State Farm Mutual Automobile Insurance Company v. Old Republic Insurance Company of Canada, 2014 ONSC 3887 (CanLII)

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CITATION: State Farm Mutual Automobile Insurance Company v. Old Republic Insurance Company of Canada, 2014 ONSC 3887
COURT FILE NO.: 13-CV-471977
DATE: 20140625

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c. I.8, as amended
AND IN THE MATTER OF the *Arbitration Act*, S.O. 1991, c.17, as amended
AND IN THE MATTER OF an Arbitration

BETWEEN:	)	
	)	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY	)	*Daniel Strigberger*, for the Applicant (Respondent on Appeal)
	)	
Applicant (Respondent on Appeal)	)	
	)	
– and –	)	
	)	
OLD REPUBLIC INSURANCE	)	*Kadey B.J. Schultz*, for the Respondent

COMPANY OF CANADA	)	(Appellant on Appeal)
	)	
Respondent (Appellant on Appeal)	)	
	)	**HEARD**: May 27, 2014
	)	

PERELL, J.

REASONS FOR DECISION

A. INTRODUCTION

[1] On November 8, 2007, in a chain reaction collision, a heavy commercial vehicle insured by the Respondent, Old Republic Insurance Company of Canada ("Old Republic"), struck a passenger automobile that struck another passenger automobile that was insured by the Applicant, State Farm Mutual Automobile Insurance Company ("State Farm").

[2] It shall prove significant that the Old Republic insured commercial vehicle did not strike the State Farm insured automobile.

[3] Pursuant to Ontario's no-fault accident benefits system under the *Insurance Act*,[1] State Farm paid statutory accident benefits (SABs), and then it sought a loss transfer as provided for by the *Act* and by O. Reg. 668 – Fault Determination Rules.[2]

[4] State Farm and Old Republic agreed that Rule 9 of the Fault Determination Rules applied to determine the loss transfer, but they could not agree about the interpretation of Rule 9 and the loss transfer issue proceeded to arbitration before Arbitrator Shari Novick.

[5] There are two Superior Court decisions about Rule 9 in similar factual situations. In *GAN General Insurance Co. v. State Farm Mutual Automobile Insurance Co.*,[3] Justice Pitt held that when Rule 9 applies to an incident, then there is no allocation of fault between vehicles that do not collide with each other. Old Republic relies on the *GAN General Insurance Co.* judgment in support of its position that it is not responsible for a loss transfer.

[6] However, in *Royal & Sunalliance Insurance Company of Canada v. AXA Insurance (Canada)*,[4] Justice Chapnik held that the insurer of a vehicle that initiates a chain reaction collision is liable to indemnify all other insurers for the SAB payments flowing from the incident. State Farm relies on the *Royal & Sunalliance Insurance* case to support its position that it is entitled to a loss transfer from Old Republic.

[7] In the case at bar, Arbitrator Novick applied *Royal & Sunalliance Insurance* and she held Old Republic was required to indemnify State Farm notwithstanding that there was no collision between the automobile insured by State Farm and the commercial vehicle insured by Old Republic.

[8] Old Republic appeals the Arbitrator's decision. It submits that the appeal raises significant

issues for the automobile insurance industry. It notes that in *Economical Mutual Insurance Company v. Northland Insurance*,[5] another arbitrator, Scott Densem, followed Arbitrator Novick's decision in the immediate case and found that Economical Mutual Insurance could recover loss transfer indemnification from Northland Insurance, even though there was no collision between the two insured vehicles.

[9] Without any empirical evidence, Old Republic submits that these decisions put at risk the economic viability of Ontario's no-fault accident benefits system and that these decisions interpret the regulations in a way that produces absurd consequences that could not have been the intention of the Legislature.

[10] For the reasons that follow, I dismiss Old Republic's appeal.

B. FACTUAL AND PROCEDURAL BACKGROUND

[11] On November 8, 2007, there was a multi-vehicle accident at the intersection of Mavis Road and Eglinton Avenue in Mississauga.

[12] Bradley Flewelling was the driver of a truck owned by Pepsi Bottling Company and insured by Old Republic under Policy Number CTB18515-04. The Pepsi truck is a "heavy commercial vehicle" under s. 9 of Ont. Reg. 664 of the *Insurance Act*.

[13] The Pepsi truck struck a Dodge driven by Pupinderpal Litt, which vehicle was insured by The Dominion of Canada General Insurance Company.

[14] The Dodge, in turn, struck a Nissan being driven by Vimalambigai Mahalingasivam, which vehicle was insured by State Farm under Policy Number 0740-068-60.

[15] At the time of the accident, all three vehicles were travelling in the same direction and same lane. The Nissan was the lead vehicle, followed by the Dodge, followed by the truck.

[16] At the time of the accident, the Dodge and the Nissan were stopped, and the accident occurred when the truck rear-ended the Dodge, causing it to rear-end the Nissan.

[17] After this multi-vehicle collision, the Nissan struck a fourth vehicle; i.e., a Lexus driven by Sathieshkumar Satchithnanthan, which vehicle was insured by State Farm under Policy Number 0704-334-60A. The parties agreed that the collision with the fourth vehicle was a separate accident.

[18] As a result of the accident, Mr. Mahalingasivam applied for and received SABs from State Farm.

[19] State Farm sought indemnification from Old Republic, and when the parties could not agree, the matter proceeded to arbitration.

[20] At arbitration, the parties agreed that Rule 9 of the Fault Determination Rules described the accident and that it would apply to decide the respective degree of fault of each insurer's insured.

[21] The issue before the arbitrator was whether State Farm could recover loss transfer indemnification from Old Republic under Rule 9 (4) of the Fault Determination Rules even though

its vehicle and Old Republic's vehicle did not collide.

C. DISCUSSION AND ANALYSIS

Introduction

[22] Ultimately, this is a case about statutory interpretation. It is about how to interpret Rule 9 of the Fault Determination Rules.

[23] As noted above, one major argument of Old Republic is that Arbitrator Novick's interpretation of the Fault Determination Rules produces an absurd result that is detrimental to the purposes of the *Insurance Act's* no-fault scheme for accident benefits.

[24] As I will explain, I do not regard the Arbitrator's interpretation as absurd. In accordance with the principles of statutory interpretation, I would interpret the legislation and the regulations of the *Insurance Act* in the same way that the Arbitrator did.

[25] I will provide my explanation in seven parts.

[26] First, I will describe the court's appellate jurisdiction.

[27] Second, I will describe the pertinent principles of statutory interpretation.

[28] Third, I will set out the relevant provisions of the *Insurance Act* and its regulations.

[29] Fourth, I will examine what I shall describe as Ontario's partial no-fault system of compensation to those injured in an automobile accident. The examination is necessary as part of the process of statutory interpretation. That process involves understanding the context of the legislation and the purposes of the Legislature in enacting the no-fault provisions including the loss transfer provisions of the *Insurance Act* and its regulations. The examination is also necessary to appreciate Old Republic's arguments that the Arbitrator's decision in the case at bar has absurd consequences.

[30] Fifth, I will describe the interpretative arguments of Old Republic and of State Farm.

[31] Sixth, I will describe the arbitral and court jurisprudence about the Loss Transfer Scheme and the Fault Determination Rules. As noted above, in addition to their respective interpretative arguments, both parties rely on the jurisprudence in support of their respective positions.

[32] Seventh, I will describe my analysis that leads me to the conclusion that this appeal should be dismissed.

1. Standard of Appellate Review of an Arbitrator's Decision

[33] The standard of review from a private arbitration decision is that of correctness on issues of law and reasonableness on issues of mixed fact and law.[6]

[34] When applying the correctness standard in respect of jurisdictional and some other questions of law, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question and decide whether it agrees with the determination of the decision maker, and, if not, the court will substitute its own view and

provide the correct answer.[7]

[35] This appeal deals exclusively with the correct interpretation and application of Rule 9. There are no factual issues in dispute. The applicable standard of review is correctness.

2. Principles of Statutory Interpretation

[36] When a court is called upon to interpret a statute, its task is to discover the intention of the legislator as expressed in the language of the statute.[8] An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.[9] The approach to interpretation is teleological or purposeful and to interpret a statute, the words of the statute are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the statute, the object of the statute, and the intention of the legislator.[10]

[37] To interpret a statute, the court should look at the Act as a whole and attempt to find an interpretation that is in harmony with the entire legislative scheme including the regulations and forms.[11] To interpret a statute, the court must in every case undertake a contextual and purposive analysis to determine whether real ambiguity exists; i.e. whether the language is reasonably capable of more than one meaning.[12]

[38] If the words of the statute when read in their context including the purpose and objective of the statute are precise and unambiguous then the words should be given their natural and ordinary sense.[13] The court's role is to interpret the statute not enact it; if the sense of the words of the statute is clear and unambiguous, the court must interpret the words literally and in accordance with their plain meaning even if the consequences are absurd or unjust.[14]

[39] It is presumed that the legislator does not intend absurd consequences and an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment. Where there are competing plausible constructions, a statute should be interpreted in a way that avoids absurd results.[15] Where the grammatical and ordinary sense of words when read in their context including the purpose and objective of the statute leads to some consequence that is repugnant or inconsistent with the purposes of the statute, the ordinary meaning may be departed from but only if there is a plausible alternative within the language used by the legislator.[16]

[40] It is presumed that every word in a statute has a role to play and a statute should not be interpreted to leave words superfluous or meaningless.[17]

[41] In interpreting a statute, it is presumed that that the constituent elements of a legislative scheme are meant to work together logically and teleologically, each contributing to the achievement of the legislator's goal without contradictions or inconsistencies among the constituent elements.[18]

3. The Relevant Statutory Provisions

[42] The relevant provisions of the *Insurance Act* are set out below:

PART VI AUTOMOBILE INSURANCE

Interpretation, Part VI

224. (1) In this Part,

"automobile" includes,

(a) a motor vehicle required under any Act to be insured under a motor vehicle liability policy, and

(b) a vehicle prescribed by regulation to be an automobile;

...

"fault determination rules" means the rules prescribed under paragraph 21 of subsection 121 (1);

....

"insured" means a person insured by a contract whether named or not and includes every person who is entitled to statutory accident benefits under the contract whether or not described therein as an insured person;

....

"statutory accident benefits" means the benefits set out in the regulations made under paragraphs 9 and 10 of subsection 121 (1);

"*Statutory Accident Benefits Schedule*" means the regulations made under paragraphs 9 and 10 of subsection 121 (1).

....

DIRECT COMPENSATION – PROPERTY DAMAGE

Accidents involving two or more insured automobiles

263. (1) This section applies if,

(a) an automobile or its contents, or both, suffers damage arising directly or indirectly from the use or operation in Ontario of one or more other automobiles;

(b) the automobile that suffers the damage or in respect of which the contents suffer damage is insured under a contract evidenced by a motor vehicle liability policy issued by an insurer that is licensed to undertake automobile insurance in Ontario or that has filed with the Superintendent, in the form provided by the Superintendent, an undertaking to be bound by this section; and

(c) at least one other automobile involved in the accident is insured under a contract evidenced by a motor vehicle liability policy issued by an insurer that is licensed to undertake automobile insurance in Ontario or that has filed with the Superintendent, in the form provided by the Superintendent, an undertaking to be bound by this section.

....

Damage recovery from insured's insurer

(2) If this section applies, an insured is entitled to recover for the damages to the insured's automobile and its contents and for loss of use from the insured's insurer under the coverage described in subsection 239 (1) as though the insured were a third party.

Fault-based recovery

(3) Recovery under subsection (2) shall be based on the degree of fault of the insurer's insured as

determined under the fault determination rules.

Dispute resolution

(4) An insured may bring an action against the insurer if the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault or the insured is not satisfied with a proposed settlement and the matters in issue shall be determined in accordance with the ordinary rules of law.

Restrictions on other recovery

(5) If this section applies,

> (a) an insured has no right of action against any person involved in the incident other than the insured's insurer for damages to the insured's automobile or its contents or for loss of use;
>
> (a.1) an insured has no right of action against a person under an agreement, other than a contract of automobile insurance, in respect of damages to the insured's automobile or its contents or loss of use, except to the extent that the person is at fault or negligent in respect of those damages or that loss;
>
> (b) an insurer, except as permitted by the regulations, has no right of indemnification from or subrogation against any person for payments made to its insured under this section.

....

INDEMNIFICATION IN CERTAIN CASES

275. (1) The insurer responsible under subsection 268 (2) for the payment of statutory accident benefits to such classes of persons as may be named in the regulations is entitled, subject to such terms, conditions, provisions, exclusions and limits as may be prescribed, to indemnification in relation to such benefits paid by it from the insurers of such class or classes of automobiles as may be named in the regulations involved in the incident from which the responsibility to pay the statutory accident benefits arose.

Idem

(2) Indemnification under subsection (1) shall be made according to the respective degree of fault of each insurer's insured as determined under the fault determination rules.

....

Arbitration

(4) If the insurers are unable to agree with respect to indemnification under this section, the dispute shall be resolved through arbitration under the *Arbitrations Act*.

[43] The relevant provisions of R.R.O. 1990, Ont. Reg. 664 (Automobile Insurance) are set out below:

R.R.O. 1990, Reg. 664
Automobile Insurance

DEFINITIONS

1. In this Regulation,

"commercial vehicle" means an automobile used primarily to transport materials, goods, tools or equipment in connection with the insured's occupation, and includes a police department vehicle, a fire department vehicle, a driver training vehicle, a vehicle designed specifically for construction or maintenance purposes, a vehicle rented for thirty days or less, or a trailer intended for use with a

commercial vehicle;

....

DIRECT COMPENSATION — PROPERTY DAMAGE (CLAUSE 263 (5) (B) OF THE ACT)

6.(1) For the purpose of clause 263 (5) (b) of the Act, the insurer of an automobile that is in the care, custody or control of a person who is engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles is entitled to indemnification from the person.

(2) The amount of the indemnity is limited to that proportion of the loss that is attributable to the fault, as determined under the fault determination rules, of the person or of an employee or agent of the person.

7. (1) For the purpose of clause 263 (5) (b) of the Act, the insurer of an automobile that is being towed by another automobile is entitled to indemnification from the lessee or, if there is no lessee, from the owner of the automobile towing it,

(a) if the lessee or owner, as the case may be, is engaged in the business of towing automobiles; or

(b) if the automobile towing the insured automobile has a gross vehicle weight greater than 4,500 kilograms.

(2) The amount of the indemnity is limited to that proportion of the loss that is attributable to the fault, as determined under the fault determination rules, of the driver of the automobile that is towing the insured automobile.

8. (1) For the purpose of clause 263 (5)(b) of the Act, the insurer of an automobile the contents of which suffer damage in an amount greater than $20,000 is entitled to indemnification from the insurer of the other automobile involved in the incident.

(2) The amount of the indemnity is limited to that proportion of the loss over $20,000 that is attributable to the fault, as determined under the fault determination rules, of the driver of the other automobile.

....

INDEMNIFICATION FOR STATUTORY ACCIDENT BENEFITS (SECTION 275 OF THE ACT)

9. (1) In this section,

"first party insurer" means the insurer responsible under subsection 268 (2) of the Act for the payment of statutory accident benefits;

"heavy commercial vehicle" means a commercial vehicle with a gross vehicle weight greater than 4,500 kilograms;

"motorcycle" means a self-propelled vehicle with a seat or saddle for the use of the driver, steered by handlebars and designed to travel on not more than three wheels in contact with the ground, and includes a motor scooter and a motor assisted bicycle as defined in the *Highway Traffic Act*;

"motorized snow vehicle" means a motorized snow vehicle as defined in the *Motorized Snow Vehicles Act*;

"off-road vehicle" means an off-road vehicle as defined in the *Off-Road Vehicles Act*;

"second party insurer" means an insurer required under section 275 of the Act to indemnify the first party insurer.

(2) A second party insurer under a policy insuring any class of automobile other than motorcycles,

off-road vehicles and motorized snow vehicles is obligated under section 275 of the Act to indemnify a first party insurer,

(a) if the person receiving statutory accident benefits from the first party insurer is claiming them under a policy insuring a motorcycle and,

(i) if the motorcycle was involved in the incident out of which the responsibility to pay statutory accident benefits arises, or

(ii) if motorcycles and motorized snow vehicles are the only types of vehicle insured under the policy; or

(b) if the person receiving statutory accident benefits from the first party insurer is claiming them under a policy insuring a motorized snow vehicle and,

(i) if the motorized snow vehicle was involved in the incident out of which the responsibility to pay statutory accident benefits arises, or

(ii) if motorcycles and motorized snow vehicles are the only types of vehicle insured under the policy.

(3) A second party insurer under a policy insuring a heavy commercial vehicle is obligated under section 275 of the Act to indemnify a first party insurer unless the person receiving statutory accident benefits from the first party insurer is claiming them under a policy insuring a heavy commercial vehicle.

[44] The relevant provisions of the Fault Determination Rules are set out below:

R.R.O. 1990, Reg. 668

Fault Determination Rules

GENERAL

1. In this Regulation,

"centre line" of a roadway means,

(a) a single or double, unbroken or broken line marked in the middle of the roadway, or

(b) if no line is marked, the middle of the roadway or that portion of the roadway that is not obstructed by parked vehicles, a snowbank or some other object blocking traffic.

2. (1) An insurer shall determine the degree of fault of its insured for loss or damage arising directly or indirectly from the use or operation of an automobile in accordance with these rules.

(2) The diagrams in this Regulation are merely illustrative of the situations described in these rules.

3. The degree of fault of an insured is determined without reference to,

(a) the circumstances in which the incident occurs, including weather conditions, road conditions, visibility or the actions of pedestrians; or

(b) the location on the insured's automobile of the point of contact with any other automobile involved in the incident.

4. (1) If more than one rule applies with respect to the insured, the rule that attributes the least degree of fault to the insured shall be deemed to be the only rule that applies in the circumstances.

(2) Despite subsection (1), if two rules apply with respect to an incident involving two automobiles and if under one rule the insured is 100 per cent at fault and under the other the insured is not at fault for the incident, the insured shall be deemed to be 50 per cent at fault for the incident.

5. (1) If an incident is not described in any of these rules, the degree of fault of the insured shall be

determined in accordance with the ordinary rules of law.

(2) If there is insufficient information concerning an incident to determine the degree of fault of the insured, it shall be determined in accordance with the ordinary rules of law unless otherwise required by these rules.

....

RULES FOR AUTOMOBILES TRAVELLING IN THE SAME DIRECTIONS AND LANE

9. (1) This section applies with respect to an incident involving three or more automobiles that are travelling in the same direction and in the same lane (a "chain reaction").

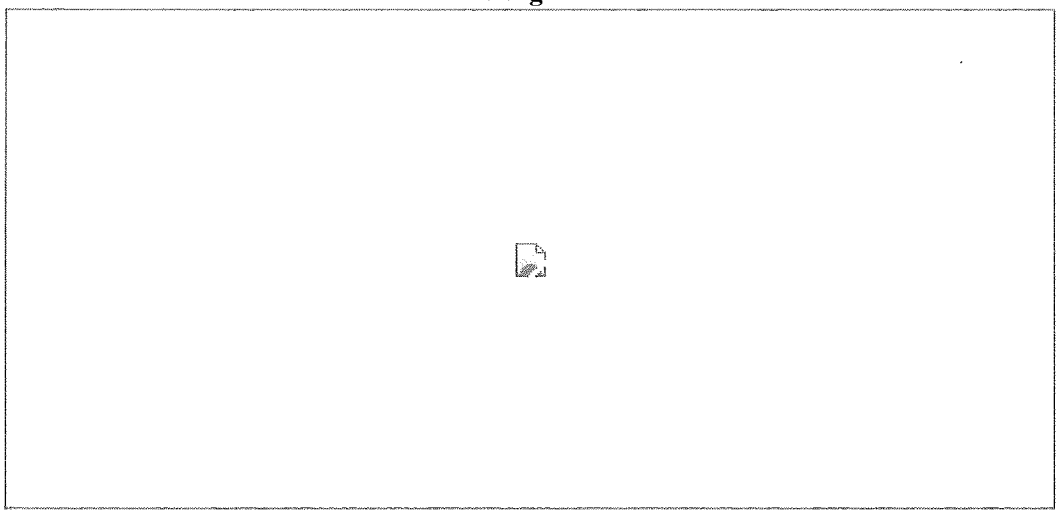
(2) The degree of fault for each collision between two automobiles involved in the chain reaction is determined without reference to any related collisions involving either of the automobiles and another automobile.

(3) If all automobiles involved in the incident are in motion and automobile "A" is the leading vehicle, automobile "B" is second and automobile "C" is the third vehicle,

(a) in the collision between automobiles "A" and "B", the driver of automobile "A" is not at fault and the driver of automobile "B" is 50 per cent at fault for the incident;

(b) in the collision between automobiles "B" and "C", the driver of automobile "B" is not at fault and the driver of automobile "C" is 100 per cent at fault for the incident.

Diagram

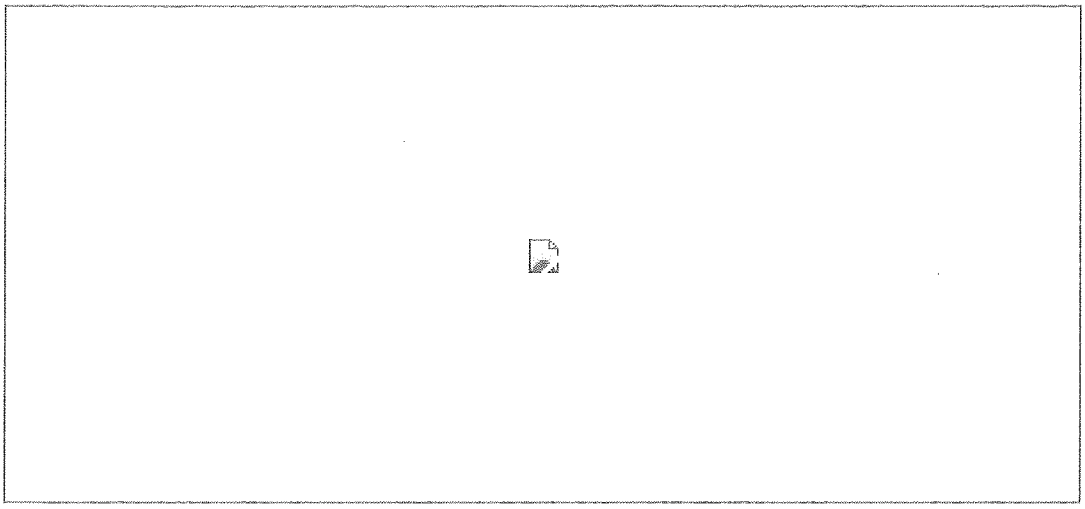


(4) If only automobile "C" is in motion when the incident occurs,

(a) in the collision between automobiles "A" and "B", neither driver is at fault for the incident; and

(b) in the collision between automobiles "B" and "C", the driver of automobile "B" is not at fault and the driver of automobile "C" is 100 per cent at fault for the incident.

Diagram

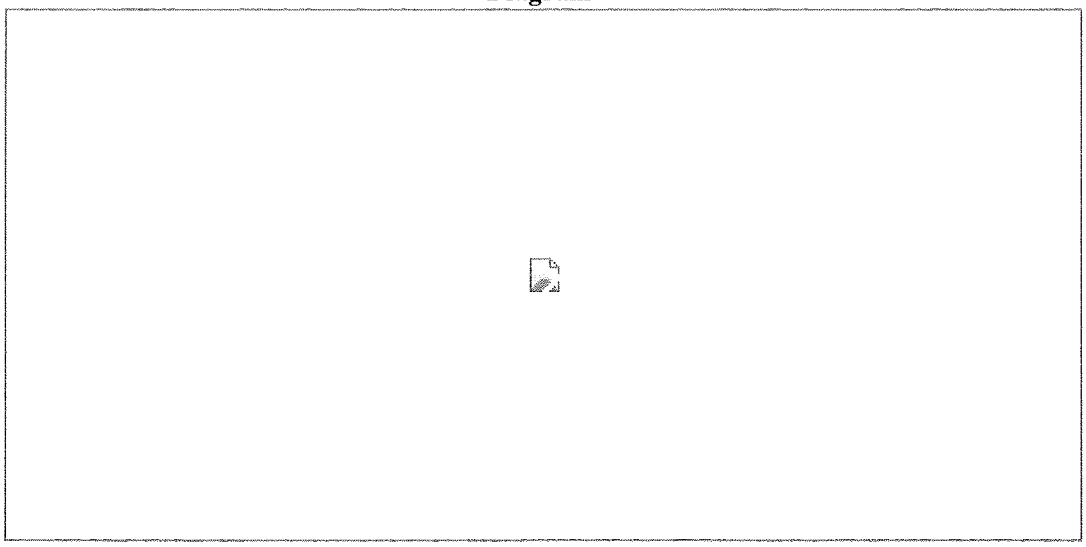


....

11. (1) This section applies with respect to an incident involving three or more automobiles that are travelling in the same direction and in adjacent lanes (a "pile-up").

(2) For each collision between two automobiles involved in the pile-up, the driver of each automobile is 50 per cent at fault for the incident.

Diagram



4. Ontario's Partial No-Fault System and its Loss Transfer Scheme

[45] Under the *Insurance Act*, Ontario has a partial no-fault system. This motion, which is a matter of statutory interpretation, concerns an insurer's liability for one aspect of this system. It is necessary to place the interpretative problem raised in the case at bar in its overall context and in the context of the purposes of the Ontario legislation.

[46] Under Ontario's partial no-fault system, the insurer of an automobile has a least five sources of liability or responsibility. First, an insurer may be liable to pay SABs to an insured person. Where there is more than one insurer that might be liable for the SABs, there is a legislated scheme to designate the responsibility to pay the SABs. Second, in some instances, an insurer who is not paying SABs may be required to indemnify another insurer who paid SABs. The case at bar,

is a dispute about this sort of liability. Third, an insurer may have to pay for property damage to the insured automobile. Fourth, in some instances an insurer may have to indemnify another insurer for property loss payments made by that insurer. Fifth, an insurer will provide an indemnity to its insured for the insured third party liability. The extent of third party liability will depend upon the limits of the insurance policy and tort laws about negligence and causation.

[47] I pause here to foreshadow that one of the interpretative arguments of Old Republic is that it would be absurd to interpret the Fault Determination Rules in the manner submitted by State Farm because State Farm's interpretation would so substantially increase the risks to be assumed by insurers of heavy commercial vehicles that they would not be prepared to assume the risks and thus insurance for heavy commercial vehicles would become unavailable or be prohibitively expensive. Once again, in order to evaluate this argument, it is necessary to place the interpretative problem raised in this case in its overall context and in the context of the purposes of the Ontario legislation.

[48] Under Ontario's partial no-fault system, there are statutory benefits for the victim of an automobile accident that are paid by an insurer to an insured motorist regardless of his or her fault. There is a scheme for determining which insurer is obliged to pay the no-fault benefits and in some instances - but not all - the insurer that pays the benefits has a right to be indemnified by another insurer.

[49] In the case at bar, as will be explained in more detail below, State Farm paid no-fault benefits and because Old Republic was the insurer of a heavy commercial vehicle, which is a class of vehicle for whose insurer may be liable for a loss transfer payment, State Farm sought indemnification from Old Republic.

[50] It is worth noting that had Old Republic's insured been operating an automobile other than a heavy commercial vehicle, there would be no loss transfer available to State Farm for the SABs it paid. The scheme of the legislation does not involve loss transfers for every accident and many and perhaps most accidents will not involve loss transfers. However, the insurers of heavy commercial vehicles can anticipate exposure to liability for loss transfers.

[51] An insured who suffers property damage to his or her automobile will have insurance for that loss, and under the *Insurance Act*, in the circumstances described in s. 263, where there is another insured vehicle, an insured is entitled to recover for the damages to the insured's automobile and its contents and for loss of use from the insured's insurer as though the insured were a third party with the recovery based on the degree of fault of the insurer's insured as determined under the Fault Determination Rules. The insured can sue its insurer if not satisfied with the property damage payment, but an insured has no right of action against any person involved in the incident other than the insured's insurer for damages to the insured's automobile or its contents or for loss of use.

[52] Where an insurer pays property damage under s. 263 of the *Act* to its insured, in an amount greater than $20,000, then pursuant to s. 6(1) of R.R.O. 1990, Ont. Reg. 664, the insurer is entitled to indemnification from the insurer of the other automobile involved in the incident as determined under the Fault Determination Rules.

[53] To use the case at bar as an illustration, if State Farm paid more than $20,000 in property loss compensation to its insured it would have a claim for indemnification for other insurers in accordance with the Fault Determination Rules. This time, Old Republic's exposure to liability, if any, would not depend upon it being the insurer of a heavy commercial vehicle. It would be exposed to liability simply because it was the insurer of another vehicle involved in the incident.

[54] Subject to a statutorily defined threshold, the insured may also sue for tort-based compensation for his or her losses. Here compensation is based on establishing fault in accordance with the common law of negligence.

[55] As already noted above, under the partial no-fault system, an insurer of some classes of vehicles may seek to be indemnified for the no-fault benefits that it pays to its insured from another insurer. In other words, under the partial no-fault system, one insurer may transfer the loss to another insurer. For example, loss transfer shifts costs from insurers insuring motorcycles to insurers of other classes of automobiles under certain circumstances. Loss transfer also shifts costs to insurers of heavy commercial vehicles from other classes of automobiles under certain circumstances.

[56] To be more precise about loss transfers under the *Insurance Act's* no-fault accident benefits scheme, an insurer obliged to pay accident benefits may in some circumstances obtain indemnification from another insurer. If the insurers are unable to agree on loss transfer indemnification, s. 275 (4) of the *Act* requires them to resolve the issues through arbitration under the *Arbitration Act, 1991.*

[57] The Court of Appeal in *Jevco Insurance Co. v. Canadian General Insurance Co.* [19] described the purpose of the loss transfer provision of s. 275 of the *Act* as follows:

[58] The scheme of the legislation, under s. 275 of the Insurance Act and companion regulations, is to provide for an expedient and summary method of reimbursing the first-party insurer for payment of no-fault benefits from the second-party insurer whose insured was fully or partially at fault for the accident. The fault of the insured is to be determined strictly in accordance with the fault determination rules, prescribed by regulation, and any determination of fault in litigation between the insured plaintiff and the alleged tortfeasor is irrelevant.

[59] In *Jevco Insurance Co. v. York Fire & Casualty Co.*,[20] the Court of Appeal added that: "the purpose of the legislation is to spread the load among insurers in a gross and somewhat arbitrary fashion, favouring expedition and economy over finite exactitude." In *Jevco Insurance Co. v. Halifax Insurance Co.*,[21] Matlow, J. described the Fault Determination Rules as follows: "They set out a series of general types of accidents and, to facilitate indemnification without the necessity of allocating actual fault, they allocate fault according to the type of a particular accident in a manner that, in most cases, would probably but not necessarily correspond with actual fault."

[60] Section 275 (2) of the *Insurance Act* provides that loss transfer indemnification shall be made according to the respective degree of fault of each insurer's insured as determined under the Fault Determination Rules.

[61] In the case at bar, as noted above, the parties agreed that Rule 9 applied to the

circumstances of the chain reaction collision involving the truck insured by Old Republic and the passenger automobile insured by State Farm.

5. The Interpretative Arguments of the Parties

(a) State Farm's Interpretive Argument

[62] State Farm's interpretative argument is as follows.

[63] State Farm argues that it was responsible for the payment of SABs under s. 268 (2) of the *Insurance Act* and pursuant to s. 275 (1) it is entitled to indemnification from Old Republic, which was the insurer of a heavy commercial vehicle, which is a class of automobile named in the regulations that was involved in the incident from which the responsibility to pay the SABs arose. Pursuant to s. 275 (2) the indemnification shall be made as determined under the Fault Determination Rules, which are set out in R.R.O. 1990, Ont. Reg. 668.

[64] State Farm argues that s. 275 (5) requires that the indemnification shall be made according to the "respective" degree of fault of each insurer's insured, which is to say separately, individually, or severally. An individual determination of fault is required else no meaning would be given to the word "respective" which would be contrary to the principle of statutory interpretation that every word in the statute is presumed to have a role to play.

[65] Under the Fault Determination Rules, Rule 2 (1) provides that an insurer shall determine the degree of fault of its insured for loss or damage arising directly or indirectly from the use or operation of an automobile in accordance with the Fault Determination Rules. The Fault Determination Rules apply to incidents, and under Rule 5 (1) if an incident is not described in any of the rules, the degree of fault of the insured shall be determined in accordance with the ordinary rules of law. The vehicle insured by Old Republic was involved in an incident and it was an incident as described in Rule 9 and thus the loss transfer liability of Old Republic is determined in accordance with Rule 9.

[66] Continuing its argument, State Farm submits that Rule 94 describes the incident since all three vehicles were travelling in the same direction and same lane and only the vehicle insured by Old Republic was in motion when the incident occurred. Having identified the incident, under Rule 9 (4), neither the State Farm vehicle (automobile "A") nor the vehicle behind the State Farm vehicle (automobile "B") has any fault for the incident and, therefore, the Old Republic insured vehicle (automobile "C") is 100 per cent at fault for the incident.

[67] State Farm's argument is reinforced by connecting Rule 9 (4) with Rules 2 (1) and Rule 9 (2) as set out in paragraphs 33 to 36 of its factum as follows:

> 33. Under Rule 9, the State Farm vehicle would be automobile "A" and the Old Republic vehicle would be automobile "C". Pursuant to Rule 9 (4), in the collision between automobiles "A" and "B", State Farm's insured would be zero percent at fault for the accident. In the collision between automobiles "B" and "C", Old Republic's insured would be 100 percent at fault for the accident. In other words, the *respective* degree of fault of each insurer's insured – under the Fault determination Rules – is 0% State Farm and 100% Old Republic.

34. This approach also conforms with Rule 9 (2) and also section 2(1) of the Rules:

> 9. (2) The degree of fault for each collision between two automobiles involved in the chain reaction is determined *without reference* to any related collisions involving either of the automobiles and another automobile. ...
>
> 2. (1) *An insurer* shall determine *the degree of fault of its insured* for loss or damage arising directly or indirectly from the use or operation of an automobile in accordance with these rules. [emphasis added]

35. Standing in State Farm's shoes, the degree of fault of its insured (automobile "A") for this loss under Rule 9 (4) – without reference to Old Republic's vehicle – is 0%. Likewise, standing in Old Republic's shoes, the degree of fault of its insured (automobile "C") for this loss under Rule 9 (4) – without reference to State Farm's vehicle – is 100%.

36. In short, the *respective* (individual, particular, several) degree of fault of State Farm's insured under Rule 9 is 0%, while the *respective* (individual, particular, several) degree of fault of Old Republic's insured under Rule 9 is 100%. Therefore, as State Farm is entitled to loss transfer indemnification from the insurer of a heavy commercial vehicle involved in the incident that gave rise to the payment of benefits, and as such indemnification from the second party insurer shall be made according to the *respective degree of fault* of each insurer's insured, State Farm should be entitled to full indemnification from Old Republic.

(b) **Old Republic's Interpretative Argument**

[68] Old Republic's interpretative argument is as follows.

[69] Rule 9 of the Fault Determination Rules is the applicable rule. Therefore, the ordinary rules of Fault Determination at law did not apply. The fault of the insureds was to be determined in strict accordance with the Fault Determination Rules. Applying the rules, Rule 9 (4) sets out that fault of each insured is only considered "in the collision between automobiles "A" and "B"" or "in the collision between automobiles "B" and "C"". Therefore, there is no allocation of fault between "A" and "C" because those two vehicles did not collide. Additionally, Rule 9 (2) specifically provides that Rule 9 applies for "each collision between two automobiles involved in the chain reaction" and that fault is determined without reference to any related collisions involving either of the automobiles and another automobile. This means that the fault of "C" for the incident with "B" is determined without reference to the related collision incident between "B" and "A". In other words, Rule 9 (2) assists with the application of Rule 9 (4) and confirms that each collision between two automobiles is its own separate incident and a trier of fact should not refer to any other collision in the entire chain reaction incident to assess fault. The plain, logical and grammatical use of the term "incident" in Rule 9 (4)(a) refers to the collision between automobiles "A" and "B" and not the entire chain reaction incident as a whole, and similarly, the use of the term "incident" in Rule 9 (4) (b) refers to the collision between automobiles "B" and "C" and not the entire chain reaction incident as a whole. A moving heavy commercial vehicle (automobile "C") is responsible only for the collision with the automobile with which it collides (automobile "A").

[70] Further, Old Republic submits that there is no ambiguity in Rule 9, and if Rule 9 applies to a chain reaction accident: (a) there is no respective degree of fault for each "collision" involving any of two stationary vehicles; (b) in the "collision" between the last stationary vehicle in the chain and the heavy commercial vehicle in motion, the heavy commercial vehicle is 100 per cent at fault for that respective "incident"; and (c) there is no respective degree of fault between the heavy

commercial vehicle and any of the stationary vehicles with which it did not "collide". These results are consistent with the legislative scheme that provides an expedient, strict, and efficient allocation to facilitate indemnification without allocating fault for the entire accident.

[71] Further still, Old Republic submits that the above interpretation of Rule 9 is supported by the similar multi-vehicle Rule 11 of the Fault Determination Rules. Rule 11 applies to three or more automobiles in the same direction and adjacent lanes. Like Rule 9, Rule 11 also provides that the degree of fault for each collision between two automobiles is determined without reference to any other collisions. For each "collision" between two automobiles, the driver of each vehicle is 50 per cent responsible for the "incident" and not the entire chain reaction collision incident as a whole.

[72] Finally, Old Republic submits that the Arbitrator's decision in the case at bar and Justice Chapnik's decision in *Royal & Sunalliance Insurance Company of Canada v. AXA Insurance (Canada)*,[22] yield absurd consequences that would not or could not have been intended by the Legislature. This argument is set out in paragraphs 36 to 39 of its factum as follows:

> 36. .... the result reached by Justice Chapnik and Arbitrator Novick would have absurd consequences not intended by the legislature in circumstances where there was more than one heavy commercial vehicle involved in the chain reaction collision, or, as demonstrated by the recent mass pileup collisions on Ontario's 400 series highways, where the last vehicle in a chain reaction collision involving dozens of passenger vehicles is a heavy commercial vehicle.
>
> 37. The legislature did not intend for a first party insurer to receive more than 100% indemnification (if there are two involved heavy commercial vehicles in the chain reaction) or for one heavy commercial vehicle to be at fault and liable to indemnify for the accident benefits claims for dozens of insureds occupying multiple vehicles involved in the entire chain reaction incident.
>
> 38. To apply the reasoning of Arbitrator Robinson and Arbitrator Novick to alter Rules 9 and 11 is inconsistent with the legislature's stated intention that if a specific FDR applies to an accident, then there is no apportionment of fault between two vehicles that do not collide with each other. Along these lines, if a heavy commercial vehicle is responsible to indemnify the accident benefits payments to the occupants of all involved vehicles in a multi-vehicle accident, this would open the floodgates to tens of millions of dollars in potential loss transfer claims each time a heavy commercial vehicle is involved in a multi-vehicle accident.
>
> 39. While this Honourable Court is being asked to decide this appeal based upon the specific facts in this case, these examples demonstrate why there is no allocation of fault between ORIC and State Farm's insureds if Rule 9 applies. The parties agreed that it does. The strict application of Rule 9 confirms there is no loss transfer between two vehicles that do not collide with each other.

6. Arbitral and Court Jurisprudence about Rule 9 of the Loss Transfer Rules

[73] In 1999, Justice Pitt decided *GAN General Insurance Co. v. State Farm Mutual Automobile Insurance Co., supra.* The facts of the accident were virtually identical to the facts of the immediate case. GAN General Insurance insured a commercial truck that rear-ended a stationary car, which set-off a multi-vehicle accident. A total of five vehicles were involved in the collision. The vehicle next to the vehicle that had been struck by the commercial truck was insured by State Farm, and it sought a loss transfer from GAN General Insurance. Pursuant to Rule 5(1), the Arbitrator decided that the incident was not described in any of the Rules, and therefore the degree of fault of the insured should be determined in accordance with the ordinary rules of law.

[74] Justice Pitt decided that the Arbitrator had erred because Rule 9 did apply. Then, the issue

became how to interpret the Rule in circumstances where the claim for a loss transfer was made by an insurer of a vehicle that was involved in the incident but which vehicle had not collided with the vehicle against whose insurer a loss transfer was being sought. Justice Pitt's answer is found in paragraphs 17 to 19 of his judgment, where he stated as follows:

> 17. I conclude that the Arbitrator made an error of law in his interpretation of Rule 9 and that it did apply to the fact situation before him, by virtue of s. 9(2).
>
> 18. Section 9(2) means simply that in determining the degree of fault between two colliding automobiles, i.e., "A" and "B" or "B" and "C", no attention is to be given to the role of car "C" in the former case or car "A" in the latter case. Put another way, the formula established for apportioning fault between the directly colliding cars has no application to cars which are involved in the same chain collision but did not collide with each other. In the result, as between car "C" and "A", which have not collided with each other, the Legislature has decided that no apportionment of liability is to be made as between these two cars.
>
> 19. Due to the combined effect of sections 9(4) and (2), and because s. 5 is not applicable, there is simply no apportionment between car "C" and "A". No transfer in liability from GAN to State Farm is required under the FDRs, ...

[75] I will return to *GAN General Insurance Co.* later in this judgment, but I foreshadow to say that I agree with Justice Pitt that Rule 9 is the applicable rule for a chain reaction, but I disagree with him that in the circumstances of this case the application of Rule 9 (4) is governed by Rule 9 (2), which provides that the degree of fault for each collision between two automobiles involved in the chain reaction is determined without reference to any related collisions involving either of the automobiles and another automobile.

[76] In *GAN General Insurance Co.*, there was no collision between State Farm's insured vehicle and GAN General Insurance's insured commercial vehicle. As I see it, Rule 9 (2) is a rule about how to determine the degree of fault for each collision in the chain reaction, but it does not provide a rule for the vehicle that started the series of collisions. Put somewhat differently, it does not follow from Rule 9 (2) that the Legislature has decided that no determination of liability is to be made between vehicles involved in the same chain collision but which do not directly collide.

[77] The *GAN General Insurance Co.* case was apparently the leading case until 2012, when Justice Chapnik decided *Royal & Sunalliance Insurance Company of Canada*, *supra*. The incident in that case was part of one of the largest multi-vehicle accidents in Ontario involving 200 vehicles in the southbound lanes of Highway 400 near Barrie, Ontario.

[78] Once again the facts were similar to the facts of the case at bar. Cheryl Rigby was operating an automobile insured by AXA that had stopped in the southbound lane. The AXA insured vehicle was rear-ended by the Jones' vehicle, which was struck by a truck insured by Royal & Sunalliance Insurance. AXA paid SABs to Ms. Rigby and sought a loss transfer from Royal & Sunalliance Insurance. Arbitrator Bruce Robinson concluded that Rule 9 applied because all three vehicles were in the same centre lane at the time of impact and that there was a collision between the Royal & Sunalliance truck and the AXA insured vehicle. Royal & Sunalliance appealed and submitted that the accident involved a pile-up as defined in Rule 11, but if Rule 9 applied, then the Arbitrator erred in finding a collision and in not determining liability between the vehicles. Royal & Sunalliance relied on Justice Pitt's decision in *GAN General Insurance Company Co. v. State Farm Mutual Automobile Insurance Co.*

[79] Justice Chapnik dismissed the appeal because it was open for the Arbitrator to find that there had been a collision between the vehicles. In what arguably is *obiter dicta*, Justice Chapnik went on to say that Rule 9 (4) applied even if the subject vehicles did not collide with each other. Thus, Justice Chapnik stated at paragraphs 29 to 33 of her judgment as follows:

> 29. The scheme of the legislation under s. 275 of the *Insurance Act* and its regulations is to provide for an expedient and summary method of reimbursing the first party insurer for payment of no-fault benefits from the second party insurer. As noted above, the fault of the insured is to be determined strictly in accordance with the *Fault Determination Rules* as provided by the regulation. Given that the Rigby and Jones vehicles were stationary and in the same lane at the time of impact, Rule 9 of the Rules would apply.
>
> 30. The factual circumstances here support the application of Rule 9(4), even if the subject automobiles did not collide with each other. It is common ground that all three subject automobiles were in the centre southbound lane at the time of the impact. Pursuant to Rule 9(4) if only the last vehicle is in motion at the impact, that vehicle is 100% at fault for the collision.
>
> 31. In my view, the arbitrator applied Rule 9(4) correctly.
>
> 32. Moreover, I agree with the submission of the respondent that to leave the insurer of a passenger vehicle without recourse to a loss transfer despite a finding that a heavy commercial vehicle is 100% at fault for the damages sustained by it, would be contrary to the legislation's intention.
>
> 33. The collision, if it occurred, with the Kotei vehicle, does not change the fact that the *Fault Determination Rules* hold that the truck is 100% at fault for the collision involving the Jones and the AXA automobile. In my view, the arbitrator was correct in finding that AXA is entitled to indemnification based on the apportionment of fault to the Royal truck for the collision.

[80] Although I do not think that Justice Chapnik ever actually explains why the Fault Determination Rules require that the truck is 100 per cent at fault for the collision involving the Jones and the AXA automobiles, I agree with Justice Chapnik's conclusion, and I will provide my own explanation for how Rule 9 is interpreted in the circumstances of the *Royal & Sunalliance Insurance Company of Canada* case, which are the same as the circumstances of the case at bar.

[81] The last case to discuss is *Economical Mutual Insurance Company v. Northland Insurance, supra*. In this case, Arbitrator, Densem reviewed the case law and provided an explanation why Rule 9 (4) allocates liability to a driver of a vehicle that causes a chain reaction but which vehicle does not collide with more than one vehicle. Once again, the facts were similar to the circumstances of *GAN General Insurance Co. v. State Farm Mutual Automobile Insurance Co.* and *Royal & Sunalliance Insurance Company of Canada v. AXA Insurance (Canada)*. The Arbitrator determined that Rule 9 (4) applied and then he applied Rule 9 (4).

[82] Arbitrator Densem's analysis focused on the element of Rule 9 (4) that speaks to the "fault for the incident." In his Reasons for Decision, he stated:

> Now FDR 9 must be applied. The first point to note is the FDR 9(1) stipulates that it applies to "an incident" described as a chain reaction involving three or more automobiles. Second FDR 9(2) sets out a general formula for determining the fault of each automobile involved in the chain reaction. That formula requires the degree of fault of each vehicle be determined by examining the circumstances of the collision between two automobiles that have collided without reference to any related collisions involving other automobiles.

To determine the degree of fault of each vehicle for the incident, one must then apply the specific provisions of FDR 9 that apply to the facts of the case. On the facts before, as the parties have agreed, FDR 9(4) applies. Applying FDR 9(4)(a) with reference to the diagram addresses the situation of the leading vehicle "A", the Economical vehicle, and the vehicle behind it, "B", that was in between the Economical vehicle, and the Northland truck when the incident occurred.

The wording of FDR 9(4) requires one to examine the collision between the Economical vehicle and the vehicle behind it to determine the degree of fault for each of those vehicles "**for the incident**"[emphasis in the original]. I pause here to say that applying principles of statutory interpretation, in my opinion, the word "incident" wherever it is used in FDR 9 should be given the same meaning as in section 275 of the *Insurance Act*, since it is in a Regulation made pursuant to the *Act,* and the Regulation does not specify a different definition. .... Having determined for the purposes of section 275 and FDR 9(1) that the incident means the chain reaction collision ... one should interpret the word "incident" the same way when applying FDR 9(4).

Applying this approach to interpreting FDR 9(4)(a), neither the Economical vehicle nor the vehicle in between the Economical vehicle and the Northland truck has any fault for the incident – the chain reaction involving all the vehicles.

Obviously, I would advocate the same approach to be applied to interpreting FDR 9 (4)(b). It is similarly worded. In determining fault "**for the incident"** [emphasis in the original] by examining the collision between the Northland truck and the Economical vehicle, vehicle "B", the conclusion is that the Northland truck is 100% at fault for the incident – the chain reaction collision involving all of the vehicles.

... FDR 9(4)(a) and (b) clearly set out that the degree of fault **for the incident** [emphasis in the original] of any one vehicle is determined by examining the collision that vehicle has collided with. The FDR does not say that a vehicle must collide with another vehicle before a determination of fault against it can be made. Once it has been determined that vehicle "A" has zero fault for the incident and vehicle "C" is 100% at fault for the incident, then loss transfer indemnity may proceed in accordance with that degree of fault determination.

7. The Interpretation of Rule 9 in the Circumstances of the Case at Bar

[83] After this lengthy discussion, I can be brief in explaining my interpretation of Rule 9 in the circumstances of the case at bar.

[84] The parties agree that Rule 9 (4) of the Fault Determination Rules is the applicable rule to the circumstances of this case. They differ, however, about the interpretation of the Rule which states:

> 9(4) If only automobile "C" is in motion when the incident occurs,
>
> (a) in the collision between automobiles "A" and "B", neither driver is at fault for the incident; and
>
> (b) in the collision between automobiles "B" and "C", the driver of automobile "B" is not at fault and the driver of automobile "C" is 100 per cent at fault for the incident.

[85] In my opinion, the plain meaning of Rule 9 (4) is that if only automobile "C" is in motion when the "incident" occurs, then automobile "C" is 100 per cent at fault for the "incident."

[86] The "incident" which is described by Rule 9 is a chain reaction collision; i.e. an event that involves two collisions caused by a vehicle (the automobile in motion) that is itself involved in one but not the other collision.

[87] If only automobile "C" is in motion when the incident occurs, then automobile "C" is 100 per cent at fault for that incident; i.e. the chain reaction. That is the plain and literal meaning of Rule 9 (4).

[88] Old Republic's interpretation and Justice Pitt's interpretation in *GAN General Insurance Co. v. State Farm Mutual Automobile Insurance Co., supra* changes the meaning of Rule 9 (4) and would, in effect, read the rule as if its concluding words were the driver of automobile C is 100 per cent "at fault for the "collision." That interpretation would indeed make the driver of automobile "C" only liable for "collisions" but that is not what the Legislature said. The Legislature said that the driver of automobile "C" is 100 per cent at fault "for the incident."

[89] In other words, I agree with the interpretation of Rule 9 (4) applied by Justice Chapnik in *Royal & Sunalliance Insurance Company of Canada v. AXA Insurance (Canada)* and applied and also explained by Arbitrator Densem in *Economical Mutual Insurance Company v. Northland Insurance, supra.*

[90] I disagree with the interpretation advanced by Old Republic, which I find forced and unnatural and contrary to the plain meaning of Rule 9 (4).

[91] In loss transfer cases involving other Rules from the Fault Determination Rules, the Rules have been interpreted in a way that an automobile can be involved in an incident without having been a colliding vehicle. These cases hold that a vehicle can be involved in an incident even without actually colliding with any other vehicles.[23] In the case at bar, the heavy commercial vehicle insured by Old Republic was involved in one collision in the incident and involved in the totality of the incident which was the chain reaction. This interpretation of Rule 9 is consistent with how other Rules have been interpreted.

[92] There is nothing absurd about this interpretation of Rule 9 or about its consequences.

[93] The interpretation does have the consequence that the insurer of both automobile "A" and the insurer of automobile "B" may have loss transfer claims against the insurer of a heavy commercial vehicle but that is consistent with the purposes of the legislative scheme, which is to impose risk and liability on the relatively more dangerous and damage causing vehicle when there is an incident.

[94] Moreover, but for the intervention of the statutory scheme, the fault determination is an outcome that is consistent with a fault determination at common law, where if two automobiles are stationary and a chain reaction is caused by a moving automobile, it would not be an absurd result to impose liability on the moving vehicle that started the chain reaction.

[95] Had the rough and ready calculus of Rule 9 (4) not applied, then the outcome of 100 per cent liability on automobile "C" might have been the same under Rule 5 (1), which provides that if an incident is not described in any of these Rules, the degree of fault of the insured shall be determined in accordance with the ordinary rules of law. Under Rule 5 (1), automobile "C", once again, would be exposed to liability for the incident because it was involved in the incident and a determination of 100 per cent liability for all loss transfers would not be absurd.

[96] Moreover, when the insurer's liability moves outside of the scheme of loss transfers for

SAB payments to the territory of the insurer's exposure for the liability for the torts of its insured, it would not be an absurd result that the insurer of a heavy commercial vehicle that causes a chain reaction series of collisions should be held liable for not only the first collision but for the chain reaction of collisions that followed.

[97] I, therefore, do not agree with Old Republic's argument that Justice Chapnik's interpretation will have dire consequences to the part of the insurance industry that insures heavy commercial vehicles. In any event, there is no empirical evidence that my interpretation of Rule 9 (4) will change the underwriting risk of insurers of heavy commercial vehicles.

[98] In my opinion, the plain language of Rule 9 (4) imposes liability for the incident on the heavy commercial vehicle in the circumstances of this case.

CONCLUSION

[99] For the above reasons, I dismiss the appeal.

[100] If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with State Farm within 20 days from the release of these Reasons for Decision, followed by Old Republic's submissions within a further 20 days.

Perell, J.

Released: June 25, 2014

CITATION: State Farm Mutual Automobile Insurance Company v. Old Republic Insurance Company of Canada, 2014 ONSC 3887

COURT FILE NO.: 13-CV-471977

DATE: 20140625

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Applicant
(Respondent on Appeal)

– and –

OLD REPUBLIC INSURANCE COMPANY OF CANADA

Respondent
(Appellant on Appeal)

REASONS FOR DECISION

PERELL J.

Released: June 25, 2014

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[1] R.S.O. 1990, s. I.8.
[2] R.R.O. 1990, Reg. 668.
[3] [1999] O.J. No. 4467 (S.C.J.).
[4] 2012 ONSC 3095 (CanLII), 2012 ONSC 3095 (S.C.J.).
[5] July 2, 2013.
[6] *Security National Insurance Co. v. Markel Insurance Co.*, 2010 ONSC 5309 (CanLII), 2010 ONSC 5309 at para. 23; *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), 2008 SCC 9 at para. 50.
[7] *Dunsmuir v. New Brunswick*, *supr*a at para. 50.
[8] *R. v. Dubois*, 1935 CanLII 1 (SCC), [1935] S.C.R. 378 at p. 381; *Goldman v. The Queen*, 1979 CanLII 60 (SCC), [1980] 1 S.C.R. 976.
[9] *Legislation Act*, S.O. 2006, c. 21, Sched. F, s. 64 (1).
[10] *Re Rizzo & Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at paras. 18-23; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), [2002] 2 S.C.R. 559.
[11] *Verdun v. Toronto-Dominion Bank*, 1996 CanLII 186 (SCC), [1996] 3 S.C.R. 550 at p. 559; *Mavi v. Canada (Attorney General)* 2009 ONCA 794 (CanLII), (2009), 98 O.R. (3d) 1 at paras. 92-96 (C.A.); *Re Can. Western Natural Gas Co. Ltd. and Shell Canada Resources Ltd.* 1980 ABCA 209 (CanLII), (1980), 118 D.L.R. (3d) 607 (Alta. C.A.).
[12] *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), [2002] 2 S.C.R. 559 at para. 30; *York (Regional Municipality) v. Winlow* 2009 ONCA 643 (CanLII), (2009), 99 O.R. (3d) 337 at paras. 42-43 (C.A.).
[13] *Grey v. Pearson* (1857), 6 H.L.C. 61; *Sussex Peerage Case* (1844), 11 Cl. & F. 85.
[14] *R. v. McIntosh*, 1995 CanLII 124 (SCC), [1995] 1 S.C.R. 686 .at p. 704; *R. v. Huggins*, 2010 ONCA 746

(CanLII), 2010 ONCA 746 at paras. 17-18; *Victoria (City) v. Bishop of Vancouver Island,* [1921] A.C. 384 (P.C.).
[15] *Re Rizzo & Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at para. 27; *Blue Mountain Resorts Ltd. v. Bok*, 2013 ONCA 75 (CanLII), 2013 ONCA 75 at para. 43.
[16] *Victoria City v. Bishop of Vancouver Island* (1921), 59 D.L.R. 399 at p. 387 (P.C.); *R. v. McIntosh*, 1995 CanLII 124 (SCC), [1995] 1 S.C.R. 686 at para. 20; *Grey v. Pearson* (1857), 6 H.L.C. 61 at p. 106.
[17] *R. v. Middleton*, 2009 SCC 21 (CanLII), 2009 SCC 21 at para. 17; *R. v. Proulx*, 2000 SCC 5 (CanLII), [2000] 1 S.C.R. 61 at para. 28; *Subilomar Properties (Dundas Ltd.) v. Cloverdale Shopping Centre Ltd.*, 1973 CanLII 11 (SCC), [1973] S.C.R. 596 at p. 603; *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20 (CanLII), [2006] 1 S.C.R. 715; *Re Therrien*, 2001 SCC 35 (CanLII), [2001] 2 S.C.R. 3.
[18] *Peel (Police) v. Ontario (Special Investigations Unit)*, 2012 ONCA 536 (CanLII), 2012 ONCA 536 at paras. 26, 60; *R. v. Morgentaler*, 1975 CanLII 8 (SCC), [1976] 1 S.C.R. 616 at p. 676.
[19] 1993 CanLII 8451 (ON CA), (1993), 14 O.R. (3d) 545 at p. 547 (C.A.).
[20] (1996), 27 O.R. (3d) 646 at para. 9 (C.A.).
[21] [1994] O.J. No. 3024 at para. 8 (Gen. Div.).
[22] 2012 ONSC 3095 (CanLII), 2012 ONSC 3095.
[23]*Dominion of Canada General Insurance Co. and Kingsway Insurance Co.*, www.fsco.gov.on.ca/english/hearings/privatearb/1999-08-23.asp, (August 23, 1999), aff'd *Kingsway Insurance Company v. Dominion of Canada General Insurance Company*, (S.C.J.), unreported January 11, 2000 (Court File No. 99-CV-176780).
