting that he was not able to work at any job that he was qualified for.

AIG also submits that Intact was grossly negligent in failing to advise Dr. Clewes of the results of the surveillance that they obtained subsequent to his examination. The surveillance shows Mr. Main travelling, hunting, working on removing the pain from a boat and working on a forge.

Again, another adjuster might well have provided this material to Dr. Clewes. From the evidence before me, it is clear that various Intact staff, including their counsel and others were well aware of the surveillance but came to the conclusion that it was unlikely to be determinative of the issue. While this might constitute negligence on the part of Intact, on balance, I do not believe it rises to the level of gross negligence on their part.

The final argument by AIG is that the proposed settlement exceeded the lifetime assessment of \$250,000.00 after the CPP offset. I believe that this was adequately explained by Mr. David Wilcox of Intact in his examination under oath and in any event

the difference, in my view, is not so great as to constitute an amount that was grossly in excess of what a reasonable adjuster would have paid.

**MEDICAL REHABILITATION BENEFITS:**

The next benefit to be considered is medical rehabilitation benefits. In my previous decision I had held that AIG was to repay Intact \$50,000.00 representing the non-catastrophic limits for this benefit that had been paid to or on behalf of Mr. Main. Intact now claims \$321,467.28 representing the amount attributed by to medical rehabilitation benefits as part of the overall settlement.

The first issue to be considered in this regard is whether Mr. Main would have been found to be catastrophic within the meaning of the Statutory Accident Benefit Schedule. As noted above, a number of doctors had found Mr. Main to be catastrophically impaired, including Dr. Gerber, Dr. Mermigis, Dr. Renders as well as Dr. Gnam and Ms. Freedman. Dr. J Clewes conducted a psychological examination of Mr. Main on December 8<sup>th</sup>, 2016 and concluded that Mr. Main suffered a complete inability to engage in any employment for which he was reasonably suited by way of education, training, or experience.

While counsel for AIG pointed out differences between the views of Dr. Gnam and Dr. Gerber, it is worth noting that Dr. Gerber had the benefit of also interviewing Mr. Main's mother to gain insight into Mr. Main's condition.

Intact, prior to the settlement, had come to the conclusion that the question of whether Mr. Main would be found CAT at the LAT hearing was basically a 50/50 proposition. This conclusion does not appear to be made lightly. The decision was reviewed by Intact's "large loss" committee which was composed of experienced claims personnel. By April 2018, Patricia Horwath, a technical assistant, after reviewing the file, assessed the probability of Mr. Main being found catastrophically impaired to be 25 and 75%.

Intact appears to have increased its view that Mr. Main would be found CAT after reviewing the report of their own occupational therapist, Elyse Freedman. Intact was also aware that counsel for Mr. Main had summonsed Ms. Freedman for the LAT hearing and was concerned that Ms. Freedman's evidence would be harmful to Intact's position on the CAT issue.

Based on the evidence before me, I am satisfied that Intact's position that the chances of Mr. Main being found CAT were 50% or more was a reasonable one in all these circumstances.

I now turn to the amount of money allocated to medical rehabilitation benefits in the settlement. The amount of benefits available under the policy, after what had already been reimbursed was \$950,000.00. The settlement disclosure put the amount allocated in the settlement at \$312,500.00 whereas Intact in internal discussions had put the amount as high as \$450,000.00. It would appear that Intact assessed that Mr.

Main could consume approximately \$30,000.00 per year. While this may seem somewhat high, it is obvious that the parties were engaged in a crystal ball exercise as to what the future would hold for Mr. Main. It is worthy of note that the lawyer for Mr. Main provided Intact with a report from RSM dated April 22<sup>nd</sup>, 2019, which set out the present value of future medical rehabilitation benefits at \$750,535.00. While another adjuster might well have come up with a different figure, I find that the amount allocated for medical rehabilitation benefits was not so unreasonable so as to bar Intact from recovering the amount claimed.

AIG also submits that Intact was grossly negligent by failing to provide Ms. Freedman and Dr. Gnam with updated clinical notes and records of Dr. Mermegis and the other treating doctors as well as copies of the surveillance reports, and if they had done so, they might have changed their position as to whether Mr. Main was CAT and therefore entitled to extended medical rehabilitation benefits. I find this position to be somewhat speculative and while I agree that it would have been reasonable to supply the doctors with this information it is not so grossly negligent as to bar Intact from recovery in this case.

With regards to the surveillance, it does show Mr. Main participating in a number of activities. It was somewhat unclear, on the evidence before me, to what extent the surveillance was shared with potential witnesses. It was certainly in the hands of counsel for Intact who was going to conduct the defence at the hearing and it would appear that a conscious decision was made that the surveillance would not likely be

sufficiently conclusive to change the witnesses' opinions. Again, this is a situation where a reasonable adjuster may differ in the handling of the file but does not amount to gross negligence.

AIG also submitted that Intact gave too much weight to Dr. Gerber's position that Dr. Gerber had not had the benefit of seeing the surveillance or the medical clinical notes and records. While this is true, Dr. Gerber's views were supported by other doctors and he did the benefit of having interviewed Mr. Main's mother. I am not satisfied that this would have made a material difference.

AIG also submits that Intact was grossly negligent by not getting updated reports from Ms. Freedman and Dr. Gnam. This is again a judgment call by the adjuster. There was already a great deal of medical information available and it is speculative at best that any new reports would have made a difference.

#### **ATTENDANT CARE BENEFITS:**

The amount allocated for attendant care varies somewhat. The disclosure notice allocates \$312,500.00 for past and future attendant care benefits, whereas Intact in internal discussions allocated \$75,000.00. The amount claimed for reimbursement is \$312,500.00.

It is worthy of note that while limited attendant care benefits are available for non-catastrophic injuries, the benefits available for attendant care for a person found to be catastrophically impaired are up to \$6,000.00 per month and \$1,000,000.00 for a lifetime.

On February 16<sup>th</sup>, 2017, Intact received an home functional assessment recommending \$1,555.16 per month for attendant care. A further assessment dated December 21<sup>st</sup>, 2018, assessed the need at \$8,050.18 per month.

Furthermore, there was a claim for past attendant care provided by Mr. Main's brother, although there was an issue of entitlement as there was a question of whether the brother had suffered an economic loss.

In May 2017, Intact received a care cost report calculating past attendant care at \$425,271.00. A further report by RSM calculated the future care at \$605,520.00.

On July 30<sup>th</sup>, 2019, Intact received an expense claim form (OCF-6) along with receipts for attendant care totalling \$237,672.72 for services provided from November 23<sup>rd</sup>, 2014 through October 2015 and November 2015 until June 2019.

Shortly prior to the LAT hearing, counsel for Mr. Main, advised that she would be calling evidence from family members with respect to the attendant care services provided to Mr. Main and proof of economic loss by the family members. She advised



she would also produce a PSW who was providing attendant care services to Mr. Main in the months leading up to the hearing.

AIG submitted that Intact was incorrect in deciding there was considerable risk of Mr. Main being found non-catastrophic and if so the benefits available for attendant care would have been drastically reduced. Earlier in this decision I have found that Intact's position re CAT was not unreasonable and accordingly AIG's submissions in this regard fail.

AIG also submits that the medical reports of Mr. Main's treating health professionals as well as the expert reports commissioned by Intact as well as the surveillance reports suggest that Mr. Main had the physical capabilities to perform all of his self-care responsibilities. It is true that the evidence shows that Mr. Main could carry out certain activities on a limited basis. The surveillance clearly shows this. What it does not do, however, is show that Mr. Main could perform these functions on an ongoing basis. It is to be remembered that if unsuccessful at the LAT hearing, the insurer was potentially exposed to a far higher figure for future attendant care, and if one takes the higher amount of \$31,500.00, this is still only one third of what Intact's exposure was. On balance, I am of the view that this amount is recoverable by Intact from AIG.

**HOUSEKEEPING BENEFITS:**

The maximum exposure for housekeeping if Mr. Main was found to be catastrophically impaired is \$100.00 per week for life. Intact's own occupational therapist in-home assessment dated February 16, 2017, prepared by a Ms. Wong-Sing noted Mr. Main's problem with housekeeping and noted the chores now done by the family.

An RSM report of April 2019 assessed past housekeeping owing at \$31,112.00 and future housekeeping at \$147,826.00. In internal discussions, Intact allocated \$78,429.78 towards housekeeping benefits.

AIG again submits that Intact made errors in assessing whether Mr. Main would have been found catastrophically impaired. I have already dealt with this issue above and do not accept AIG's position in this regard.

AIG notes that Intact simply took the total exposure and discounted it by 50%. It further alleges that Intact failed to take into account the reports and clinical notes of Mr. Main's treating physicians as well as the surveillance reports. AIG also notes that Intact failed to take into account assessments such as those of Mr. Murphy and the orthopedic assessment by Dr. Feilden that did not reveal any impairment that would result in his ability to perform housekeeping duties. On the other hand, there were reports from Mr. Main's doctors suggesting there was an impairment in this regard. It is worthy of note that Intact appears to have taken into account that Mr. Main's counsel would have aggressively pursued this benefit in the future.

Intact's decision with regards to housekeeping benefits does cause me some concern. They seem to have simply reduced the available benefit by 50%. This goes beyond what a reasonable adjuster would have done. The question then becomes was it so grossly negligent as to result in a payment greatly in excess of that which the insured would have been entitled to, had the file been managed by a reasonable claims adjuster. In our case, the adjuster seems to have taken a 50% reduction for CAT risk, but nothing more. In this regard, I would have thought a further reduction for the possibility of Mr. Main not needing housekeeping for the rest of his life should have been taken into account. In this regard I think that AIG has shown that the test was met and I would reduce the amount for housekeeping by \$25,000.00.

**INTACT'S HANDLING OF CLAIM:**

AIG takes the position that Intact did not aggressively handle the claim as they were aware that in the final analysis AIG would potentially end up paying the claim pursuant to the Loss Transfer provisions. Based on the evidence before me, I do not think this to be the case. As the case progressed, the file was reviewed by a number of claims handlers and AB technicians just as a non-loss transfer file would be. The proposed settlement was reviewed by the "large loss" committee, just as a non-loss transfer file would be. It is also clear that Intact was prepared to proceed to a hearing if Mr. Main's lawyer held firm at what Intact considered too high a settlement number. In reviewing the file for the large loss committee, an executive summary of the file was

prepared by the AB technician, David Wilcox, where on September 4, 2019, he recommended

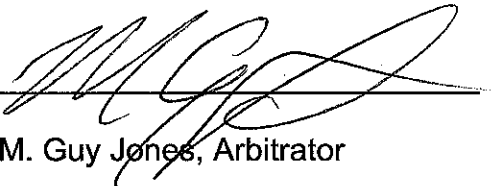
“Proceeding with the arbitration if the applicant settlement offer remains above \$1,000,000.00.”

This reinforces my view that Intact took the claim very seriously and handled it in the proper fashion.

For the reasons set out above, I find that AIG is to reimburse Intact in the amount of \$924,857.74.

In the event that the parties are unable to agree on the issue of costs, I am be spoken to.

Dated at Toronto this twenty-second day of June 2021.



M. Guy Jones, Arbitrator

Schedule A  
AGREED STATEMENT OF FACTS

**IN THE MATTER** of a loss transfer dispute between insurers pursuant to s. 275 of the *Insurance Act*, R.S.O. 1990, c. I.8 and Ontario Regulations 664 & 688/90 thereunder and the *Arbitration Act*, S.O. 1991, c.17;

**AND IN THE MATTER** of an Arbitration;

**BETWEEN:**

**INTACT INSURANCE COMPANY**

Applicant

- and -

**AIG INSURANCE COMPANY OF CANADA** formerly **CHARTIS INSURANCE COMPANY OF CANADA**

Respondent

**AGREED STATEMENT OF FACTS**

The parties, through their lawyers, agree to the following facts:

1. This dispute relates to the quantum of indemnification that Intact is entitled to pursuant to section 275 of the *Insurance Act* for the payment of accident benefits to Ryan Main ("Mr. Main") following a motor vehicle accident that took place on November 23, 2014 (the "Accident").
2. AIG denies that it is required to indemnify Intact for certain Income Replacement Benefits that have been paid to Mr. Main and for the amounts that were paid to Mr. Main to settle his claim for accident benefits as AIG states that these payments made to Mr. Main were grossly unreasonable.
3. The ability of Intact to seek indemnification through the loss transfer provisions of the *Insurance Act* from AIG is not in dispute; neither is AIG's liability under the Fault Determination Rules. AIG accepts that it is 100% liable for the incident pursuant to the Fault Determination Rules.
4. AIG initially challenged the reasonableness of payments for accident benefits made to Mr. Main. This dispute was resolved by way of a hearing on July 30, 2019. Attached as **Exhibit "1"** is a copy of Arbitrator Jones' decision.

5. The parties enclose and rely on the facts as contained in the Agreed Statement of Facts dated July 10, 2019 and all associated Exhibits that were relied on by Arbitrator Jones in support of his September 4, 2019 decision. Attached as **Exhibit "2"** is the Agreed Statement of Facts and Associated Exhibits dated July 10, 2019.
6. AIG now challenges Intact's further adjusting and final settlement of the accident benefits claim as grossly unreasonable.
7. To date, AIG has reimbursed Intact for payment of medical and rehabilitation benefits paid to Mr. Main up to the non-catastrophic limits of \$50,000 and income replacement benefits from 7 days post-accident until December 31, 2017 in the amount of \$64,000.
8. Intact resolved Mr. Main's accident benefits claim, on the eve of the hearing, for \$900,000. The Settlement Disclosure Notice signed by both Mr. Main and Intact document that the settlement contemplated payments of \$275,000 towards income replacement benefits; \$312,500 for medical benefits; and \$312,500 for attendant care benefits.
9. Intact now seeks reimbursement of \$949,857.74 still outstanding. The amounts are broken down by benefit as follows:

Benefit Type	Paid to Claimant	Amount reimbursed	Still Outstanding
Income Replacement	\$377,000.00	\$64,000.00	\$313,000.00
Medical	\$371,467.28	\$50,000.00	\$321,467.28
Attendant Care	\$312,500.00	\$0.00	\$312,500.00
Cost of Examinations	\$3,685.92	\$0.00	\$3,685.92
Rehabilitation/Other	\$1,204.54	\$0.00	\$1,204.54
		Deductible	-\$2,000.00
		<b>Total</b>	<b>\$949,857.74</b>

*Intact's Ongoing Adjusting of the Accident Benefits Claim*

10. On October 19, 2016, Mr. Main's lawyer provided Intact with a Psychological Report dated October 13, 2016 as completed by Dr. Mermigis, Mr. Main's treating Psychologist. Attached as **Exhibit "3"** is a copy of the October 19, 2016 report by Dr. Mermigis.

11. On December 19, 2016, Dr. Reinders completed an OCF-19 stating that he believed that Mr. Main sustained a catastrophic impairment as per Criteria 7. Attached as **Exhibit "4"** is a copy of the December 19, 2016 OCF-19 completed by Dr. Reinders.
12. On February 21, 2017, Intact was provided with the Occupational Therapy (OT) In-Home Functional Assessment Report and Form 1 dated February 16, 2017 completed by Ms. Wong-Sing (OT). Attached as **Exhibit "5"** is a copy of Ms. Wong-Sing's Report and Form 1.
13. Intact conducted post-104 assessments to address Mr. Main's ongoing entitlement to benefits in early 2017. Attached collectively as **Exhibit "6"** are copies of the Post 104 IRB assessments.
14. In early 2017, Intact conducted catastrophic assessments to address whether Mr. Main suffered from a catastrophic impairment. Attached collectively as **Exhibit "7"** are copies of the insurer's assessments relating to whether Mr. Main suffered from a catastrophic impairment.
15. On July 31, 2017, the adjuster on file, Srma Samuel, prepared a summary of the claim and submitted this to Lisa Knowles, her unit manager and technical services representative.
16. Intact received a Progress Report from Mr. Main's treating Psychologist Dr. Mermigis on October 12, 2017. Attached as **Exhibit "8"** is a copy of the Dr. Mermigis' Progress Report dated October 12, 2017.
17. Mr. Main exhausted the non-cat limits for medical and rehabilitation benefits in October of 2017.
18. On October 11, 2017, the technical services consultant assigned to the file, Shelagh Brown, reviewed the claim.
19. October 27, 2017, Monica Murray summarized the section 44 CAT report prepared by Occupational Therapist Elyse Freedman, received on October 26, 2017.
20. On October 27, 2017, the technical services consultant, Shelagh Brown, reviewed Elyse Freedman's report and took a non-CAT position with respect to Mr. Main's claim.
21. On November 14, 2017, Shelagh Brown, increased the reserves in relation to Mr. Main's accident benefits claim.
22. Intact Adjuster Matt McDonald ("Mr. McDonald") assumed carriage of the day-to-day handling of Mr. Main's claim for accident benefits in November 2017.



23. On December 13, 2017, Mr. McDonald, denied reimbursement for several invoices related to the purchase of marijuana because the THC percentage in the marijuana purchased by Mr. Main was higher than recommended by his doctors. On the same day he also denied invoice from Molly Maid as Mr. Main had not been accepted as CAT and had not purchased optional housekeeping benefits.
24. On February 28, 2018, Mr. McDonald again denied reimbursement for the purchase of marijuana as the \$50,000 medical and rehabilitation benefits limits had been exhausted.
25. On April 11, 2018, Mr. McDonald completed an annual review of the claim. He was of the opinion that there was a moderate risk that Mr. Main would be found to have suffered a catastrophic impairment.
26. On April 13, 2018, technical consultant, Patricia Horwath reviewed the claim and assessed the probability of Mr. Main being found catastrophically impaired at between 25% and 75%.
27. On June 22, 2018, Mr. Main commenced a LAT Application seeking Attendant Care Benefits and Medical and Rehabilitation Benefits that were denied by Intact. Attached as **Exhibit "9"** is a copy of Mr. Main's LAT Application.
28. On July 25, 2018, Intact was served with the Psychological Report by Dr. Gerber in support of Mr. Main's Application to be declared catastrophically impaired. Attached as **Exhibit "10"** is a copy of the June 19, 2018 report by Dr. Gerber.
29. On August 3, 2018, Roxanne Hector, a LAT dispute resolutions adjuster was assigned to the file.
30. The LAT application was not received at Intact until September 17, 2018.
31. On October 9, 2018 Roxanne Hector, sent a request to assign counsel to respond to the LAT application.
32. On November 2, 2018, Mr. Main and Intact participated in a Case Conference. The parties agreed to participate in a settlement teleconference on December 6, 2018 to address whether settlement was possible for the issues as set out in the LAT Application.
33. On December 6, 2018, Mr. Main and Intact participated in a Settlement Teleconference but were unable to resolve the issues in dispute. A resumption of the Case Conference was ordered to clarify the issues in dispute and to schedule the hearing. Attached as **Exhibit "11"** is Mr. Main's Pre-hearing Settlement Conference Memorandum. Attached as **Exhibit "12"** is Intact's Pre-hearing

Settlement Conference Memorandum. Attached as **Exhibit "13"** are the Case Conference Report and Order dated January 3, 2019.

34. On January 7, 2019, Intact confirmed that Mr. Main reported having applied for CPP disability benefits and requested an update on the decision once it was rendered.
35. On January 9, 2019, Patricia Horwath, recommended that structure quotes be secured as Mr. Main "meets a complete inability"; and to carry out surveillance to determine Mr. Main's functioning.
36. Mr. McDonald requested an Annuity Quote from McKellars in relation to the present value of Mr. Main's Income Replacement Benefits if he remained entitled over the remainder of his life. McKellars provided Mr. McDonald with the Annuity Quote on January 22, 2019. Attached as **Exhibit "14"** is a copy of the January 22, 2019 Annuity Quote.
37. On January 25, 2019, Intact received the December 21, 2018 report by Ms. Wong-Sing (OT) that addressed Mr. Main's entitlement to Attendant Care Benefits. Intact also received a memo that updated the Occupational Therapy (OT) In-Home Functional Assessment Report and Form 1 dated February 16, 2017. Attached as **Exhibit "15"** is a copy of Ms. Wong-Sing's December 21, 2018 Report and Memo.
38. On April 3, 2019, Intact received a Surveillance Report dated February 8, 2019. This report was then reviewed by Mr. McDonald on April 10, 2019. While he believed that another round of assessments to address Mr. Main's ongoing entitlement to post-104 Income Replacement Benefits could be beneficial, he decided to hold off on scheduling same until he received additional medical records. Attached as **Exhibit "16"** is a copy of the Surveillance Report dated February 8, 2019 received by Intact and reviewed by Mr. McDonald.
39. On April 8, 2019, Mr. Main and Intact participated in Resumption of the Case Conference. The parties agreed on consent to an 8 day in-person hearing scheduled for September 9 – 18 in Barrie that would address whether Mr. Main suffered from a catastrophic impairment and whether he was entitled to attendant care benefits as claimed. Attached as **Exhibit "17"** is the Case Conference Report dated May 14, 2019.
40. On April 10, 2019, Intact requested the updated clinical notes & records from Dr. Reinders from March 2016 to present pursuant to Section 33(1) of the SABS. These records were provided to Intact on May 15, 2019. Attached as **Exhibit "18"** is a copy of the clinical notes & records from Dr. Reinders that were provided to Intact.
41. A further round of surveillance was then requested by Intact in April of 2019.

42. On May 2, 2019 Roxanne Hector provided a summary of the LAT case conference where counsel for Mr. Main identified 24 witnesses to be called at the LAT hearing.
43. On May 16, 2019, Intact was provided with the Future Cost of Care Report and Income Replacement Benefits, past Attendant Care Benefits and past Housekeeping Benefits Entitlement Report by Ian Wolloch and Ellen Drevnig from RSM dated April 22, 2019. Attached as **Exhibit "19"** is a copy of these reports from RSM.
44. The June 13, 2019 Surveillance Report was reviewed by Mr. McDonald on June 19, 2019. Attached as **Exhibit "20"** is a copy of the June 13, 2019 surveillance report received by Intact and reviewed by Mr. McDonald.
45. On August 1, 2019, another round of surveillance was requested by Intact.
46. In late July and early August, documentation was provided to Intact in support of Mr. Main's claim for Attendant Care Benefits. Attached as **Exhibit "21"** is a copy of the documentation provided to Intact in support of his claim for Attendant Care Benefits.
47. On August 12, 2019, Intact wrote to Mr. Main denying his entitlement to Attendant Care Benefits and requesting documentation to substantiate that the proposed expenses had been incurred. Attached as **Exhibit "22"** is a copy of Intact's letter to Mr. Main denying his entitlement to Attendant Care Benefits.
48. On August 20, 2019, Intact received a Notice of Motion Hearing from Mr. Main. Attached as **Exhibit "23"** is the Notice of Motion dated August 20, 2019.
49. On August 23, 2019, Intact served its own Notice of Motion Hearing on Mr. Main. Attached as **Exhibit "24"** is the Notice of Motion August 23, 2019.
50. On August 29, 2019, Intact received the Motion Decision and Order. Attached as **Exhibit "25"** is the Motion Decision and Order.
51. On August 30, 2019, Intact Technical Claims Consultant in Accident Benefits Dave Wilcox ("Mr. Wilcox") was provided with an executive summary of Mr. Main's case by Roxanne Hector. David arranged to have the matter addressed at Intact's Large Loss meeting scheduled for September 3, 2019 (the "Meeting"). The purpose of the meeting was for various Intact employees and representatives to review the claim and then determine how Mr. Main's claim ought to be handled given that the LAT hearing was approaching.
52. Prior to the Meeting, Mr. Wilcox reviewed the assessments relating to whether Mr. Main suffered from a catastrophic impairment, the surveillance reports received by Intact, the executive summary as prepared by the dispute management adjuster, Roxanne Hector, and the adjuster's log notes. Mr. Wilcox noted that Mr. Main had

previously extended an Offer to Settle to resolve the dispute for the amount of \$1,800,000.00 and that Intact had not responded to this offer or engaged in any other settlement discussions.

53. Mr. Main's claim was then presented to the participants at the Meeting on September 3, 2019.

54. Following the Meeting, Mr. Wilcox presented a recommendation for settlement to Intact's Technical Services Manager, Sharon Royer. Mr. Wilcox requested \$905,909.73 in settlement authority. David's assessment and reasoning were contained in an email to the committee sent September 4, 2019.

55. As of September 4, 2019, Intact had paid Mr. Main the following amounts:

- Med/Rehab/Cost of Examination: \$60,716.18
- Income Replacement: \$101,200
- Attendant Care: \$3,000

56. Settlement authority in the amount of \$750,000 was given to Mr. Wilcox by Ms. Royer. With the assistance of counsel, Ian Hu, Intact engaged in settlement discussions with Mr. Main's Representative.

57. Between September 5 and 6, 2017, counsel for Intact, Ian Hu, and counsel for Mr. Main, Ms. Wendy Sokoloff, exchanged several emails regarding Mr. Main's accident benefits claim. Attached as **Exhibit "26"** are copies of emails exchanged between Mr. Ian Hu and Ms. Wendy Sokoloff.

58. On September 6, 2019, Intact and Mr. Main agreed to settle Mr. Main's claim for past and future accident benefits for the amount of \$900,000. Attached as **Exhibit "27"** are the executed settlement documents.

59. Leading up to the LAT hearing, Mr. Main filed a LAT Medical Brief with the tribunal. Attached as **Exhibit "28"** is the LAT Medical Brief.

60. After filing a LAT Medical Brief, Mr. Main filed a Supplementary LAT Document/Medical/Income Brief with the tribunal. Attached as **Exhibit "29"** is the Supplementary LAT Document/Medical/Income Brief.

61. Intact has produced the adjuster log notes associated with the handling of Mr. Main's claim for accident benefits. The adjuster log notes are attached as **Exhibit "30"**.

62. Examinations Under Oath of Mr. McDonald and Mr. Wilcox have been conducted. The transcript from the Examination Under Oath of Mr. McDonald are attached as **Exhibit "31"**. The transcript from the Examination Under Oath of Mr. Wilcox are attached as **Exhibit "32"**.

March 12, 2021

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