FSCO A03–001125

BETWEEN:

SHIVJINDER SOHI

Applicant

and

ING INSURANCE COMPANY OF CANADA

Insurer

REASONS FOR DECISION

Before: John Wilson

Heard: April 26, 27, 28 and 29, 2004, at the offices of the Financial Services Commission of Ontario in Toronto.

Appearances: Bassanio Ghose for Mr. Sohi
Chris Blom for ING Insurance Company of Canada

Issues:

The Applicant, Shivjinder Sohi, was injured in a motor vehicle accident on May 18, 2001. Subsequently, he suffered severe burns to much of his body, following a suicide attempt by fire. He applied for statutory accident benefits from ING Insurance Company of Canada ("ING"), payable under the *Schedule*.[1] The parties were unable to resolve their disputes through mediation, and Mr. Sohi applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

---

[1]The *Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996*, Ontario Regulation 403/96, as amended by Ontario Regulations 462/96, 505/96, 551/96, 303/98, 114/00 and 482/01.

The issues in this hearing are:

1. Is Mr. Sohi entitled to receive a medical benefit claimed for Dr. Pilowsky's treatment plan, pursuant to section 14 of the *Schedule*?

2. Is Mr. Sohi entitled to payments for the cost of examinations pursuant to section 24 of the *Schedule* for examinations performed by Dr. Pilowski, J&K Rehab and the Burlington Medical Assessment Centre?

3. Is Mr. Sohi entitled to interest on the overdue payment of benefits pursuant to section 46(2) of the *Schedule*?

Result:

1. Mr. Sohi is entitled to receive a medical benefit claimed for Dr. Pilowsky's treatment plan, pursuant to section 14 of the *Schedule*.

2. Mr. Sohi is entitled to payments for the cost of examinations pursuant to section 24 of the *Schedule* for examinations performed by Dr. Pilowski and J&K Rehab. The Burlington Medical Assessment Centre claim was withdrawn at the hearing.

3. Mr. Sohi is entitled to interest on the overdue payment of benefits pursuant to section 46(2) of the *Schedule*.

EVIDENCE AND ANALYSIS:

While this arbitration is framed as a claim for discrete medical and rehabilitation, and examination expenses, the underlying issue is whether Mr. Sohi sustained impairments as a result of an accident as defined by the *Schedule*.

There is little dispute about the fact situation giving rise to the claim. Mr. Sohi was involved, on May 18, 2001, as a pedestrian, in an accident of some nature. He was run down by a motor vehicle in a parking lot. Following that incident, he was taken by ambulance to Scarborough Centenary Hospital where he was treated and released. He received some further treatment for the sequelae of the accident from his own doctor and from a hospital in Etobicoke over the next few days. Some three weeks later, in his home, in the presence of his family, he poured gasoline over himself, and set himself on fire.

Needless to say, Mr. Sohi's injuries from the gasoline-fuelled fire far exceeded those he had received from the car accident itself. He was immediately hospitalized for burns to a large percentage of his body, first in Burlington, and then in Sunnybrook and Women's College Hospital in Toronto, where he remained for many months, followed by an almost nine-month convalescence at St. John's Rehabilitation Hospital. This was not a minor matter.

Mr. Sohi claims that the fire that precipitated his serious injuries was linked directly to the motor vehicle accident on May 18, 2001, and that the fire-related injuries constitute an impairment as a result of an accident as defined by section 14(1) of the *Schedule*.

The Insurer, however, sees the matter differently. While accepting that an "accident" did likely happen on May 18, and that Mr. Sohi was seriously injured by the gasoline fire, it takes the position that the suicide by fire was a discrete event due to other tragic factors in Mr. Sohi's life, and was not directly related to the earlier motor vehicle accident.

There are few issues in law which have generated more scholarly and judicial comment and controversy than that of causation. It is a concept that is of more than passing interest to criminal law, torts and negligence and, of course, insurance law.

In the early common law, there was generally a system of strict liability, with emphasis on responsibility flowing from direct, physical causation, without regard to intention or purpose.
Gradually, the idea of proximate or direct cause itself began to develop. In the words of Sir Francis Bacon, "*In jure non remota causa, sed proxima spectatur*."[2] Over the years, absolute responsibility for the direct consequences of actions evolved and became hedged with conditions and variations.

In the nineteenth century, changing economic conditions favoured the placing of limits on consequential responsibility, leading to the further development of the notions of proximate cause, and intervening cause. This marked the beginning of the clear distinction between factual and legal causation.

Factual causation, the action that set into motion the event or train of events became more of a pre-condition to a finding of legal causation. Before a finding of legal causation could be made, questions of whether certain results were natural or probable consequences of an impugned act, whether another action intervened to break causation, or whether certain consequences were intended by the actor, had to be examined. In essence, the law began to interpose social policy between the precipitating action and the consequential result.

Nowhere has this evolution been more apparent than in insurance law. Policies of insurance tend to indemnify policyholders for the consequences of certain situations specified in a contract. Initially both the jurisprudence and the language of the insurance contracts in the nineteenth century incorporated the language of proximate causation. As Lord Atkinson noted in *Green v. British India Steam Navigation Co. Ltd*:

[2]Sir Francis Bacon *Maxims*, Reg I [1596] "The law looks to the proximate, and not to the remote cause."

> It has long been firmly established a rigid principle of the law of marine insurance to be unfailingly applied, that in order to recover on a policy damages for the loss of a ship by one of the perils insured against that peril must be proved to have been the direct and proximate cause of the loss.[3]

The traditional notion of proximate cause was challenged, however, by the effect of the First World War on insurance, especially marine insurance. Ordinary policies of insurance that dealt with normal marine perils were supplemented by war loss syndicates, to cover losses attributable to enemy action. Tremendous war losses under extreme circumstances often meant that the exact cause of a sinking was often either unclear or unknown, leaving open the question of whether either or both of such insurance coverage covered the loss.

In *Leyland Shipping Co. Ltd. v. Norwich Union Fire Insurance Co. Ltd.* [1918] C.C.S. 89, the House of Lords dealt with the question of proximate cause in this new environment. In this case a ship was torpedoed off the coast of France while on a voyage from South America to England. Although the vessel was holed by the torpedo, she stayed afloat and was successfully brought into the outer harbour at Le Havre. Due to an approaching storm, the port authorities ordered her moved to a nearby anchorage where she weathered the storm. The ship, however, was down by the head, owing to flooding of the forward holds and the forward portion of the vessel grounded with each low tide. The resulting stresses placed on the ship, grounding forward while remaining afloat astern, structurally weakened the vessel and she became a constructive total loss, having, essentially broken her back. Notwithstanding the intervening time, the intervention of the grounding of the vessel and the change in weather conditions, both the Court of Appeal and the House of Lords found that the loss of the *Ikaria* was *directly* due to the torpedo. Lord Shaw, in conclusion, stated:

> In my opinion, the real efficient cause of the sinking of this vessel was that she was torpedoed. Where an injury is received by a vessel it may be fatal or it may be cured: it has to be dealt with. In so dealing with it there may, it is true, be attendant

[3] *Green v. British India Steam Navigation Co. Ltd*. [1920] All E.R. Rep. 296 H. of L.

> circumstances which may aggravate or possibly precipitate the result, but are incidents flowing from the injury, or receive from it an operative and disastrous power. The vessel, in short, is all the time in the grip of the casualty. The true efficient cause never loses its hold.

The same approach to causation was taken in *Re Polemis and Furness, Withy & Company*, a later decision by the English Court of Appeal.[4] Although framed in negligence, the case found clearly that a party could be held responsible for even a remote, unforeseen event, provided that the loss was the direct consequence of the negligent act.

The causation test as a pre-condition for accident benefits has a varied legislative history. The most recent versions of the *Schedule* have changed the definition of an accident from that of an incident which either **directly or indirectly** causes a named impairment to that of one that **directly** causes the impairment. Needless to say, this legislative revision has precipitated much discussion about its ultimate meaning.

Earlier on, it was generally accepted that entitlement could arise as long as the activity giving rise to the impairment took place in the general context of the general use of a motor vehicle given some sort of causal relationship between the use of the motor vehicle and the impairment. Courts and arbitrators in Ontario drew inspiration from the case of *Amos v. Insurance Corporation of British Columbia*, (1995)127 D.L.R. (4th) 618, in which the Supreme Court of Canada dealt with the question of the use or operation of a motor vehicle.

---

[4] *Re Polemis and Furness, Withy & Company Ltd.* [1921] All E.R. Rep. 40. In that matter, a claim was made for the destruction of a vessel under a charter that specifically excluded responsibility for destruction by fire. The ship in question was destroyed by fire while being discharged by workers employed by the charterers. Arbitrators found that the fire was precipitated by a plank, negligently dropped by one of the stevedores, and found the charterer consequentially responsible for the fire damage to the vessel. Both the court of first instance and the Court of Appeal upheld the arbitrators' award.

More recently in *Chisholm*[5], the Court of Appeal of Ontario re-examined direct causation in the context of Statutory Accident Benefits. Laskin J.A. stated:

> The net effect of these decisions has been to direct the focus of the analysis back to an older concept of causation, something more akin to proximate cause than the *Amos* test.

The decision continued:

> A direct causation requirement conjures up memories of the famous English tort case of *In Re Polemis and Furness, Withy & Co. Ltd.*, [1921] All E.R. Rep. 40, [1921] 3 K.B. 560, where recovery was allowed for damages that were not a foreseeable result of the defendant's negligence but were directly caused by it. When one thinks of direct causation one thinks of something knocking over the first in a row of blocks after which the rest falls down without the assistance of any other act.

In *Greenhalgh v. ING Halifax Insurance Co.* [2003] O.J. No. 2740, Kiteley J. examined the *Chisholm* decision in the context of the jurisprudence from other provinces and FSCO arbitrations, and found that the principles of causation enunciated by Director's Delegate Makepeace in *Seale and Belair Insurance Company Inc*.[6] best summarized the current judicial consensus:

> In my view, these factors – time, proximity, activity and risk – are important in defining the incident that resulted in injury. It is clear that "direct cause" need not be the only cause, that physical contact with an automobile is not required, and that a subsequent contributing cause may not break the chain of causation if it is "part of the ordinary course of things."

I find that Kiteley J.'s adoption of the interpretation put forward by Director's Delegate Makepeace to be a sound restatement of the current state of the law in Ontario, and binding on me as an arbitrator.

---

[5] *Chisholm v. Liberty Mutual Group* (2002) 60 O.R. 3d 776 or [2002] O.J. No. 3135 (August 15, 2002), affirming [2001] O.J. No. 3294 (Ont.S.C.J.).

[6] (FSCO A01-000635, January 31, 2002)

In Mr. Sohi's case, there is no dispute that he had "physical contact with an automobile." It is also clear that there are likely numerous contributing factors to the attempt at suicide by fire, one of which, Mr. Sohi asserts, is the psychological *sequela* to the motor vehicle accident.

In an attempt to link the fire event to the motor vehicle accident, Mr. Sohi testified on his own behalf, as well as producing two psychologists, together with their reports.

Mr. Sohi's evidence suffered from a significant weakness. He had little to no actual recall of the events immediately preceding the attempt at suicide by fire and those thereafter due to the severity of his injuries, and the significant time he remained unconscious following the event. His own version of this period is necessarily coloured by his own attempt to reconstruct events in his own mind.

I accept, however, certain key elements of Mr. Sohi's testimony as reflecting a reasonably reliable chronicle of events surrounding both the accident and its consequences.

From his testimony and other reports, it is clear that Mr. Sohi was standing about at the edge of the parking lot of a plaza in Scarborough with a group of individuals, known to him, when he was hit by a moving vehicle which dragged him along, before the car reversed, letting him fall to the ground. His foot was injured, and there were lacerations on his body from the broken glass of either the car or a bus shelter. The driver of the vehicle was also likely known to Mr. Sohi, and may also have uttered threats of serious consequences if his name was revealed.[7]

Following treatment at Scarborough Centenary Hospital, Mr. Sohi was released to his home. He was walking with crutches and had dressings on his wound. Some days later, still complaining of pain, he went to a family physician for follow-up. He was reported as being highly distraught post-accident due to pain and difficulty sleeping. His wife reported subsequently to assessors that he began to abuse

[7] I do not accept the Insurer's contention that such a threat would necessarily constitute a *novus actus interveniens* breaking the chain of causation from the motor vehicle accident.

painkillers and alcohol due to his distress and pain.[8] Mr. Sohi's own recollection was that he was distressed and hopeless due to his physical injuries and pain when he attempted to burn himself to death.[9]

Dr. J. Pilowski and Dr. Louise Koepfler, the DAC assessor, both psychologists, accepted Mr. Sohi's linkage between the motor vehicle accident and the subsequent suicide attempt. Dr. Koepfler, however, noted the involvement of Mr. Sohi's "longstanding, relatively enduring personality characteristics, which by definition predate trauma but which can be exacerbated by current difficulties."

There is no question that Mr. Sohi had long-standing difficulties prior to the accident. He had a record of substance abuse that had landed him in court for assault and driving offenses. Indeed, he was likely drinking with the "boys" in the plaza parking lot at the time of his accident. Although he had some work experience, economic stability in his family seemed to have been provided for by his wife, and the other family members who lived under the same roof. With functional illiteracy and very limited English language skills, his long-term employment prospects were not promising.

His relations with his spouse and in-laws were strained. In addition to once having been tried and convicted for assaulting his wife, in the period surrounding the accident his marital relations were not a model of felicity. Indeed, his wife may have temporarily ceased to co-habit with him.

The Insurer pointed to Mr. Sohi's low level of functionality and his family stresses as the likely causes for his suicide attempt. However, in its evidence, and in the cross-examination of Mr. Sohi, it drew out information indicating that Mr. Sohi's social and relational problems were long-standing. As Dr. Koepfler noted, these were related to long-standing personality traits that, prior to the accident had not led him to attempt to take his own life.

---

[8] In her report of October 8, 2002, Dr. Pilowski reported comments by both Mr. Sohi and his wife, relating to this period.

[9] The flaming gasoline resulted in serious burns to over 42% of Mr. Sohi's body, and necessitated a long and complicated hospitalization and rehabilitation.

The Insurer, in taking its position, was bolstered by the opinions of Dr. Monte Bail, a psychiatrist who assessed Mr. Sohi as part of the West Park Attendant Care DAC. Dr. Bail stated:

> From a review of the extensive medical file material, and the assessment today, it seems that Mr. Sohi was suffering from a Major Depressive Disorder, Anxiety, and Alcoholism for a long time prior to the motor vehicle accident, even though he denied all of these things today...

While Dr. Bail accepted that Mr. Sohi suffers from serious psychiatric disorders, including a Major Depressive Order, he concluded:

> I do not feel that the aftermath of his burn injury, including the scars, and restricted range of motion, is significantly related to the motor vehicle accident, and as such, from a psychiatric point of view, the psychiatric aftermath of living with the results of his self immolation [suicide attempt] are not related to the motor vehicle accident.

In his testimony, Dr. Bail downplayed the likelihood of suicide as the result of motor vehicle accidents, stating that he had never seen a similar situation in his examination of some 4,000 motor vehicle accident cases. Dr. Bail's observation, while perhaps literally correct, is at the very least, somewhat misleading.

While the specific act of self immolation following a motor vehicle accident may well be a rarity, attempts at suicide in that context are not unheard of, even in Dr. Bail's practice. Nor are they unknown to accident-related jurisprudence.[10] [11]

---

[10] See *Gabremichael and Zurich Insurance Company* (FSCO A97-002061, October 12, 1999).

[11] In the case of *Cotic v. Gray*, 33 O.R. (2d) 356, the Court of Appeal dealt with a suicide taking place some 16 months after a motor vehicle accident, upholding a finding that the suicide directly resulted from the motor vehicle accident, notwithstanding the passage of time. See also *Murdoch v. British Israel World Federation (New Zealand) Inc*. et al. [1942] 61 N.Z.L.R. 600.

Counsel for Mr. Sohi introduced as an exhibit, a copy of an interview with Dr. Bail posted on the website of Riverfront Evaluations, a medical assessment company which uses his services. In the interview, Dr. Bail focussed on opportunistic claims and his view of motivating factors for what he saw as an increase in claims involving "*psychosocial gain*." While I accept that the excerpt of an interview by itself does not conclusively establish bias on the part of Dr. Bail, I find the attitudes expressed disquieting when taken in conjunction with his testimony in this hearing.

Dr. Bail testified at the hearing that he discounted much of Mr. Sohi's stated concerns, because of perceived inconsistencies in the materials provided to him as well as his presentation during the interview. His reports and testimony featured a listing of Mr. Sohi's supposed inconsistencies and contradictions. He also, in his testimony, derided the opinions of psychologists, characterizing them as little more than psychometrists, capable, if at all, of administering tests. Indeed, Dr. Bail presented as a notably partisan witness.

In *Harrison and Wellington Insurance Company* (FSCO A96-000785, July 23, 1998), Arbitrator Makepeace dealt with the testimony of a partisan medical examiner. She stated: "I reject Dr. Costa's report in all other respects because he appears to have focussed mainly on identifying discrepancies in the Applicant's claim." Likewise, Dr. Bail's partisan approach and his focus on inconsistencies are troubling and seriously weaken the credibility and weight of his testimony.

By way of contrast, I found both Dr. Pilowsky and Dr. Koepfler to be more balanced and professional in their assessments and their approach to Mr. Sohi's history, even when their opinions diverged. Rather than attempting to discredit Mr. Sohi by searching for inconsistencies and divergencies, they sifted through his records, statements and history, looking for a credible explanation for his presentation.

I give little weight to Dr. Bail's conclusions concerning the characterization of Mr. Sohi's suicide attempt, and its triggers, especially when they conflict with the opinions of Drs. Pilowsky and Koepfler.

Even had Dr. Bail's assessment been even-handed and unprejudiced, I would tend to discount his conclusion that the "self immolation" as he termed Mr. Sohi's suicide attempt was due only to pre-existing and co-existing causes, and unrelated to the accident.

The law has long been that a direct cause need not be also the only cause. Indeed, the cause in fact shifts, depending on how the analysis of the facts is framed. This is nowhere more evident than in an examination of "thin skull" cases, such as that dealt with by the Supreme Court in *Athey v. Leonati* [1996] S.C.J. No. 102. In examining the application of the thin skull rule, the court, as well, did much to clarify the question of causation in personal injury cases. The court defined the issue before it as follows:

> This appeal involves a straightforward application of the thin skull rule. The pre-existing disposition may have aggravated the injuries, but the defendant must take the plaintiff as he finds him. If the defendant's negligence exacerbated the existing condition and caused it to manifest in a disc herniation, then the defendant is a cause of the disc herniation and is fully liable.[12]

It has long been clear that the thin skull rule can apply to a fragile personality or psyche as well as purely physical weaknesses such as a compromised disc. As Lacourcière J.A. wrote in *Cotic v. Gray* (supra):

> Because of the so-called "egg-shell" or "thin-skull" principle, the defendant has to take his victim as he finds him, a psychologically vulnerable individual. It must also be assumed that the jury were satisfied, on a preponderance of the evidence, that the accident, while not necessarily the sole cause, was a direct and substantial cause without which the suicide would not likely have happened.

---

[12] Laskin J.A. in *Chisholm* (supra) also noted "Conceivably road accidents may occur where there is more than one direct cause of a victim's injuries and one of the direct causes is the use or operation of an automobile. That, however, is not the case here. The only direct cause, the only effective cause of Chisholm's injuries, were the gun shots."

In this matter, even Dr. Bail accepts that Mr. Sohi was psychologically compromised prior to the accident. Although Dr. Koepfler characterized pre-accident problems as "long-standing personality traits", her observation that they had never led to suicide before reflects the overall evidence of Mr. Sohi's conduct prior to the accident.

I accept Dr. Koepfler's and Dr. Pilowsky's conclusions and find that Mr. Sohi's suicide attempt, and the injuries arising from it, was triggered by the motor vehicle accident, which was a direct cause of his burn injuries. The motor vehicle accident was the direct trigger setting a compromised Mr. Sohi on the road to self destruction. Like the *Ikaria*[13], whose final destruction was physically caused by another means (the grounding of the forward section of the ship), the true efficient cause of Mr. Sohi's distress (the motor vehicle accident) never lost its hold.

I find that Mr. Sohi has satisfied the burden of proving, on the balance of probabilities, that his burn-related injuries were a direct result of the motor vehicle accident.

Proposed treatment by Dr. Pilowsky:

As noted earlier, the primary substantive issue in this arbitration is the request for psychological treatment, to be provided by Dr. Pilowsky. This treatment was declined by the Insurer, principally because it felt that the treatment addressed a fire-related condition, rather than one which arose from the motor vehicle accident.

The treatment plan was, however, the subject of a DAC assessment. Dr. Koepfler, the DAC assessor, while disagreeing with the Insurer on the linkage of the psychological problems, believed that Mr. Sohi would not benefit from treatment due to his lack of insight, a lack that would prevent him from fully engaging in a psychotherapeutic relationship.

[13] *Leyland Shipping Co. Ltd. v. Norwich Union Fire Insurance Co. Ltd.* (supra)

The arbitration hearing had the benefit of the testimony of both Dr. Pilowsky and Dr. Koepfler. Dr. Koepfler confirmed that in her opinion Mr. Sohi suffered psychological problems which she attributed, ultimately, to the motor vehicle accident. She believed that Mr. Sohi could benefit from counselling in the area of pain management

The criteria for the provision of medical benefits are set out in section 14(1) and (2) of the *Schedule*. Indeed, the criteria are simple. If a person suffers an impairment arising from an accident, then the Insurer *shall* pay for all reasonable and necessary expenses.

The meaning of the terms *reasonable* and *necessary* must be interpreted in the light of the overall intention of the legislature in creating statutory accident benefits and their predecessors.[14] Rather than waiting for the results of a long, drawn-out civil action to put treatment resources in the hands of an accident victim, the legislature recognized that early treatment of accident-related[15] disabilities would be an advantage both to the public and the accident victims. This is reflected in the use of the mandatory "shall" in section 14(1).

Bearing in mind that both psychiatry and psychology in particular contain elements of both science and art, it should not be anticipated that there must be an absolute consensus of all experts that a treatment is not only advisable but also absolutely necessary before treatment can commence.

In Mr. Sohi's case, the two psychologists agree that he suffered psychological impairments resulting from the motor vehicle accident. Both agree that some sort of psychological treatment is advisable, but disagree on the nature of the treatment, and Mr. Sohi's likelihood of responding to a treatment.

---

[14] *Alfred v. Allstate Insurance Co. of Canada* [2004] O.J. 848, a decision of Himel J., cites *Smith v. Co-operators* [2002] 2 S.C.R. 129, as authority for the proposition that "in interpreting section 6 of the Schedule, I must be mindful of the objectives of the insurance regime, which emphasize consumer protection. That section must be interpreted in a fair and liberal manner."

[15] *Meyer v. Bright* (1993), 15 O.R. (3d) 129 (C.A.) sets out some of the "tradeoffs" involved in the creation of a no-fault regime.

Dr. Koepfler's reservations about the proposed treatment may have been due, in part, to her apparent assumption that Dr. Pilowsky intended to engage solely in conventional psychotherapy. This assumption appears to be at odds with Dr. Pilowsky's treatment plan.

Dr. Pilowsky's C.V., which was accepted by the Insurer, clearly indicates that she brings considerable expertise in cross-cultural psychology to her practice.[16] She also listed in her report and treatment plan that she conducts psychovocational assessments.

It is clear from the many reports and the testimony of Mr. Sohi that his difficulties have been complicated by a limited understanding of English, necessitating the use of an interpreter, both at the hearing and during assessments.[17]

The treatment plan, which is shown at page 9 of Dr. Pilowsky's report, mentions supportive psychotherapy as only one of six different techniques to be considered in the proposed treatment. The plan specifically addresses, as well, his "difficulties coping with pain."

Curiously, Dr. Koepfler rejected the proposed treatment plan, observing that Mr. Sohi's residual problems "are not amenable to a psychotherapeutic intervention in isolation." Dr. Koepfler then proceeded to recommend further intervention including vocational rehabilitation, functional restoration, pain management, and "counseling to help him deal with his feelings of doubt and inadequacy and fear of going out into the wider world."

In light of Dr. Pilowsky's testimony concerning her treatment plan, and the plan itself, I find that it is likely that the proposed treatment would have addressed many of those areas identified by

[16] The C.V. notes "Emphasis on the impact of language and culture on test administration/interpretation, diagnosing, and treatment; the impact of language and culture on personality development."

[17] Dr. Koepfler noted Mr. Sohi's "minimal ability to speak English".

Dr. Koepfler. In addition, I find that Dr. Pilowsky's experience in "cross-cultural" issues would likely have been useful in working with, and understanding Mr. Sohi whose difficulties integrating into an English language working environment may have inhibited his return to a higher level of functioning.

While there is no guarantee that Dr. Pilowsky's treatment would have been successful, I find that it addresses many of the strategies proposed by Dr. Koepfler. Both psychologists agree that some treatment is necessary. That proposed by Dr. Pilowsky is in the words of Himel J. "reasonable under the circumstances"[18] and should have been funded by the Insurer.[19]

S. 24 Assessment by Dr. Pilowsky:

Section 24 of the *Schedule* provides for the mandatory payment by the insurer of "all reasonable expenses incurred by or on behalf of an insured person for the purpose of this Regulation..." Such expenses specifically include the costs of an examination or assessment, or the obtaining of a "certificate, report or treatment plan."

There was no serious disagreement that the report and treatment plan were for the benefit of Mr. Sohi, nor any apparent problem with the report otherwise meeting the purposes of the *Schedule*. Rather, the Insurer's objections to funding the report stemmed directly from its position that the subject-matter – the psychological sequelae of the burn incident – was unrelated to the motor vehicle accident. Having found already that Mr. Sohi's suicide attempt was related to the motor vehicle accident, I find that the Insurer's position taken towards Dr. Pilowski's report is likewise without foundation.

Even if there remained some dispute about the causation of the suicide attempt, I would be inclined to accept Mr. Sohi's view that the report should be funded. A psychological report that enquired into the

[18] *Alfred v. Allstate* (supra)

[19] Given the report of the O.T. dated the previous May, there may have been some urgency in treating Mr. Sohi in a timely manner.

causation and treatment of Mr. Sohi's evident psychological issues, could not help but advance his treatment and shed light on his claim and its relationship to the undisputed motor vehicle accident. As such, I find that it was reasonable for Mr. Sohi to request the report, and mandatory that the Insurer indemnify him for its expense.

J&K Rehab Section 24 Report

This report was prepared May 9, 2002, by a Punjabi speaking occupational therapist, Ashok Jain, O.T. Its aim was to "assess his level of functioning with daily activities including self-care, homemaking and return-to-work."

At the time of the assessment, Mr. Sohi was still wearing a "burn suit" and exhibited healing burn scar tissue over the front part of his body, chest, abdomen, and both upper and lower extremities, which limited his range of movement. Mr. Sohi was still complaining of difficulties with personal care tasks, housework and social activities. The report concluded that Mr. Sohi needed various assistive devices, limited housekeeping assistance, and assistance in caring for his son. He also recommended referral to a psychologist to "manage the psychological trauma."

Once again, this report seems to have been prepared for the benefit of Mr. Sohi, who was clearly still suffering from the physical after-effects of his burns. The author of the report spoke Mr. Sohi's language and could be expected to offer some specialized insight into his needs. It made concrete and practical suggestions that might have had a positive impact if implemented.

The Insurer's objection to the report, as stated by its counsel, was that it related to "impairments arising from the burn incident and not the injuries sustained in the motor vehicle accident."
For the reasons previously stated, I find that this objection has no foundation in fact and that the report should have been dealt with by the Insurer and, of course, its cost reimbursed to Mr. Sohi.

Burlington Medical Assessment Centre

The claim for reimbursement of this report was withdrawn by Mr. Sohi at the arbitration hearing.

INTEREST:

In accordance with section 46(2) of the *Schedule*, ING shall pay compound interest at the statutory rate on all overdue payments until such time as they are paid in full.

CALCULATION OF THE AMOUNTS OWING:

If the parties are unable to agree upon the calculation of the benefits and interest outstanding within 30 days of the date of this decision, then either party may request a brief hearing to confirm the amounts due and the form of the final order to issue.

EXPENSES:

If the parties are unable to agree on the issue of expenses, I may also be spoken to. Parties shall have 30 days to advise the Commission should they wish to make representations on this issue, failing which I will proceed to fix expenses.

July 15, 2004

John Wilson
Arbitrator

Date

FSCO A03–001125

BETWEEN:

SHIVJINDER SOHI

Applicant

and

ING INSURANCE COMPANY OF CANADA

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. ING shall pay to Mr. Sohi a medical benefit claimed for Dr. Pilowsky's treatment plan, pursuant to section 14 of the *Schedule*.

2. ING shall reimburse Mr. Sohi for the cost of examinations, pursuant to section 24 of the *Schedule*, for examinations performed by Dr. Pilowski and J&K Rehab.

3. ING shall pay all compound interest owing on the overdue payment of benefits, pursuant to section 46(2) of the *Schedule*.

July 15, 2004

John Wilson
Arbitrator

Date