

**IN THE MATTER OF THE *INSURANCE ACT*,  
R.S.O. 1990 c. I. 8 Section 275 AND ONTARIO  
REGULATIONS 664 and 668, R.R.O. 1990**

**AND IN THE MATTER OF THE *ARBITRATION ACT*, S.O. 1991, c.17, S.O. 1991**

**AND IN THE MATTER OF AN ARBITRATION**

B E T W E E N :

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Applicant

- and -

DOMINION OF CANADA GENERAL INSURANCE COMPANY  
and ROYAL & SUNALLIANCE CANADA

Respondents

**AWARD**

**COUNSEL**

John D. Withrow

Counsel for the Applicant, State Farm Mutual Automobile Insurance Company

Peter J. Festeryga

Counsel for the Respondent, Dominion of Canada General Insurance Company

P. Diane McDowell and J.C. Rioux

Counsel for the Respondent, Royal & SunAlliance Canada

**ISSUES IN DISPUTE**

This Arbitration concerns a dispute between State Farm Mutual Automobile Insurance Company ("State Farm") and Dominion of Canada General Insurance Company ("Dominion") and Royal & SunAlliance Canada ("Royal") as to what extent, if at all, Dominion and Royal are required to indemnify State Farm with regard to statutory accident benefits paid to Kimberley Stasse, arising out of the June 16, 1999 motor vehicle accident, pursuant to Section 275 (2) of the *Insurance Act*, R.S.O. 1990, c.I.8 and pursuant to Ontario Regulation 668.

The issues in dispute, as set out in the Arbitration Agreement executed by all parties, are as follows:

1. What is the "respective degree of fault under the Fault Determination Rules" of each of the drivers of the Stasse motor vehicle, the Mallot vehicle and the Barrett vehicle with respect to the collision? (Section 275 of the *Insurance Act* and *Ontario Regulation* 668, R.R.O. 1990;

2. What amount of interest, if any, is State Farm entitled to and which party is responsible to pay for same?
3. Which party is responsible for the payment of the Arbitrator's fees and other costs associated with the administration of the Arbitration or in what proportion are each of the parties responsible for the same?
4. Each of the parties is claiming legal costs and disbursements with respect to the Arbitration and the Arbitrator shall determine the issues relating to such claims. In determining this issue, the Arbitrator may take into account any written offers to settle.

### **AGREED STATEMENT OF FACTS**

The parties have consented to this Arbitration proceeding on the basis of an Agreed Statement of Facts. The agreed upon facts are as follows:

1. On June 16, 1999, a red Dodge minivan driven by Cyril Virostek (the "Virostek minivan") was southbound on Highway 40, attempting to turn left onto a private drive.
2. A 1997 Dodge truck driven by Kenneth Chambers (the "Chambers truck") was behind the Virostek minivan.
3. A tractor-trailer unit driven by Nathaniel Mallot and insured by Royal & SunAlliance (the "Mallot tractor-trailer") struck the Chambers truck in the rear.
4. The Chambers truck was propelled forward and collided with the rear of the Virostek minivan.
5. The Virostek minivan was pushed across the centre line of Highway 40, into the path of a northbound dump truck, insured by Dominion of Canada and driven by John Barrett (the "Barrett dump truck").
6. The Barrett dump truck struck the Virostek minivan and then struck a Buick sedan insured by State Farm and driven by Kimberley Stasse (the "Stasse Buick").
7. Kimberley Stasse applied to State Farm for accident benefits and State Farm paid Stasse statutory accident benefits as a result of the accident.
8. State Farm has requested indemnification from Royal & SunAlliance and Dominion of Canada for the accident benefits paid to Kimberley Stasse.
9. The total amount of the indemnification claim for Kimberley Stasse is \$162,847.77, net of a \$2,000 deductible.
10. The Chambers truck was in motion at the time of the accident.

11. The Mallot tractor-trailer, the Chambers truck, the Virostek minivan and the Stasse Buick were all automobiles travelling in the same lane, in the same direction at the time of the accident.
12. No vehicle insured by Royal & SunAlliance ever came into contact with or ever collided with either the Virostek minivan or the Stasse Buick at any material time.
13. The Barrett dump truck was travelling in an opposite direction in an adjacent lane and was over the centre line when it struck the Stasse Buick in the southbound lane.
14. The Barrett dump truck was a heavy commercial vehicle.
15. The Mallot tractor-trailer was a heavy commercial vehicle.
16. The Stasse Buick was not a heavy commercial vehicle.
17. The Virostek minivan was not a heavy commercial vehicle.
18. The Chambers truck was not a heavy commercial vehicle.

### **ANALYSIS AND FINDINGS**

The Applicant State Farm takes the position that the incident described and the facts agreed upon by the parties is not described by any of the Fault Determination Rules and that the degree of fault of each insurer's insured is to be determined in accordance with the ordinary rules of law. The Applicant State Farm submits that the application of the ordinary rules of law would lead to a finding that the Mallot tractor-trailer was 100% at fault for the incident. In the alternative, the Applicant State Farm submits that Rule 12(4) of Faulty Determination Rules is applicable and that the Barrett dump truck is 100% at fault for the incident.

The Respondent Royal takes the position that no vehicle insured by Royal ever made contact with the Stasse Buick at any time and that the three separate incidents occurring on June 16, 1999 are each clearly described by a Fault Determination Rule. First, there is a chain reaction collision in which the Mallot tractor-trailer struck the Chambers pick-up truck, which in turn struck the Virostek minivan. The collision between the Mallot tractor-trailer and the Chambers pick-up and the subsequent collision between the Chambers pick-up and the Virostek minivan is a chain reaction collision described by Rule 9 of the Fault Determination Rules. Second, there is a collision between the Virostek minivan and the Barrett dump truck, in which the Virostek minivan crossed the centre line and struck the Barrett dump truck. The collision between the Virostek minivan and the Barrett dump truck is described by Rule 12 of the Fault Determination Rules. Third, the Barrett dump truck crossed the centre line and struck the Stasse Buick. This incident is also described by Rule 12 of the Fault Determination Rules. The application of the Fault Determination Rules imposes no liability on the Mallot vehicle insured by Royal.

The Respondent Dominion's position mirrors that of the Applicant State Farm, namely that the incidents herein are not described by a particular Fault Determination Rule and that ordinary rules of law ought apply.

At risk of oversimplification, the issue at hand is whether each of the three collisions ought to be looked at independently with the application of the most appropriate Fault Determination Rule, or whether the actions of the other vehicles materially "involved" in the collision should be considered to determine whether the individual Fault Determination Rule is applicable in the circumstances. I am of the opinion that the collisions described in the Agreed Statement of Facts cannot be viewed independently and that the actions of other vehicles meaningfully "involved" in the collision should be considered to determine whether an individual Fault Determination Rule is applicable in the circumstances.

The collision giving rise to the present application involves the Stasse and Barrett motor vehicles. With respect to this collision, the Respondent submits that Rule 12 (4) of the Fault Determination Rules ought to apply. Rule 12 (4) essentially attributes fault to a vehicle which crosses the centre line of the highway and comes into collision with a vehicle travelling in the opposite direction.

I find that Rule 12(4) of the Fault Determination Rules is inapplicable to the present fact situation. Rule 12(4) of the Fault Determination Rules depicts an incident involving two vehicles. It is inapplicable to the present fact situation as it ignores the meaningful role played by a third motor vehicle, namely the Mallot vehicle, insured by Royal, that was clearly "involved" in this incident. I am of the view that the Fault Determination Rules ought not be applied in a way that ignores a main event leading to the payment of no fault benefits. In this case, the main event leading to the payment of no fault benefits was the collision between the southbound Mallot tractor-trailer and the southbound Chambers truck, which set into motion the chain of events ultimately leading to the collision between the Stasse and Barrett vehicles.

Fundamental to my decision is the finding that the Mallot vehicle was a vehicle "involved in the incident" within the meaning of Section 275 of the Insurance Act. I find that an automobile does not have to be a collision partner to be "involved in the incident" within the meaning of Section 275 of the *Insurance Act*. I rely heavily on the decision in The Dominion of Canada General Insurance Company v. Kingsway Insurance Company (unreported decision of Arbitrator Lee Samis, released August 23, 1999, affirmed in an unreported decision of H. Sachs, J. of the Ontario Superior Court of Justice, released January 11, 2000). In that decision, Arbitrator Samis sets out the criteria to be considered to determine whether an automobile is "involved in the incident" which includes:

- a) Whether there is contact between the vehicles;
- b) The physical proximity of the vehicles;
- c) The time interval between the relevant actions of the two vehicles;
- d) The possibility of a causal relationship between the actions of one vehicle and the subsequent actions of another; and
- e) Whether it is foreseeable that the actions of one vehicle might directly cause harm or injury to another vehicle and its occupants.

In the Dominion of Canada General Insurance Company v. Kingsway Insurance Company decision, the Court properly took into consideration the actions of another vehicle “involved” in the collision rather than simply applying the fault chart depiction with respect to only the two vehicles actually in collision with one another. The facts of that case disclosed that the operator of a heavy commercial vehicle, insured by Kingsway, exited from a truck stop on the east side of Highway 11 and was moving through the northbound lane of Highway 11 while making a left turn. Rock Russeau, who was driving a vehicle insured by Dominion, was driving north on Highway 11 when he saw the heavy commercial vehicle making its turn. Believing the northbound was obstructed by the heavy commercial vehicle, Mr. Russeau applied his brakes, lost control of his vehicle and skidded into a collision with a parked pick-up truck. Mr. Russeau sustained injuries that entitled him to statutory accident benefits from the insurer of his vehicle, Dominion. Dominion sought reimbursement from the insurer of the heavy commercial vehicle, Kingsway. Kingsway denied liability for any loss transfer payment and the two insurers proceeded with an Arbitration. Arbitrator Samis found that although the heavy commercial vehicle exiting from the truck stop was not involved in any collision, it was still a vehicle “involved” in the incident, using the criteria aforesaid. He found that the incident at hand could not be characterized by simply taking into account the actions of only the two vehicles actually involved in the collision. As a result, it was found that the Fault Determination Rules called for the determination of fault in accordance with the ordinary rules of law. The decision of Arbitrator Samis was appealed to the Superior Court of Justice wherein Justice Sachs accepted the analysis and findings of Arbitrator Samis.

Application of the criteria set out in the Dominion of Canada General Insurance Company v. Kingsway Insurance Company decision leads me to the determination that the Mallot tractor-trailer was “involved in this incident”. On the facts of this case, the first collision in this chain reaction of collisions was the collision of the southbound Mallot tractor-trailer striking the southbound Chambers truck in the rear. The force of that collision caused all the collisions occurring thereafter, including the collision between the Barrett dump truck and the Stasse Buick. I reiterate that the Fault Determination Rules ought not be applied in a way that ignores a main event leading to the payment of no fault benefits, nor ignores the actions of other vehicles meaningfully “involved” in the incident. In this case, the main event leading to the payment of no fault benefits was the collision between the southbound Mallot tractor-trailer and the southbound Chambers truck.

In reaching my decision, I have considered Rule 3 of the Fault Determination Rules which excludes from consideration ambient conditions and the actions of pedestrians, but does not require that the actions of an automobile “involved” in the incident be excluded from the description of the incident.

I find that Rule 12(4) of the Fault Determination Rules does not properly describe the incident in question. Rule 12(4) depicts an incident involving but two motor vehicles travelling in opposite directions. The present facts situation not only deals with the two vehicles involved in the collision itself, but clearly a third vehicle meaningfully involved in the incident, namely the Mallot vehicle insured by Royal. To find Rule 12(4) of the Fault Determination Rules applicable would be to ignore the main event leading to the payment of the no fault benefits and give no consideration to a circumstance fundamental to the happening of the incident.

In reaching my decision, I have considered and accept the principles set out in Jevco Insurance C.O. v. Canadian General Insurance Co. (1993) O.J. 174 and Jevco v. York Fire & Casualty Company (1996) 27 O.R. (3d) 483, but simply find that Rule 12 (4) of the Fault Determination Rules inapplicable to the present facts situation for the reasons aforesaid. I

am of the view that in the vast majority of cases, the Fault Determination Rules provide a simple solution to the determination of fault. On rare occasion, as is the case here, the role of other vehicles meaningfully "involved" in the incident must be considered making the application of a particular Fault Determination Rule inappropriate in the circumstances overall.

I find that in the present facts situation, the ordinary rules of law apply and that the Mallot vehicle would be found 100% responsible, not only for the initial collision, but the subsequent collisions set into motion by reason of the initial collision.

### **ORDER**

It is ordered that Royal indemnify State Farm by payment of the amount of \$162,847.77, net of the \$2,000 deductible, plus interest at the rate of 3% per annum.

It is ordered that the Arbitrator's fees and disbursements be paid by Royal & SunAlliance.

It is ordered that the costs of the Applicant State Farm and the Respondent Dominion be paid on a partial indemnity basis by Royal. If agreement cannot be reached by the parties, I would be happy to fix those costs.

DATED at TORONTO this )  
day of January, 2006. )

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KENNETH J. BIALKOWSKI  
Arbitrator