IN THE MATTER OF the *Insurance Act,* R.S.O. 1990, c. I.8, Section 275 and Regulation 664/90

AND IN THE MATTER of the *Arbitration Act*, 1991, S.O. 1991, c.17, as amended

AND IN THE MATTER of an Arbitration

BETWEEN:

HAY MUTUAL INSURANCE COMPANY

Applicant

- and -

WEST WAWANOSH MUTUAL INSURANCE COMPANY

Respondent

AWARD

Counsel:

Hay Mutual Insurance Company (Applicant): Douglas A. Wallace

West Wawanosh Mutual Insurance Company (Respondent): Catherine R. Bruni

Introduction:

This matter comes before me pursuant to the *Arbitrations Act*, 1991, to arbitrate an issue between the above-noted insurers with respect to a priority dispute pursuant to the *Insurance Act* and its regulations. Specifically, this claim is with respect to a motor vehicle accident that occurred on April 17, 2012 and a claim for statutory accident benefits that was advanced by Adrienne Kester.

The parties selected me as their arbitrator on consent and the matter proceeded to a hearing with documentary evidence only on September 15, 2015.

Exhibits:

The following documents were made exhibits at the arbitration hearing:

Exhibit 1: Arbitration Agreement dated February 25, 2015

Exhibit 2: Agreed Statement of Facts including attached documents Tabs 1 through 8

Issue in Dispute:

The issue for determination is which of Hay Mutual Insurance Company (hereinafter called Hay Mutual) and West Wawanosh Mutual Insurance Company (hereinafter called West) is liable to pay statutory accident benefits to Adrienne Kester as a result of the accident of April 17, 2012.

Ms. Kester applied to Hay Mutual for accident benefits as she was a listed driver under the Hay Mutual policy that insured the Grand Am that she was the driver of on the date of the accident.

Hay Mutual claims that West is the priority insurer, on the grounds that Steve Taylor, who is Adrienne's common-law spouse, was a named insured under a West policy with respect to a 1997 GMC Safari van. Hay Mutual Claims that as Adrienne Kester was the spouse of the named insured under the West policy that they rank in priority.

West takes the position that Adrienne Kester was the *de facto* owner of the 2005 Grand Am, even though it was registered in the name of her father, Anthony Kester. West claims that in the circumstances of this case, Adrienne Kester should be elevated from status of listed driver to that of named insured. If they are correct in that then Adrienne Kester, as a "named insured" under the Hay Mutual policy and an occupant of that vehicle on the date of loss would have priority with Hay Mutual.

The key issue that I see in this arbitration is therefore whether:

1. I have the authority to elevate a "listed driver" to the status of a "named insured" in the circumstances of this case and in the context of the Insurance Act, Statutory Accident Benefit Schedule and Priority Rules;

2. A second issue raised by West is that I use my equitable authority to rectify the contract as between Hay Mutual and Adrienne Kester/Anthony Kester to properly reflect Adrienne Kester's status of *de facto* owner.

Result

For reasons that are outlined below, I find that there is no jurisdiction, either in the Insurance Act, Statutory Accident Benefit Schedule or in law, for me to elevate a listed driver under a contract to the status of named insured. I further find that this is not a case in which I would exercise any equitable jurisdiction to rectify the contract as requested by West. In my view, the contact reflected exactly what the parties requested.

Consequently, I find that West Wawanosh Mutual Insurance Company is the priority insurer with respect to the accident benefit claim of Adrienne Kester arising out of the motor vehicle accident of April 17, 2012.

Facts

Counsel prepared a detailed Agreed Statement of Facts which was marked as Exhibit 2 and I have attached as an addendum to this Decision. However, from that Agreed Statement of Facts, in my view, the following facts were key with respect to the issues in dispute:

1. On April 17, 2012 Adrienne Kester was the driver of a 2005 Pontiac Grand Am, registered in the name of her father, Anthony Kester. The Grand Am was insured pursuant to a standard automobile policy issue by Hay Mutual Insurance Company bearing policy number 43880A01.

2. The Certificate of Automobile Insurance issued by Hay Mutual identified Adrienne's father and mother: Anthony and Theresa Kester, as the named insureds. Adrienne Kester was listed as the principal driver of the Grand Am.

3. In late October of 2010 Adrienne Kester purchased the 2005 Pontiac Grand Am from Steven Taylor's employer. She paid $4,200 in cash. She paid for the car herself.

4. Adrienne had, since September of 2008, been enrolled as a full time student in the Food and Nutrition Sciences program at Brescia College of Western University in Ontario.

5. Prior to the purchase of the Grand Am, Adrienne had successfully applied for a student loan through the Ontario Student Assistance Plan (OSAP) while she attended Brescia College. Adrienne admitted that in order to reduce her net worth and increase her loan entitlement, she asked her father Anthony to register the Grand Am in his name. Her father agreed. The purpose of Anthony registering the Grand Am in his name was to permit Adrienne to receive greater OSAP funding while attending school.

6. Effective October 31, 2010, Anthony, with the assistance of his agent, Phil Erb, a captive agent of Hay Mutual, arranged insurance on the Grand Am. The car was added to an existing plan that insured three other vehicles and a boat trailer. Anthony and Theresa Kester were the named insured on the policy.

7. Prior to Mr. Erb adding the Grand Am to the Hay Mutual policy, both Anthony and Adrienne advised him that the Grand Am was registered in Anthony's name to permit Adrienne to receive a larger loan from OSAP. Mr. Erb was also advised that Adrienne would be keeping the Grand Am at her home in Clinton, which was about 30 kilometers away from her parents' home. She would be driving the car to and from school in London. She would be the sole driver but for the rare occasion when her common law husband, Steve might drive it. Mr. Erb was also aware that Adrienne would be paying for gas and maintenance expenses on the vehicle.

8. In August 2012 Adrienne lived with her common law spouse, Steve Taylor. Steve owned a 1997 GMC Safari van that was insured under a standard automobile policy with West Wawanosh, bearing policy number 15147A03. Adrienne and Steve had a daughter together, born February 27, 2010. Adrienne and Steve lived together at 173 Fulton Street and had been doing so since 2006.

9. Mr. Erb, being aware of all the above, completed an OPCF25A alteration form to add the Grand Am to Anthony Kester's policy. Anthony paid the first year premium for the Grand Am but was reimbursed by Adrienne. Anthony paid the annual premiums thereafter until the date of the accident.

10. The premium for the Grand Am would not have been different if Adrienne was the registered owner and had insured it through Hay Mutual. Although a multi-vehicle discount was applied to the vehicle's trailer, owned by Anthony and Theresa, that discount was not applied to the Grand Am.

11. In the accident of April 17, 2012, Adrienne sustained some injuries and applied by way of an Application for Accident Benefits to Hay Mutual for statutory accident benefits which Hay Mutual has been paying.

12. There were no facts in dispute in this arbitration. The facts as noted above were supported by various documents which were attached to the Agreed Statement of Facts.

The Law

Section 268(1.1)(2) of *The Insurance Act*, R.S.O 1990, c.1.8 (hereinafter called The Act) sets out the priority rules for determining which insurer is liable to pay statutory accident benefits. The relevant previsions with respect to the circumstances of this case are as follows:

Liability to Pay

(2) The following rules apply for determining who is liable to pay statutory accident benefits:

1) In respect of an occupant of an automobile,

   i) The occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured;

   v) Despite subsection (4) if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependent, as defined in the Statutory Accident Benefit Schedule, of a named insured, the person shall claim statutory accident benefits against the insurer under the policy.

The Statutory Accident Benefit Schedule- accidents on or after September 1, 2010: Ontario Regulation 34/10, Section 3 (1) provides the definition of "insured person" as follows:

> *"Insured person" means, in respect of a particular motor vehicle liability policy*
>
> *a) The named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and a dependent of the named insured or of his or her spouse,*
>
> *(i) If the named insured, specified driver, spouse or dependent is involved in an accident in or outside Ontario that involves the insured automobile or another automobile.*

Also relevant to the consideration of the issues in this case is the definition of insured under Section 222(1) of the Insurance Act as follows:

> *"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.*

There does not appear to be any issue that as a matter of law Adrienne Kester and Steven Taylor met the definition of common law spouse/spouse pursuant to Section 224(1) of the Insurance Act.

It is also relevant to note that the definition of "insured person" has over the course of history of various statutory accident benefit schedules, changed from time to time. Since Bill 59 came into place (Statutory Accident Benefit Schedule for accidents on or after November 1, 1996) the definition of insured person has been consistent in including a reference to both the "named insured" and "any person specified in the policy as a driver of the insured automobile". However, that was not always the case. Under what is commonly known as "OMPP": the statutory accident benefit schedule that governed no fault claims from June 1990 until January 1994, the definition of insured person read as follows:

> *"insured person" in respect of a particular motor vehicle liability policy, means,*

> *c) the named insured, his or her spouse and any dependent of either of them while an occupant of any other automobile.*

The difference between the definitions was one did not include a specified driver (commonly referred to as the listed driver) while the subsequent definition included listed/specified driver.

It is my view that the change of the definition of insured person as noted above, was to reflect the fact that there was a difference between a person who was a "named insured" and someone who was a listed or specified driver. The difference in the two definitions must also be kept in mind when reviewing the relevant case law with respect to who is a named insured and whether there is any legislative or legal authority to elevate a listed driver to a "deemed named insured".

Having carefully reviewed the legislative authority noted above and the case law that counsel have outlined in their factum, I am satisfied that there is no statutory or common law authority for the proposition that I can elevate the "listed/specified driver" to the status of the named insured.

I am further satisfied that is the case irrespective of the particular facts of any case. That is important as two other arbitrators have suggested that if certain facts are present, that there may be some authority to elevate a listed driver to a named insured. I must disagree with those arbitrators.

The first case that I found to be of assistance was the decision of the Court of Appeal in *Collins v. Wright* 1988 CarswellOnt 704 (S.C.J.), and [1989] O.J. No. 2416 (C.A.).

I appreciate the Collins and Wright case does not deal with statutory accident benefits and was decided at a time long before our present legislative and regulatory no fault scheme. However, I find that the court did give direction with respect to the issue of what is a named insured. Before turning to that case, I point out that the legislature in their wisdom have chosen not to provide a definition of "named insured". Case law offers examples as to who is the named insured but no definition has ever been set out in the Insurance Act. However, the Ontario Automobile Policy (OAP1), a standard prescribed form with respect to motor vehicle liability policies, does set out in paragraph 1.3: definitions, the following:

Named insured

> *"The named insured is the person or organization to whom the certificate of automobile insurance is issued."*

In this case there does not appear to be any argument, therefore, that under the definition of named insured under the OAP that the only named insured that would meet that definition are Anthony and Theresa Kester, as they are the "persons" to whom the certificate of automobile insurance is issued.

In Collins and Wright a plaintiff who had sustained some injuries in a motor vehicle accident brought an action against the unlicensed driver. The facts were that a mother had lent her vehicle to her son. Her son had then let his unlicensed girlfriend drive the car. The girlfriend was the one involved in the accident.

The insurer of the mother denied coverage to the son's girlfriend on the grounds that she did not have consent to drive the vehicle. The insured plaintiff argued that the son was listed as the principal driver under the policy of insurance. Therefore, he should be considered a "person named therein" pursuant to then section 209 of the Insurance Act (now Section 239). Section 209 read:

> *"every contract evidenced by an owner's policy insures the person named therein and every other person who with his consent personally drives an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured person named in the contract or that other person for loss or damage..."*

Similar to this case, an argument was being made that the fact that the son was listed as principal driver elevated him to the status of "insured named in the contract".

The Court found that they could not elevate the son to move from the status of a principal driver to a person named in the contract. The trial judge found against the plaintiff and that was upheld by the Court of Appeal. The Court stated, in reference to a case relied upon by counsel (*Blair v. Royal Exchange Assurance* 67DLR (2D) 420) on the appeal of that case as follows:

> *"If, however, Blair stands for the proposition that the naming of a person as a principal or occasional driver in an owner's policy in respect of a vehicle owned by someone else, elevates the named driver to the status of a named insured under the policy, we respectfully disagree."*

In my view this authority for the proposition that the Court of Appeal recognizes that there is a difference between a "named insured" and a principal driver/listed driver and that the naming of someone as a principal driver in the owner's policy cannot result in them being elevated to the status of named insured.

Other cases have considered what the meaning of "named insured" is. In the appeal decision of Director Delegate Draper, in the case of *Portch v. Markel Insurance Company of Canada* {1995} CarswellOnt 4908(OIC), Director Delegate stated the following when attempting to determine which of two insurers bore priority for Mr. Portche's accident benefit claim:

> *"(Page 9, Paragraph 56) In Mr. Portch's case it is tempting to look behind the corporate name on the automobile policy issued by Markel. In my opinion,*

> *however, "named insured" has a specific meaning in the Insurance Act. Although it is not defined, it is used consistently to mean the person or entity in whose name the policy is issued. This appears to be the approach taken by the courts, and accepted in Kattrysse and Sittler"*

While this case deals with an accident in 1992 and the old definition of insured, the analysis with respect to what is a "named insured" is still relevant to the present definition.

In reaching my decision, I have also kept in mind the direction provided by the Ontario Court of Appeal in the decision of *Warwick v. Gore Mutual Insurance Company* 1997 CarswellOnt 566 (C.A.).

In that case the Court of Appeal directs the analysis with respect to determining who was an insured person for the purposes of a priority dispute as follows. The Court says that contractual entitlement to no fault benefits is to be determined by Section 268(1) of the Insurance Act and the definition of insured person under the regulation. The Court notes that Section 268(1) adds the statutory accident benefit schedule to every contract of automobile insurance but then delegates to the schedule maker authority to define the classes of persons insured under any particular contract. Therefore, one must look to the Statutory Accident Benefit Schedule and the definition of insured person to determine who is entitled to no fault benefits and to determine who is the priority insurer.

Also of note in that case is the court's comment with respect to premiums and risks. The court states:

> *"Premiums reflect risk, in this case the risk of a car accident and its severity. In fixing a premium, insurers must and do take account of the risks presented by occasional drivers. But individual risk assessment is unworkable. In order to set prices, premiums, private insurers group risks with similar risk characteristics. The resulting risk classification system enables insurers to spread the risk and lower the cost. In any such system anomalous instances of apparent individual fairness may occur. A person may pay for a benefit that he or she will not receive. . . . such anomalies are likely inherent in any insurance system where the premiums of the many pay for the losses of the few."*

Before turning to the two arbitral decisions which suggest that an arbitrator may have jurisdiction to elevate a listed driver to a named insured in certain circumstances, it is also as important to make note of the only circumstance that I am aware of under the Insurance Act and its regulations that does provide for a deemed named insured process. That is found in the section commonly referred to as "company automobiles". Under the present SABS the deeming provision is found under the definition section. The section provides (7)(F)

> *"An individual who is living and ordinarily present in Ontario is deemed to be the named insured under the policy insuring an automobile at the time of the accident, if at the time of the accident:*
>
> *i) The insured automobile is being made available for the individuals regular use by a corporation, unincorporated association, partnership, sole proprietorship or other entity, or;*
>
> *ii) The insured automobile is being rented by the individual for a period of more than 30 days.*

This provision is known as the "deemed named insured provision". It applies to circumstances where the actual named insured under the automobile policy is the company (a corporation or other entity). However, the risk lies with the driver that regularly uses that vehicle. Accordingly, in those circumstances the legislature has specifically provided that individual is a "deemed named insured" in order to reflect that risk. I cannot help but ask that if the legislature had wanted to have a listed or specified driver to be considered or deemed to be a "named insured" in certain circumstances that they would have specifically done so.

The two arbitration decisions that counsel for West Wawanosh rely upon in support of the proposition that I have jurisdiction to elevate an individual from a listed driver to a named insured are as follows:

Liberty Mutual Insurance Company v. Markel Insurance Company 2006 CarswellOnt 6210 decision of private Arbitrator Guy Jones, released July 2006 and *Unifund Assurance Company v. Intact Insurance Company* 2015 CarswellOnt 6527- decision of Arbitrator Bialkowski. I also note that Arbitrator Jones, in two subsequent decisions (*Allstate Insurance Company v. Kingsway General Insurance Company*, private arbitration Guy Jones released October 26, 2007 and *Aviva Canada Inc. v. The Motor Vehicle Accident Claims Fund*, private arbitration, Guy Jones, released May 2009. Arbitrator Jones, while declining to elevate the individual to the status of named insured, suggested that was, in certain circumstances, possible.

Turning to Arbitrator Jones' first decision in *Liberty Mutual v. Markel.* In that particular case it was argued by Markel that a Mr. Kumaraval was the principal driver of the Toyota and therefore de facto should be the deemed named insured under the Liberty policy. It was submitted that the term "named insured" is not a defined term under the Insurance Act and is capable of a wide interpretation. As in this case it was alleged that Mr. Kumaraval, while not the registered owner, was in fact using the vehicle 100% of the time. It was acknowledged that the Certificate of Insurance issued by Liberty named the registered owner as the named insured, while the "de facto owner" was Mr. Kumaraval.

Arbitrator Jones states:

> *"While I would be prepared to accept that in the right circumstances, someone other than the Applicant and owner could be the "named*

> *insured", we must examine the facts of this particular case in order to determine if it's an appropriate situation to make such a finding."*

With the greatest of respect to Arbitrator Jones, he does not provide any legal authority or legislative authority for his statement that in certain circumstances someone other than the individual shown on the certificate of insurance could be found to be the named insured in the context of a priority dispute between two insurers.

Counsel for West Wawanosh points out that Arbitrator Jones in that case, looked at the question as to whether the owner and principal driver of the vehicle had devised a plan to obtain lower insurance rates. He finds in fact they did not and counsel for West Wawanosh suggests that in circumstances where somebody devises a plan to receive lower insurance rates that those would be appropriate circumstances to elevate someone from a listed driver to a named insured. I do not agree. I see no legal authority for that. That is particularly so when in the circumstances of this case Hay, through its agent, was fully aware and accepted that "there was a plan to obtain lower insurance rates". The facts suggest that Hay, through its agent, was well aware that the purpose of putting the policy of insurance and the vehicle in the name of Anthony Kester was to provide a financial advantage to Ms. Kester with respect to the OSAP loan. I find that Hay and the Kester's got the contract that both of them intended and wanted.

In Arbitrator Jones' second decision from 2007 (*Allstate v. Kingsway*), we again see the argument put forward that the listed driver/principal driver under the policy was in fact the real owner. It was alleged that individual had the primary, if not exclusive use of the automobile and therefore should have been listed as the named insured rather than as the listed driver. Arbitrator Jones was asked to consider elevating that individual to be a deemed named insured under the policy. Arbitrator Jones made reference to his previous decision in *Liberty Mutual v. Markel* as support for the proposition that in certain circumstances one could elevate a listed driver to a deemed named insured. There is no reference to any legislative authority or any case law. At the end of the day though, Arbitrator Jones declined to elevate the individual to be the deemed named insured, noting that in his view, in order to elevate the deemed named insured to that position that the insurer would either have had to have been aware or ought to have been aware of the facts such that they should have listed the individual as the named insured rather than as the listed driver. He noted that the evidence before him was not clear. In my view there is no authority for Arbitrator Jones to have taken the position that in circumstances where the insurer or its agent ought to have known that the individual should be the named insured rather than the listed driver that one could then elevate them to that status for the purposes of a priority dispute. I do not agree with Arbitrator Jones' statement and even though the facts of this case would probably fall within Arbitrator Jones' criteria, I do not accept that is the law.

There is no doubt that in this case Hay Mutual knew that Adrienne Kester would have exclusive use of the vehicle, that the vehicle would be at her house and that there was a financial purpose in setting up the arrangement of the contract in the manner that they did. However, I do not find that those circumstances then allow me to now do what the parties clearly did not

intend to do and make Adrienne Kester the named insured for the purposes of this priority dispute.

The third case in which Arbitrator Jones brought forward his theory was Aviva and The Motor Vehicle Accident Claims Fund. Arbitrator Jones relied on his two previous cases to support the proposition that he had authority to elevate an individual from listed driver to a deemed named insured. Of note is the fact that Arbitrator Jones does not in any of these cases make reference to the *Collins v. Wright* decision in the Court of Appeal. Arbitrator Jones chooses not to deem the individual in that case to be the named insured. The basis seems to be that he is not satisfied that the factual background is appropriate. He notes that there is no evidence before him to suggest that the insurance agent who arranged for the contract knew that the car was in fact paid for and owned by the listed driver. The case seems to suggest that had that been the fact that Arbitrator Jones would have considered deeming that individual as a named insured under the policy. Again, I do not agree that there is legislative authority or legal authority for an arbitrator to do that. I find in fact, the legislature has specifically provided a definition of an insured person and has distinguished a named insured and a specified driver and that to try to elevate an individual from a listed driver to a named insured would be contrary to the definition under the Statutory Accident Benefit Schedule and the policy behind it.

The last case to be considered is the one of Arbitrator Bialkowski in *Unifund v. Intact* from 2015. The case involved an individual who for primarily financial reasons (in this case a bankruptcy) wanted to put the ownership of the vehicle in someone else's name and the contract of insurance in someone else's name. This information was in fact disclosed to the broker. The actual individual named in the policy of insurance was blind and did not drive. The de facto owner of the vehicle (the daughter) was shown as the listed driver and the policy was rated on her driving record. Her mother was shown as the named insured.

Arbitrator Bialkowski, in deciding that he will not elevate the listed driver to the status of named insured, does make reference to the decision in Collins and Wright and also makes reference to the previous decisions of Arbitrator Jones. He states, and I agree:

> *"Ontario courts and private arbitrators have consistently recognized and enforced the distinction to be drawn between an individual who would be considered as a "named insured" under a motor vehicle liability policy and someone who would be considered as a "listed driver". Individuals who are described simply as a "listed driver" should not be elevated to the status of "named insured".*

However, having made that statement, in reliance on the decisions of Arbitrator Jones, Arbitrator Bialkowski goes on to suggest that in certain circumstances, it may be appropriate to elevate the listed driver. He suggests that the common thread in the cases he reviewed is that if the insurer knew or ought to have known about the facts behind the listed driver versus the named insured, then those may be circumstances in which the elevation to named insured can occur. In that case, Arbitrator Bialkowski concludes that there was an insufficient factual basis

on the evidence before him to raise the listed driver to the named insured. This seems to be inconsistent with Arbitrator Bialkowski's earlier statement that a listed driver should not be elevated to the status of named insured.

Having reviewed the decisions of my fellow arbitrators, Bialkowski and Jones, with the greatest respect, I simply cannot agree that there are any circumstances where an individual who is a listed driver can be elevated to the named insured for the purposes of a priority dispute. It remains my view that a named insured is distinct from a listed driver and that neither the policy, the Insurance Act nor the regulations nor any law that has interpreted those to date allows that elevation to take place. The specified driver and the named insured are treated as two distinct entities under the definition of insured. There was no provision for going behind the contract of insurance and the certificate of insurance and to analyze the circumstances in which the contract was entered into for the purposes of elevating an individual from a listed driver to a named insured in a priority dispute.

I turn briefly now to the request from West Wawanosh that I consider using my equitable jurisdiction to rectify the contract. I do not believe I have the jurisdiction to do so in light of what I have said above, but if I am wrong, then I do wish to address that issue. Counsel for West Wawanosh relied upon the decision of *Weerasooriya-Epps v. Economical Mutual Insurance Company* 1998 CarswellOnt 2234 OIC, Arbitrator Bayefsky in support of their position.

Arbitrator Bayefsky in that case did indeed conclude that he had equitable jurisdiction as an arbitrator in certain circumstances to rectify a contract of insurance to give effect to the intentions of the parties. Arbitrator Bayefsky relied upon the appeal decision of *Branchaud v. Co-operators General Insurance Company* (May 2, 1997) (00048) Director of Arbitrations, where it was held that an arbitrator has "implicit power to apply equitable principles in the ordinary exercise of his or her statutory jurisdiction". In the case before him, Arbitrator Bayefsky was asked to rectify the contract before him and to take an individual who had been inappropriately deleted from the policy as a named insured and to have them put back as the named insured, as that was the parties intention.

The arbitrator outlines that rectification is appropriate where the contract did not in fact reflect the intention of the parties. In the case before me, I believe that the contract of insurance between Hay Mutual Insurance Company and Anthony Kester/Theresa Kester in fact reflected exactly the intention of the parties. The Kester's, through their agent, requested that the automobile legally registered in the name of Anthony Kester be added to the policy of insurance under which Anthony Kester and Theresa Kester were shown as named insureds. It was requested that Adrienne Kester be noted as the listed or principal driver. Everyone was aware as to why that was being requested and the circumstances involving Adrienne Kester's de facto ownership of the vehicle. How can I agree to rectify a contract which exactly reflected what both parties intended, particularly when the request is being made by an insurer who is not a party to the contract.

Therefore, I conclude that I do not have the jurisdiction to elevate Adrienne Kester, who is a listed driver under the Hay Mutual Insurance Company policy to be the deemed named insured under that policy. As a result I find that West Wawanosh Mutual Insurance Company is the priority insurer, as Adrienne Kester was the spouse of the named insured under their policy.

Order

I find that Hay Mutual Insurance Company is not the priority insurer with respect to the accident benefit claim of Adrienne Kester arising out of the accident of April 15, 2012 and that West Wawanosh Mutual Insurance Company is the priority insurer for the reasons outlined above.

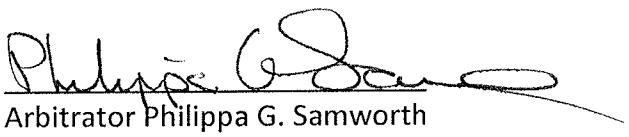
Costs

Pursuant to paragraph 10 of the Arbitration Agreement, I am given the authority to fix the costs of the successful party in my discretion.

Counsel for West Wawanosh argues that this was a novel issue. While certainly based on the case law, there was every reason for West Wawanosh to pursue this argument, at the end of the day they were unsuccessful. I therefore find that West Wawanosh Mutual Insurance Company should pay the costs of the arbitration pursuant to the Arbitration Agreement. If an appeal is taken from this decision then pending that appeal the costs will be borne equally by the parties.

In the even that counsel are unable to agree with respect to the quantum of the costs, a further prehearing can be arranged.

Dated this 12th day of November, 2015 at Toronto.



Arbitrator Philippa G. Samworth