

Case Name:

**Kingsway General Insurance Co. v. Ontario
(Minister of Finance)**

IN THE MATTER OF the Insurance Act, R.S.O. 1990,
c. I.8, as amended, and Regulation 283/95 made pursuant
to the Insurance Act
AND IN THE MATTER OF the Motor Vehicle Accident
Claims Act, R.S.O. 1990, c. M.41
AND IN THE MATTER OF the Arbitration Act, 1991,
S.O. 1991, c. 17
AND IN A MATTER OF an arbitration

Between

Kingsway General Insurance Company, appellant, and
Her Majesty the Queen in Right of Ontario as
represented by the Minister of Finance, respondent

[2005] O.J. No. 266
Court File No. 04-CV-270079 CMI

**Ontario Superior Court of Justice
M.R. Dambrot J.**

Heard: January 19, 2005.
Judgment: January 27, 2005.
(30 paras.)

*Arbitration — Agreement to arbitrate — Intention of parties — Arbitrators —
Jurisdiction — Insurance law — Automobile insurance — Compulsory government
schemes — Cancellation of coverage — Rights and duties of insurer.*

Appeal by Kingsway General from an arbitrator's decision requiring Kingsway to pay statutory accident benefits to Legarde. Legarde was injured in a pedestrian motor vehicle accident. The driver had been insured by Kingsway, but Kingsway had cancelled the policy two days prior to the accident due to non-payment of premiums. The cheque issued to pay the premiums had been returned NSF. Kingsway thus refused to pay any benefits on the basis that the driver was not an insured. The Motor Vehicle Claims Fund then paid benefits to Legarde. The Fund commenced arbitration proceedings. The arbitrator found that although Kingsway's insured was a status Indian living on a Reserve, and was thus exempt from sales tax, Kingsway charged her sales tax on her premiums. The insured was on welfare, but was rated as a driver driving some distance to work. If she had been rated correctly, she would have paid a lower premium. There would have

been sufficient funds in her account to pay the premium and the policy would not have been cancelled. The arbitrator found that due to these circumstances, there was a significant nexus between Kingsway and the insured that obligated Kingsway to pay Legarde's claim under s. 2 of the Insurance Act Regulations, since Kingsway was the first insurer to which Legarde had made a claim and there was a significant nexus between the driver and Kingsway.

HELD: Appeal allowed. The matter was remitted to the arbitrator. As the Fund was not an insurer, the dispute between the Fund and Kingsway was not one which had to be resolved by arbitration under the Insurance Act Regulations. The parties had, however, agreed to resolve the dispute by way of arbitration and the arbitrator thus had jurisdiction to determine this matter. The arbitrator did not err in finding Kingsway liable under s. 2 of the Regulations to pay the initial benefits to Legarde, based on the finding of a close connection between the driver and Kingsway. The arbitrator erred, however, in making Kingsway liable to permanently pay Legarde's benefits. The arbitrator only determined that Kingsway should have commenced making the initial payments when a claim was first brought by Legarde, pending resolution of the dispute between Kingsway and the Fund. In order to make a final decision as to which party was responsible for paying the accident benefits, the arbitrator had to determine whether Kingsway was the driver's insurer at the time of the accident. The arbitrator never determined this issue and erred in law in making his award. He had no jurisdiction under the arbitration agreement to impose a sanction of Kingsway for its breach under its obligation under se. 2 of the Regulations.

Statutes, Regulations and Rules Cited:

Arbitration Act, ss. 2(1), 2(3), 5(2), 45(2), 45(3), 45(5)

Insurance Act, R.S.O. 1990, c. I.8

Insurance Act Regulation 283/95, ss. 1, 2, 7(1)

Motor Vehicle Accident Claims Act, R.S.O. 1990, c. M.41

Counsel:

Jamie R. Pollack, for the appellant

John Friendly, for the respondent

¶ 1 **M.R. DAMBROT J.:**— This appeal involves a dispute between the Motor Vehicle Claims Fund and Kingsway General Insurance Company about the obligation to pay Statutory Accident Benefits to a motor vehicle accident victim.

BACKGROUND

¶ 2 Irene Legarde was injured in a pedestrian motor vehicle accident on April 1, 2000. She was struck by a vehicle being driven by her cousin Frances Legarde. Francis Legarde had been insured by the appellant Kingsway General Insurance Company under policy No. KGHOAP15365, but Kingsway cancelled the policy two days before the accident. Marie Legarde presented an application for payment of statutory accident benefits to Kingsway on August 17, 2000. Kingsway did not accept the claim, on the basis that Francis Legarde did not have a policy of insurance with Kingsway on the date of the accident. Ultimately, Irene Legarde applied to the Motor Vehicle Claims Fund, which paid the benefits. Despite making these payments, however, the Fund took the position that Kingsway, which insured Frances Legarde almost continuously under a series of policies both before and after the accident had an obligation to respond to and pay Irene Legarde's initial claim.

¶ 3 Her Majesty the Queen in right of Ontario, as represented by the Minister of Finance, who is responsible for the administration of the Motor Vehicle Accident Claims Fund, commenced private arbitration proceedings against Kingsway, seeking an order that Kingsway was required to pay the benefits, and to make restitution.

¶ 4 On March 31, 2004, Arbitrator Bruce Robinson made an award in favour of the Fund. Specifically he made an order that "Kingsway General Insurance Company is responsible to pay statutory accident benefits to Irene Marie Legarde arising out of a motor vehicle accident of April 1st 2000."

THE DECISION OF THE ARBITRATOR

¶ 5 The arbitrator made the following findings in an Award released on March 31, 2004:

- (a) Kingsway was named as Francis Legarde's insurer on the accident report prepared by the investigating officer. The claimant presented a completed Application for Accident Benefits to Kingsway on August 17, 2000. By letter dated November 27, 2000, Kingsway denied the application on the ground that the policy in question had been cancelled as of 12:01 a.m. on March 30, 2000, two days before the accident.
- (b) The policy had been cancelled because the monthly amount of \$123.58 that was automatically deducted from her bank account on March 8, 2000, had been returned NSF. At the time, the balance in her account was \$116.20, a shortfall of \$7.38.
- (c) At all material times, Frances Legarde was a status Indian living on a Band Reserve. The motor vehicle that she was operating was registered to an address on the Reserve. As a result, she was exempt from paying retail sales tax. Despite this, Kingsway had charging her sales tax in her premiums.

- (d) In addition, Kingsway rated Frances Legarde as a Class 02 risk, indicating that she drove some distance to work. In fact, she was on welfare. There was no justification in her policy for the 02 rating. She should have been rated 01, representing pleasure use of the vehicle, and as a result charged a lower premium.
- (e) If Francis Legarde had been rated an 01 driver and not been charged retail sales tax, the premium owing on March 8, 2000, would have been \$111.87. There would have been sufficient funds in her account to pay this amount, and there would have been no reason to cancel her policy.
- (f) The applicant's application to the Fund was received on January 11, 2001, and the Fund then began making payments to the applicant.
- (g) The Fund put Kingsway on notice of the "priority problem" on July 6, 2001, and filed a Notice of Dispute between insurers on that date.
- (h) Kingsway was the first insurer to receive the Application, and failed to comply with the Regulations or deal with the claim appropriately by its refusal to pay. I note that s. 2 of Regulation 283/95 provides:

The first insurer that receives a completed application for benefits is responsible for paying benefits to an insured person pending the resolution of any dispute as to which insurer is required to pay benefits under s. 268 of the Act.

- (i) There was a sufficient nexus between the claimant and Kingsway to require Kingsway to pay benefits to Irene Legarde. As a result, it should have paid benefits to her upon receiving her application.

ANALYSIS

¶ 6 I begin by attempting to set out in a comprehensible way the grounds of appeal raised by the Appellant. It is important to note that the parties to this arbitration entered into an arbitration agreement. Section 45 of the Arbitration Act provides that if the arbitration agreement does not deal with appeals, a party may appeal an award to the Superior Court of Justice only on questions of law with leave. Sections 45(2) and 45(3) of the Act provide that if the arbitration agreement so provides, a party may appeal an award on a question of law or a question of fact and law, respectively, presumably as of right. Upon reviewing the arbitration agreement, given the broad grounds of appeal in the Notice of Appeal, I was surprised to find no mention of appeals at all. I subsequently learned, however, that at the outset of the arbitration, counsel for the Crown announced that the parties had agreed that either party could appeal on a question of fact and law. Section 5(2) of the Arbitration Act provides that if parties to an arbitration agreement make a further agreement in connection with the arbitration, it is deemed to form part of the arbitration agreement. As a result, the further oral agreement mentioned by Crown counsel forms a part of the written arbitration agreement. That leaves us in the rather anomalous position that the parties are entitled to bring an appeal on a matter of mixed fact and law as of right, but on a question of law alone only with leave. It may be that the

parties actually agreed that an appeal could be taken as of right on a question of law as well as on a question of mixed fact and law. That position was proposed by the counsel for the Fund to counsel for Kingsway in a letter dated January 19, 2004, but I am unaware of the Fund's response. In any event, if there is an anomaly, I do not think that it causes any problem on this appeal.

¶ 7 In its Notice of Appeal, Kingsway lists fifteen grounds of appeal, the last of which is "such further and other grounds as counsel may advise and this Honourable Court may permit." Many of the grounds of appeal, although described as raising jurisdictional or legal issues, fundamentally raise only questions of fact or mixed fact and law. In addition, most of the grounds of appeal really raise sub-issues that support the four substantial issues raised in the Notice of Appeal. Greater attention to the purpose of a Notice of Appeal by the appellants would have been helpful. In the end, however, I am able to extract the following issues as the issues of substance raised by the appellants:

- (a) the learned arbitrator erred in finding that Irene Legarde was insured by Kingsway General Insurance Company pursuant to the meaning provided in Section 2 of Regulation 283/95 and that Kingsway General Insurance Company was therefore obligated to accept and process her application for accident benefits pending the resolution of any resulting dispute between insurers (ground (j)).
- (b) the learned arbitrator erred in holding that Kingsway General Insurance Company was obligated to pay Statutory Accident Benefits to and on behalf of Irene Legarde pursuant to Section 3 of Regulation 283/95 (ground (n)).
- (c) the learned arbitrator misapplied equitable doctrines by ordering that Kingsway General Insurance Company was obligated to pay Statutory Accident Benefits to and on behalf of Irene Legarde in order to penalize Kingsway General Insurance Company for allegedly inappropriate actions that Kingsway General Insurance Company had taken (ground (d)).
- (d) the learned arbitrator erred in law in finding that the respondent was not obligated to comply with the notice requirements and limitation period pursuant to Regulation 283/95 (ground (k)).

¶ 8 On the hearing of the appeal, Kingsway raised an issue that it had not raised before the arbitrator, in its notice of appeal or in its factum. Section 7(1) of Regulation 283/95 provides that if insurers cannot agree as to who is required to pay benefits, the dispute shall be resolved through arbitration. The appellant argued that because the Fund is not an insurer, Section 7(1) has no application, and the arbitrator had no jurisdiction to make his Award in this case.

¶ 9 I will consider each of these issues in turn, but I will consider the jurisdictional issue first.

1. Did the Arbitrator Have Jurisdiction to Make His Award?

¶ 10 It is beyond dispute that the arbitration in this case was governed by the Arbitration Act. That Act applies to arbitrations conducted in accordance with another Act (s. 2(3)), as well as arbitrations conducted under an arbitration agreement (s. 2(1)). Surprisingly enough, it is not immediately apparent whether this arbitration is governed by s. 2(3) or s. 2(1).

¶ 11 On the one hand, s. 7(1) of Regulation 283/95 made pursuant to the Insurance Act provides that if disputes between insurers as to which of them is required to pay benefits cannot be resolved by agreement, they must be resolved through arbitration under the Arbitration Act. Since Regulation 283/95 is authorized by the Insurance Act, an arbitration required by the regulation and conducted in accordance with the Regulation is an arbitration conducted in accordance with another Act within the meaning of s. 2(3) of the Arbitration Act. It is apparent that the Fund purported to commence this arbitration under Regulation 283/95. On June 17, 2002, counsel for the Fund faxed a "Notice of Commencement of Arbitration" to counsel for Kingsway. In the notice, which took the form of a letter, he said, "You are hereby notified that my client will commence an arbitration in this matter on the basis the Kingsway General was the first insurer to receive a completed application and is, as a consequence, obligated to pay accident benefits to Ms. Legarde." He invited counsel for Kingsway to contact him to choose an arbitrator, or to send him a list of arbitrators that he would recommend "for appointment under O. Reg. 283/95."

¶ 12 On the other hand, despite the facts that the Fund gave notice to Kingsway that it intended to commence an arbitration under the Regulation, the parties clearly entered into an arbitration agreement in this case. An arbitration agreement is defined in the Act as "an agreement by which two or more persons agree to submit to arbitration a dispute that has arisen or may arise between them." The agreement was actually forwarded by the arbitrator to the parties in draft on November 27, 2002, with the direction that it be executed and returned by December 30, 2002. The arbitrator left it open to the parties to prepare a separate agreement, in addition to his agreement, if they so desired. The agreement was made on November 27, 2002, and signed by counsel for the Fund and for Kingsway. [I have not seen a copy of the agreement bearing a signature on behalf of Kingsway, but the parties advised me in oral argument that they were both parties to the agreement.] The agreement makes no reference to the Regulation. It does acknowledge the following:

- (a) a dispute exists between the parties;
- (b) it is the intention and desire of the parties that there be a final resolution and determination of the dispute by arbitration pursuant to the provisions of the Arbitration Act and the Insurance Act;
- (c) the parties entered the agreement voluntarily; and
- (d) in consideration of the mutual covenants in the agreement, the parties agree to appoint the arbitrator as the sole arbitrator to hear and determine the dispute.

¶ 13 I have described the basis for the arbitration at length because of the jurisdictional argument raised by the appellant. As I have noted, on the hearing of the appeal, Kingsway raised an issue that it had not raised before the arbitrator, in its notice of appeal or in its factum. Kingsway noted that s. 7(1) of Regulation 283/95 provides that if insurers cannot agree as to who is required to pay benefits, the dispute shall be resolved through arbitration. It argued that because the Fund is not an insurer, s. 7(1) has no application, and the arbitrator had no jurisdiction to make his Award in this case.

¶ 14 This argument proceeds from *Kalinkine v. Ontario (Superintendent of Financial Services)*, [2004] O.J. No. 5138, a decision of the Court of Appeal released on December 17, 2004. I reproduce the Court's brief endorsement in full:

[1] **THE COURT** (oral endorsement):— The issue on this appeal is whether the Motor Vehicle Accident Claims Fund (the "Fund") is entitled to seek restitution through the courts from The Personal Insurance Company of Canada ("Personal") (represented with the appellants) for statutory accident benefits ("SABS") paid by the Fund to an injured tort victim in circumstances where Personal, the insurer of the tortfeasor, concedes that it bears primary responsibility for the payment of the SABS and there is no dispute as to the quantum of the benefits paid by the Fund.

[2] The appellants argue, on several grounds, that the Fund is not entitled to seek restitution through the courts because it is bound by the arbitral dispute resolution model and all other provisions of O. Reg. 283/95 under the Insurance Act, R.S.O. 1990, c. I.8, entitled "Disputes Between Insurers" (the "Regulation"). In our view, this argument cannot succeed for two principal reasons.

[3] First, s. 1 of the Regulation establishes that it applies only to "insurers" that are required to pay SABS under s. 268 of the Insurance Act. The Fund is not an "insurer" for the purpose of the Insurance Act or the Regulation. Section 6(2) of the Motor Vehicle Accident Claims Act, R.S.O. 1990, c. M.41 deems the Fund be an insurer only for the limited purpose of the Statutory Accident Benefits Schedule referred to in that section: see also *Young v. Ontario (Minister of Finance)*, [2003] O.J. No. 4832 (Ont. C.A.) and *Ontario (Minister of Finance) v. Allstate Insurance Co.*, [2001] O.J. No. 1181 (S.C.J.).

[4] Second, and in any event, nothing in the Regulation purports to remove the Fund's right to seek restitution through the courts in a proper case. Contrary to the appellants' contention, we are not persuaded that s. 11 of the Regulation reflects a legislative intention to displace the Fund's common law right to seek restitution in court proceedings. Section 11 affects the rights of insured persons in defined circumstances, not the substantive rights of the Fund.

[5] Accordingly, for these reasons, the appeal is dismissed. The respondent is entitled to its costs of this appeal as against Personal on a partial indemnity basis, fixed in the amount of \$5,000, inclusive of disbursements and Goods and Services Tax.

¶ 15 As can be seen, the Court of Appeal held that the Fund is not an insurer for the purpose of s. 1 of the Regulations. It follows that a dispute about the obligation to pay benefits between the Fund and an insurer is not a dispute between insurers. As a result, it seems plain to me that a dispute of this nature between the Fund and an insurer that the fund and the insurer cannot resolve is not a dispute that must, by virtue of s. 7(1) of the Regulations be resolved by arbitration. To this extent, I agree with the appellant's argument. But the fact that the Fund and Kingsway were not compelled to resolve their dispute by way of arbitration does not preclude them from agreeing to arbitration. Whatever misapprehensions the parties held with respect to the Regulation, and despite the form of the Fund's Notice of Commencement of Arbitration, both parties had the "intention and desire" to finally resolve their dispute by arbitration, and both voluntarily agreed to do so. It does not lie in the mouth of Kingsway to now resile from its agreement.

¶ 16 Lest it be thought that despite the language of the agreement, Kingsway only agreed to arbitrate because it thought it had to, I point to a letter from counsel for Kingsway to counsel for the Fund dated August 27, 2002. In it, Mr. Fonseca, who later appeared for Kingsway on the arbitration, advised Mr. Friendly that he believed that the notice of dispute between insurers sent to Irene Legarde "was not proper" "as their was no priority dispute to be determined." The Regulation, of course, compels arbitration only of priority disputes between insurers. It is indisputable that Kingsway agreed to an arbitration despite its belief that it was not obliged to submit to one.

¶ 17 Accordingly, I will not give effect to the appellant's jurisdictional argument. In view of my analysis of the issue, however, I will analyze the remaining grounds of appeal with the understanding that this was an arbitration conducted under an agreement, and not under the Regulation.

¶ 18 I note that, even if I were of the view that there was merit to the appellant's jurisdictional argument, I would not give effect to it. Section 46(6) of the Arbitration Act provides that if the ground alleged for setting aside an award could have been raised as an objection to the arbitral tribunal's jurisdiction to conduct the arbitration, the court may set the award aside on that ground if it considers the applicant's failure to make an objection in accordance with s. 17 was justified. I do not consider the failure here to be justified, particularly because Kingsway was aware of a possible jurisdictional issue prior to the selection of an arbitrator. As a result, I am not authorized to set aside the award on this jurisdictional basis.

2. Did the Arbitrator Err in Finding that Irene Legarde Was Insured by Kingsway within the Meaning of Section 2 of Regulation 283/95, and as a Result that Kingsway Was Obligated to Accept and Process her Application?

¶ 19 I begin by noting that the question raised by the appellant misdescribes the arbitrator's finding. He did not decide that Francis Legarde was insured by Kingsway at the time of the accident. He did not decide, for example, that, by virtue of its wrong classification of Frances Legarde, or because of its wrongful collection of sales tax from

her, it had wrongly cancelled her insurance and was in fact her insurer. He left that issue open. He only found that in these circumstances, together with the fact that her account would otherwise have contained enough money to pay the premium, "there is a very significant nexus between Kingsway General Insurance Company and Frances Legarde" that obliged them to pay the claim under s. 2 of the Regulation. This would not have precluded them from disputing their obligation to pay. It would only have ensured that, pending resolution of the dispute, Francis Legarde would have received benefits.

¶ 20 His reference to a nexus quite obviously derives from the decision of the Divisional Court in *Allstate Insurance Company of Canada v. Brown et al.* (1998), 40 O.R. (3rd) 610, which he referred to in reaching his conclusion. I infer from the decision of the majority in that case that in circumstances such as these, although a company might ultimately not be an insurer under the Act, it is obliged preliminarily to pay interim benefits to a claimant if a nexus exists between the company and the driver. In that case the only nexus was the fact that the insurer had been providing insurance coverage four months before the accident.

¶ 21 As I have stated, the arbitrator in this case did not decide against the appellant because he decided that it was in fact the insurer. He decided against Kingsway because it breached its obligation as the first insurer applied to for benefits.

¶ 22 In my view it makes perfect sense to require Kingsway to pay the benefits in the first instance in circumstances such as these despite the fact that it says that it is not an insurer. If an insurance company is permitted to refuse to pay benefits simply because it decides that it is not an insurer despite the existence of some connection between the company and the driver, it would undermine the purpose of the regulation - that accident victims not be denied statutory accident benefits simply because the first insurer applied to for benefits thinks another insurer should pay.

¶ 23 Accordingly, I conclude that the arbitrator made no error in concluding that Kingsway breached s. 2 of the Regulation by failing to accept Irene Legarde's application and commencing to make payments to her.

3. Did the Arbitrator Err in Holding that Kingsway Was Obligated to Pay Statutory Accident Benefits to Irene Legarde pursuant to Section 3 of Regulation 283/95?

¶ 24 Again this misdescribes the arbitrator's finding. He held that Kingsway was obliged to pay benefits to Irene Legarde pursuant to s. 2 of the regulation, not section 3. In any event, I have already dealt with this issue in my consideration of issue 2.

4. Did the Arbitrator Err in Concluding that Kingsway Should Be Obligated to Pay Benefits to Irene Legarde in Order to Penalize Kingsway for Violating Section 2 of the Regulations?

¶ 25 As I have noted, Kingsway denied that it was obliged to preliminarily pay benefits to Irene Legarde pursuant to s. 2 of the Regulations. But it went on to say that

even if Kingsway was obliged to make payments to her pending the resolution of a dispute and so breached that obligation, this should not attract the sanction of having permanent responsibility for paying the benefits. In my view, Kingsway has accurately described the effect of the arbitration award. Nowhere in his reasons did the arbitrator conclude that Kingsway was in fact the insurer at the time of the accident. He merely concluded that because of the nexus between the company and the driver, it should have commenced making payments pending the resolution of any dispute. It is as a result of this finding that he concluded that Kingsway remains responsible to pay benefits to Irene Legarde.

¶ 26 In my opinion, the arbitrator erred in law in resolving the matter in this fashion. The issue that he was obliged to determine, in his own words, was: As between Her Majesty the Queen in Right of Ontario as represented by the Minister of Finance and Kingsway General Insurance Company, which is responsible to pay statutory accident benefits to Irene Marie Legarde, arising out of a motor vehicle accident of April 1, 2000. In order to answer this question, he had to determine whether or not Kingsway was the insurer of Frances Legarde on that date. If it was, then it would be responsible to pay the benefits. If it was not, then only the Fund could be responsible. By stopping short of deciding whether or not Kingsway was the insurer, he erred in law in making his Award. He had no jurisdiction under the arbitration agreement to impose a sanction on Kingsway and make it responsible for the benefits because it had violated s. 2 of the Regulations. His sole responsibility was to decide if it had the legal obligation to pay the benefits, and if so, if its obligation stood in priority to any obligation on the Fund to pay.

¶ 27 I note that this is not an inter-company priority dispute between two insurers who are each liable to pay the benefits. In such a case, it may be appropriate to deprive the insurer first applied to that refuses to make payment the right to argue in an arbitration that another insurer stands ahead of it in priority (see *State Farm Mutual Automobile Insurance Co. v. Ontario (Minister of Finance)* (2001), 53 O.R. (3d) 436 (S.C.J.)). Here the appellant says that it has no liability at all - it is not an insurer. Before the arbitrator can require it to pay, he must conclude that it is in fact an insurer, regardless of issues of priority.

¶ 28 As a consequence of this error, pursuant to s. 45(5) of the Arbitration Act, I would remit the Award to the arbitrator with my reasons, and direct that he complete the arbitration in accordance with those reasons.

5. Did the Arbitrator Err in Law in Finding that the Fund Was Not Obligated to Comply with the Notice Requirements of Regulation 283/95?

¶ 29 The arbitrator held that even if the Fund failed to provide a notice to Kingsway within 90 days of receiving a completed application for benefits as required by s. 2 of the Regulations, Kingsway is precluded from relying on this breach because of its own breach of s. 2 of the Regulations. There is support for this position in judgments of this Court (see *Lombard Canada Inc. v. Saskatchewan Government Insurance*, [2002] O.J. No. 4257). However, in view of my conclusion that this arbitration was conducted under

an arbitration agreement, and that there was no jurisdiction to conduct it under Regulation 283/95, the notice requirements in the Regulation can have no application. In any event, the notice provisions apply only to insurers. Since the Fund is not an insurer, at the very least the notice provisions can have no application to it in any event (on this narrow point, see the endorsement of Kennedy J. of this Court in *Her Majesty the Queen in right of Ontario, as represented by the Minister of Finance v. Ing Halifax*, August 28, 2003). Accordingly, whether the arbitrator's analysis of this issue is correct in law or not, it is irrelevant to this appeal.

DISPOSITION

¶ 30 The appeal is allowed, and pursuant to s. 45(5) of the Arbitration Act, I remit the Award to the arbitrator with my reasons, and direct that he complete the arbitration in accordance with those reasons. Specifically, he is to determine, based on the findings of fact that he has already made, whether or not Kingsway was an insurer on the date of the accident, and then answer the question raised in the arbitration in accordance with that determination. The parties may address the question of costs in writing if necessary. The respondent will file its submissions within fifteen days of the release of this judgment. The appellant will file its submissions within fifteen days of receipt of the respondent's submissions. The respondent may file brief reply submissions within ten days of receipt of the appellant's submissions.

M.R. DAMBROT J.

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