

**CITATION:** Jordan v. Commonwell Mutual Insurance Group, 2025 ONSC 4173  
**COURT FILE NO.:** CV-19-00000096-0000  
**DATE:** 2025Jul14

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** JOHN JORDAN and WILLIAM NIELSON, Plaintiffs/Responding Parties

**AND**

COMMONWELL MUTUAL INSURANCE GROUP and FINNEGAN  
INSURANCE BROKERS LTD., Defendants/Moving Parties

**BEFORE:** Justice Thomas Carey

**COUNSEL:** Michael Raymond Switzer, for the Plaintiffs/Responding Parties

Kadey B. J. Schultz, for the Defendant, The Commonwell Mutual Insurance  
Group

Pasquale Santini, for the Defendant, Finnegan Insurance Brokers Ltd.

**HEARD:** in writing

**COSTS ENDORSEMENT**

[1] The defendants were successful in their motion to dismiss the plaintiff Jordan’s claim for the loss by fire on November 13, 2018 of a hunting camp which had been appraised by agreement of the parties under the *Insurance Act* at \$32,918.26. That amount was paid by the insurer, but the action continued against both defendants by Jordan.

[2] The defendant Finnegan made an initial offer to settle for dismissal without costs after the examinations for discovery on September 18, 2020 and a second offer through a dismissal with costs payable in the amount of \$25,000 on October 31, 2023.

[3] The defendant broker is seeking substantial indemnity costs of \$97,714.39.

[4] The insurer Commonwell seeks costs, also on a substantial indemnity basis of \$116,286.80.

[5] Both defendants rely on Rule 49.10 and assert that there has been a clear finding of reprehensible conduct.

[6] The defendants Finnegan rely on the weakness of the plaintiff’s case in challenging the “binding findings of the appraisal award” as well as the fact that the co-plaintiff did not sue Finnegan as evidence the co-plaintiff was “of the view that the action was not viable.”

[7] The plaintiffs' response is that substantial indemnity costs are only to be awarded "where there has been scandalous or outrageous conduct on the part of one of the parties (*Young v. Young*, [1993] SCR 3 at 134 per McLachlin J.; *More v. 1362279 Ontario Ltd. (Seiko Homes)*, 2023 ONCA 527 at para. 31.

[8] The plaintiffs strongly dispute the defendants' characterization of their actions in this case. They point out numerous offers to settle, two of which remained open until one minute following the commencement of trial.

[9] As well, the plaintiffs assert that defendants' settlement offers "included short deadlines that prevented plaintiffs' counsel from obtaining adequate instructions and the only offers to settle made by the defendants still open at the trial's commencement were made on October 31, 2023 (in any event the fact that a reasonable offer was made, does not in the absence of egregious behaviour justify substantial indemnity costs. (*St. Elizabeth Home Society v. Hamilton (City)*, 2010 ONCA 280 at paras. 87-92.

[10] I agree with the plaintiffs that the circumstances here fall far short of justifying substantial indemnity costs.

[11] This was a short trial on narrow issues that did not require the calling of a defence.

[12] The plaintiff gave evidence of his understanding of his insurance coverage. He based his assumption on his previous insurance policies for his homes. However, this property was a rarely used hunting camp and would not have been considered for replacement value insurance. I accept that, as a fact, the defendants' position that the arbitration was not capable of being challenged in court as it was "binding" was not supported by any case law. Both sides made offers to settle this out of court consistent with there being triable issues.

[13] The defendants' reliance on the co-plaintiff not testifying as "telling" on the plaintiff's case runs counter to the plaintiff Jordan's unchallenged evidence that he alone attended the broker's office to obtain the insurance coverage.

[14] The enormity of the total costs sought here in relation to the amount sought by the plaintiffs and the length of the trial is staggeringly disproportional to the claim at stake as well as the reasonable time requirements for preparation and trial. There was no demonstrable need for four counsel to appear with attendant trial expenses on this uncomplicated case.

[15] I reject completely that plaintiff Jordan's conduct or that of his counsel was such as to require costs on the substantial indemnity scale. The filing of a multimillion dollar claim when the settlement attempts were unsuccessful was imprudent and counterproductive but did not, in my view, impact the length of the trial or complicate the issues.

[16] The awarding of costs is a matter wholly in the discretion of this court. In all of the circumstances, costs will be fixed at \$10,000 inclusive of disbursements for each of the defendants.

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The Honourable Thomas Carey

**Date:** July 14, 2025