

**ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)**  
**CIVIL ENDORSEMENT FORM**  
*(Rule 59.02(2)(c)(i))*

<b>BEFORE</b>	<b>Judge/Case Management Master</b> Mr Justice Robert Centa	<b>Court File Number:</b> CV-20-00640647-0000
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**Title of Proceeding:**

**JENNINGS, EDITHA ET AL.** Plaintiff(s)

-v-

ARIAN SULTAFA, litigation administrator of  
GLIGOR LOJOVIC, deceased ET AL. Defendants(s)

**Case Management:** ☐ **Yes** If so, by whom: **X No**

**Participants and Non-Participants:** *(Rule 59.02(2)(vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Plaintiff	Allan Blott Nadezhda P. Simova	ablott@blottlaw.com nsimova@blottlaw.com		Y
2) Defendant	Bhavpreet Saini	bsaini@kglawyers.com		Y
3)				

**Date Heard:** *(Rule 59.02(2)(c)(iii))* **June 21, 2022**

**Nature of Hearing (mark with an "X"):** *(Rule 59.02(2)(c)(iv))*

☒ Motion ☐ Appeal ☐ Case Conference ☐ Pre-Trial Conference ☐ Application

**Format of Hearing (mark with an "X"):** *(Rule 59.02(2)(c)(iv))*

☐ In Writing ☐ Telephone ☒ Videoconference ☐ In Person

If in person, indicate courthouse address:

**Relief Requested:** *(Rule 59.02(2)(c)(v))*

Plaintiff's motion for partial summary judgment for an advance payment arising from a motor vehicle accident.

**Brief Reasons, if any:** *(Rule 59.02(2)(b))*

The plaintiff brought a motion for partial summary judgment. On April 26, 2022, in her requisition to attend Civil Practice Court, the plaintiff indicated that the motion was urgent. On May 17, 2022, the matter came before Justice Myers at Civil Practice Court. In an endorsement Myers J. described the plaintiff's motion as a "motion for advance payment of medical expenses (not income replacement) under s. 256 of the *Insurance Act*."

The plaintiff delivered motion materials and a factum that sought an advance payment of \$50,000 for either medical expenses or income replacement. The grounds for the motion, therefore, were different than the motion that Myers J. scheduled to be heard. The defendants Arian Sultafa (litigation administrator of Gligor Lojovic) and Nikola Lojovic filed responding material and a factum. The defendants' factum submitted that there could be no advance payment ordered in respect of future health care costs on a motion for summary judgment because this motion did not meet the requirements of a threshold motion under s. 267.5(12) of the *Insurance Act*.

At the beginning of the hearing, I asked counsel for the plaintiff to clarify the basis for the claim for the advance payment. He indicated that the grounds for the motion had evolved over time and, having read the materials filed by the respondent, the plaintiff was abandoning the request for an order requiring the payment of advance costs in respect of general damages or future health care costs. The plaintiff was only seeking an order of advance costs in respect of past or future income loss. I note, again, that this was not the motion that Myers J. permitted to be scheduled. I indicated my concern but allowed counsel for the plaintiff to continue his submissions.

Counsel for the plaintiff then addressed the claim for lost income. Counsel candidly acknowledged that the plaintiff had not yet completed or provided to the defendant the corporate plaintiff's tax returns. The individual plaintiff is employed by the corporate plaintiff that earned the income providing IT contracting services to Hydro One. In addition, the motion materials did not contain a quantification of the plaintiff's income loss.

Counsel for the plaintiff then proposed that I decide only whether or not the plaintiff had proven the defendant's liability on this motion and that the plaintiff could return later for a determination of whether or not an advance payment was required. I noted that the defendant denied liability and that para. 51(a) of the plaintiff's factum specifically stated that "it appears that the Court is not required to provide definitive rulings on liability and threshold in order to grant a partial summary judgment and order an advance payment to be made. Those issues could be properly dealt with and determined at trial."

Counsel for the defendant stated that he was not aware that this motion would seek a final determination of liability because the plaintiff had stated otherwise in its materials. He stated that his client disputed liability and there might be additional evidence filed at trial on the issue of liability.

I allowed counsel for the parties an opportunity to discuss among themselves and then with each other how they wished to proceed. Following that discussion, counsel for the plaintiff requested an adjournment of the motion to permit the plaintiff to arrange for the completion of the outstanding corporate tax returns and to file additional evidence and submissions on

liability. Counsel for the defendant opposed any adjournment request.

I denied the adjournment request. The plaintiff sought an urgent motion for partial summary judgment motion for advance payment of medical expenses (not income replacement). That motion was scheduled for today. The plaintiff then unilaterally altered the grounds of the motion to add a request for an advance payment for loss of income. An adjournment, if any, should have been requested well in advance of the return of the motion.

After I denied the adjournment request, counsel for the plaintiff withdrew the motion.

I invited submissions on costs. Counsel for the defendant had provided a costs outline seeking \$6,295.90, inclusive of HST on a partial indemnity basis. Counsel for the plaintiff did not oppose a costs order in favour of the defendant, but proposed that a costs award of approximately half that amount, or \$3,147, would be appropriate in recognition of the financial circumstances of the plaintiff.

In all of the circumstances, and recognizing both the costs entirely thrown away and the plaintiff's financial circumstances as outlined in her affidavit material filed on the motion, I exercise my discretion and order the plaintiff to pay \$4,000, inclusive of disbursements and HST to the defendant within 30 days of this order.

**Additional pages attached:** ☐ Yes ☒ No

**Disposition made at hearing or conference (operative terms ordered):** (Rule 59.02(2)(c)(vi))

Motion withdrawn

**Costs:** On a **N/A** indemnity basis, fixed at \$ are payable  
by to [when]

**June 21, 2022**

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Date of Endorsement (Rule 59.02(2)(c)(ii))

Signature of Judge/Case Management Master (Rule 59.02(2)(c)(i))