

CITATION: W. James D. Helmer v. Economical Mutual Insurance Company, 2026 ONSC 3715

COURT FILE NO.: CV-16-70237

DATE: 2026/06/24

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
W. James D. Helmer	)	Michael Van Dusen and Matthew Glass, for
	)	the Plaintiff
Applicant	)	
	)	
– and –	)	
	)	
Economical Mutual Insurance Company and	)	Martin P. Forget and Joshua Vickery, for the
Carr & Company Insurance Brokers Ltd.	)	Defendant, Economical Mutual Insurance
	)	Company
Defendant	)	
	)	
	)	
	)	
	)	HEARD: In Writing
	)	

DECISION REGARDING COSTS

R. SMITH J.

[1] This case involved a claim for the balance of an endorsement (6558) to a commercial fire insurance policy of \$500,000 issued by Economical Mutual Insurance Company (“Economical”). On October 21, 2015, the three old buildings, which had been joined together in an old historical area of Ottawa, were destroyed by fire.

[2] The plaintiff initially commenced a claim against both his insurance broker, Carr & Company Insurance Brokers Ltd. for negligence for failing to recommend adequate fire insurance coverage and Economical seeking the full replacement cost of approximately \$4.9 million. The action against the insurance broker was settled before trial pursuant to a Pierringer agreement. Any

costs related to the claim against the insurance broker must and have been deducted from the award of costs.

[3] After the settlement with the insurance broker, the plaintiff sought the balance of endorsement 6558 which covered a number of expenses after a fire, including the cost of upgrades required to meet the building code and zoning bylaws in place at the time of the fire. The amount claimed was \$339,146, which by the time of trial, had been reduced to \$327,162 which was the balance owing under the endorsement. This amount was not disputed by Economical but it denied that it was required to pay the balance of the endorsement because of the type of building that was reconstructed on the site (three stories high instead of two).

[4] The claim was vigorously defended by Economical and the legal proceedings lasted from 2016 until this trial was heard in early 2026, a period of almost 10 years. The defendant chose to proceed with a jury trial and the jury awarded the plaintiff the full amount of his claim for the balance of endorsement 6558.

[5] The jury found that Economical promised to pay the plaintiff the balance of the 6558 endorsement provided he rebuilt a new structure that complied with the building code and zoning bylaws regardless of whether it was the same height as the original structures. I infer that Economical made this promise to pay the balance of the endorsement because of the complicated nature of replacing three 100-year-old individual buildings, which had been joined together on one lot and the difficulty in determining what costs were incurred to meet the current building code and zoning bylaw requirements.

Positions of Parties

[6] The plaintiff seeks full indemnity costs throughout the legal proceeding of \$225,980 plus HST, plus disbursements of \$57,742, plus PJI at the average rate of 2.15% over ten years of \$72,370. He submits that costs should be payable on a full indemnity scale because the plaintiff was completely successful, it equaled an offer to settle that was open for acceptance for approximately 19 months, the insured paid premiums for coverage which was wrongfully denied, and because Economical acted unfairly towards its insured by failing to honour its promise to pay the full amount of the 6558 endorsement. In these circumstances, the plaintiff submits that he

should be fully indemnified for the unnecessary legal costs that he was forced to incur and because Economical unnecessarily complicated the litigation and caused a substantial increase in costs.

[7] Economical submits that costs should only be awarded costs on a partial indemnity basis because the plaintiff's offer to settle did not meet the requirements of Rule 49.10 because it expired before the commencement of the trial, and secondly that Economical's conduct was not so reprehensible, scandalous or outrageous such as to justify sanction by the court. Economical submits that the legal costs should be reduced to \$70,653 and the disbursements reduced to \$27,847.

[8] Economical further submits that prejudgment interest should remain at the applicable rate of 0.8% and not averaged over the 10-year period as claimed by the plaintiff.

Factors

[9] The factors to be considered when fixing costs are set out in Rule 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and include, in addition to success, the amount claimed and recovered, the complexity and importance of the matter, unreasonable conduct of any party which unduly lengthened the proceeding, scale of costs and any offer to settle, the principle of indemnity, the time spent, and the amount that a losing party would reasonably expect to pay.

Success

[10] In this case, the plaintiff was completely successful as the jury found that Economical breached its promise to pay Mr. Helmer the balance of the 6558 endorsement provided he rebuilt a code compliant building on the site.

Amount Claimed and Recovered

[11] The plaintiff claimed the balance of the 6558 endorsement which was \$339,146 at the time pursuant to its Amended Statement of Claim dated November 12, 2024 and recovered a jury award of \$500,000. This amount was amended on consent as the plaintiff only sought to recover the balance of the 6558 endorsement owing at the time of trial, which was in the amount of \$327,162.

The judgement was reduced on consent to \$327,162. I find that the plaintiff recovered at trial exactly the amount he was claiming. The plaintiff was completely successful at trial.

Complexity and Importance

[12] Both parties agree that the issues were above average complexity and were important to the parties. The legal proceeding lasted approximately 10 years and included questions of contract, interpretation, promissory estoppel, construction requirements, building code and bylaw stipulations, and expert opinions.

[13] The legal proceeding was important to the plaintiff who was forced to carry the cost of financing the shortfall caused by the insurer's refusal to honour its promise to pay the full amount of the 6558 endorsement. Legal proceeding was also important to the defendant as it was defending a claim for bad faith and punitive damages. The jury did not award any punitive damages.

Unreasonable Conduct of Any Party

[14] Economical defended the claim aggressively and refused to consent to proposed amendments to the Statement of Claim which were ultimately granted, initially refused to produce the adjuster for discovery until a motion was prepared and made multiple refusals to answer questions during examinations for discovery, named the plaintiff's lawyer personally in an attempt to have Mr. Van Dusen removed as counsel of record which forced the plaintiff to bring a motion to strike these portions of the Amended Amended Amended Statement of Defence and finally, sought production of the records for each and every contractor and subcontractor who worked on the reconstruction of the plaintiff's building causing substantial legal costs, where none of these records were referred to at trial.

[15] While Economical defended the claim vigorously and forced the plaintiff to incur substantial legal costs, I do not find that his conduct or was so reprehensible, scandalous or outrageous to justify an order of substantial indemnity costs in accordance with *Davies v. Clarington (Municipality) et al*, 2009 ONCA 722 at paragraphs 28-29.

Scale of Costs and Offers to Settle

[16] The plaintiff claims legal costs of \$225,980 plus HST as well as disbursements of \$55,637 on a full indemnity scale because the plaintiff was insured and had paid premiums for the coverage under the 6558 endorsement and it would be unfair and burdensome to make him pay a premium in legal fees in order to obtain the coverage that he purchased and because Economical acted unfairly refusing to comply with the promise it made to pay him the full amount of the 6558 endorsement provided he rebuilt a code compliant building.

[17] In the case of *Baker v. Blue Cross Life Insurance Company of Canada*, 2023 ONCA 842, the Court of Appeal for Ontario stated that there was no category of cases where substantial indemnity costs were awarded in all circumstances. The Court of Appeal stated at paragraph 42 that it was preferable the trial judges retain their discretion to award costs based on their assessment of the dynamic of the litigation. In the *Baker* decision, the Court of Appeal actually upheld the amount of costs awarded by the trial judge based on the circumstances of that case.

[18] The failure of Economical to honour its promise to pay the balance of the 6558 endorsement to the plaintiff was serious misconduct which justifies an increase in the amount of costs in the circumstances where the plaintiff had suffered a tragic fire with insufficient insurance coverage to rebuild. In these circumstances, I will give the principle of indemnity more weight.

[19] Economical did not make any written offer to settle during the 10 years of litigation and as a result, the plaintiff had no option other than to pursue his claim. A without prejudice email from the insurance adjuster did not constitute an offer to settle with cost consequences under the *Rules of Civil Procedure*.

[20] The plaintiff made a Rule 49 offer to settle on April 18, 2024 for \$339,146 (the balance of endorsement 6558 at that time) plus \$50,000 for costs for a total offer to settle of \$389,146. This offer was open for acceptance until October 15, 2025, a period of approximately 19 months. The offer was open for acceptance until almost the beginning of trial, which commenced in January 2026. This offer to settle was withdrawn before the commencement of the hearing and so it does not meet the requirements of Rule 49.10.

[21] Under Rule 49.13, the court in exercising its discretion with respect to costs may take into account any offer to settle. The amount of costs of \$50,000 included in the offer, would have

exceeded by the costs recovered by the plaintiff to that point in time. This offer to settle was very reasonable and in fact was for the amount that the jury found that Economical had promised to pay to the plaintiff (the balance owing on 6558 endorsement). By October 15, 2025, the plaintiff's recoverable costs on a partial indemnity basis would very likely have exceeded \$50,000. This offer to settle weighs in favour of awarding costs on a substantial indemnity basis from the date this offer was made.

Hourly Rates, Time Spent, and Indemnity

[22] Economical does not dispute the amount of the hourly rates claimed by the plaintiff. However, it seeks to further reduce the amounts claimed based on the time spent pursuing the claim against the insurance broker, making further deductions for instances where costs were not addressed by the judge or associate judge for motions and it seeks to deduct some of the costs incurred for expert witnesses.

[23] In the instances where costs submissions were made by the plaintiff, but not responded to by Justice Phillips, and where costs were not addressed by associate Justice Fortier, costs will be awarded in the cause.

Amount the Unsuccessful Party Would Reasonably Expect to Pay

[24] Economical has not produced its Bill of Costs for this legal proceeding and I find that it is a sophisticated party that was aware of the amount of legal costs that would be incurred by the plaintiff to successfully pursue a jury trial and several motions. Economical has not argued that it would not have reasonably expected to pay the amount claimed for costs by the plaintiff in these proceedings.

[25] I find that Economical as a sophisticated insurance company would have reasonably expected to pay the amount of costs claimed by the plaintiff if it was not successful in his defence.

Pre-Judgment Interest

[26] Section 130(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 gives the court discretion in respect of the amount of interest payable where it considers it just to do so. Subsection 1(b) and

2(a) to (g) permits allowing interest at a rate higher or lower depending on changes in market interest rates, the circumstances of the case, or any other relevant consideration.

[27] In this case, the prejudgment interest rates applicable under section 128 of the *Courts of Justice Act* range from 0.8% in 2016 when the claim was issued to 3.3% in 2025. In these circumstances where the interest rates have varied substantially over the 10-year period I find it would be just to take the average of the prescribed rate over the ten-year period, which in this case is 2.15% as submitted by the plaintiff.

Disposition

[28] Having considered the above factors, Economical is ordered to pay costs to Mr. Helmer fixed in the amount of \$200,000 plus HST of \$26,000 plus disbursements of \$50,000 inclusive of HST.

[29] Economical is further ordered to pay pre-judgment interest on the jury award of \$327,000 at the rate of 2.15% from October 21, 2015 to February 6, 2026 for a total of \$72,370.

The Honourable Justice Robert Smith

Released: June 24, 2026

CITATION: W. James D. Helmer v. Economical Mutual Insurance Company, 2026 ONSC 3715

COURT FILE NO.: CV-16-70237

DATE: 2026/06/24

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

W. James D. Helmer

Applicant

– and –

Economical Mutual Insurance Company and Carr &
Company Insurance Brokers Ltd.

Defendants

DECISION REGARDING COSTS

Robert Smith J.

Released: June 24, 2026