

IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c. 1.8, as amended

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

AND IN THE MATTER OF Arbitration pursuant to O. Reg. 283/95
made under the Insurance Act

BETWEEN

OPTIMUM INSURANCE COMPANY

Applicant

- and -

ROYAL & SUNALLIANCE INSURANCE COMPANY and
THE DOMINION OF CANADA INSURANCE COMPANY

Respondents

AWARD

Counsel:

Optimum Insurance Company (Applicant): Amanda Lennox

Royal & SunAlliance Insurance Company of Canada (Respondent): Peter Durant

The Dominion of Canada General Insurance Company (Respondent): Neil Colville-Reeves

Introduction:

This matter came 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 November 29, 2011 and a claim for Statutory Accident Benefits that was advanced by Joseph Fiorica.

The parties selected me as their Arbitrator on consent and the matter proceeded to a hearing with viva voce evidence as well as documentary evidence on 2 days in Toronto: December 15, 2014 and January 22, 2015.

Exhibits:

The following documents were made exhibits at the arbitration hearing:

Exhibit 1: Arbitration Agreement signed by all counsel

Exhibit 2: Document Brief of the Respondent: The Dominion of Canada General Insurance Company tabs 1 through to 7

Exhibit 3: Document Brief of the Respondent: Royal & SunAlliance Insurance Company of Canada tabs 1 through to 4

Exhibit 4: Email of Tara Sciara to Ray Sheppard at RSA Group dated June 6, 2012

Witnesses:

The following witnesses were called to give viva voce evidence:

1. Ray Sheppard Property Damage Adjuster RSA
2. Mr. Vicky Banga Corporate Manager Routes Car Rental
3. Judy Wilson- Simmons Youngs Insurance Brokerage
4. Jasmeet Gill Manager Routes Auto Rental Hamilton

Counsel also submitted various Books of Authorities.

The Issue in Dispute:

The Arbitration Agreement identified the following issues for my determination:

1. Which insurer is higher in priority to pay Statutory Accident Benefits to and on behalf of Joseph Fiorica as a result of the motor vehicle accident of November 29, 2011; and

2. What amount, if any, is the Respondent, Royal & SunAlliance Company or the Dominion of Canada Insurance Company required to pay the Applicant, including interest?;
3. What is the amount of costs payable and which party has the burden of payment?

Counsel agreed that we would proceed on addressing issue 1 first. Once I have rendered my decision on issue 1 counsel will advise as to whether we then have to proceed to hear further evidence to determine the quantum issue.

There was no Agreed Statement of Facts filed. The only agreement in terms of facts were as follows:

1. The Applicant, Optimum Insurance Company, provided a motor vehicle liability policy to Mr. Fiorica. They insured a Honda Accord. The policy was in full force and effect on the date of the accident, November 29, 2011. However Mr. Fiorica was not an occupant of that vehicle on the date of loss;
2. Royal & SunAlliance Insurance Company of Canada (hereinafter referred to as "RSA") also provided a standard motor vehicle liability policy to Mr. Fiorica. They insured a Honda Prelude. The policy period for the RSA coverage was from November 20, 2010 to November 20, 2011 at 12:01 a.m. Mr. Fiorica had been involved in a prior motor vehicle accident on July 3, 2011. The RSA vehicle was a total loss. On November 29, 2011 Mr. Fiorica was operating a rental vehicle provided by Routes Car Rental in Hamilton. RSA was paying the cost of the rental.
3. Dominion of Canada General Insurance Company is the insurer of Routes Car Rental and insured the rental vehicle that Mr. Fiorica was driving on November 29, 2011.

Position of the Parties:

Optimum acknowledges that Mr. Fiorica is a named insured under their policy. However they submit as he was not an occupant of the vehicle that they insured on the date of loss and that priority falls with RSA or Dominion. Optimum submits that Mr. Fiorica's rental vehicle was a temporary substitute vehicle under the RSA policy and the fact that the policy had lapsed and/or was not renewed on November 29, 2011 is not relevant as RSA continued to pay for the rental of the vehicle subsequent to the lapsing/cancellation of the policy.

Alternatively Optimum submits that if it is accepted that the lapsing of the RSA policy ended the coverage on the rental then priority would fall to Dominion, the insurer of the rental vehicle.

Optimum submits that the vehicle was rented for more than 30 days: July 12, 2011 to June 14, 2012 and therefore falls within the deemed named insured provisions of Section 7 of the SABS in that "the insured automobile was being rented by the individual for a period of more than 30 days". As Mr. Fiorica rented the vehicle for more than 30 days he becomes a deemed named insured under the Dominion policy and as he was an occupant of the vehicle on the date of loss priority rests with Dominion.

RSA's position is that their policy was lapsed/not renewed or cancelled on or before November 20, 2011 more than 9 days before the motor vehicle accident. They submit that the payments being made for the rental of the vehicle were pursuant to that policy as a result of the accident of July 3, 2011 and that those policy obligations continued after the cancellation of the policy until the property damage claim was settled. RSA submits that payment for the rental cost of the vehicle does not result in the policy coverage being extended. RSA says priority rests either with Dominion or Optimum. RSA's position is that Optimum has priority as the rental vehicle would have been an "other automobile" under the Optimum policy or Mr. Fiorica was a deemed named insured under the Dominion policy.

Dominion submits that the payment of the rental vehicle by RSA beyond its policy period results in the policy being extended during the time the rental payments are made. Dominion also submits that the rental vehicle was not rented for a period in excess of 30 days pointing to the various renewals that are made from time to time during the period of the rental: each renewal taking place less than 30 days before the previous renewal. Dominion submits that RSA is the priority insurer.

Dominion also argued that RSA had a duty to advise Routes when Mr. Fiorica's policy lapsed/was cancelled. Dominion takes the position that by virtue of the RSA payment of the cost of the rental for Mr. Fiorica that Routes in essence became a party to the insurance contract and therefore were entitled to receive notice of any cancellation pursuant to the Insurance Act.

Dominion submitted that the facts support that there was no notice to Routes prior to the effective cancellation date on November 20, 2011. RSA and Optimum acknowledge that no notice was provided prior to that date but submits that Routes Rental was not a party to the insurance contract between RSA and Mr. Fiorica and was not entitled to notice.

Summary of the Evidence:

Mr. Ray Sheppard

Mr. Sheppard is an auto property damage adjuster having been employed with RSA in that capacity for approximately 7 years. He was ultimately assigned the responsibility of dealing with the property damage claim made by Mr. Fiorica with respect to the Honda Prelude and the damages sustained in the accident of July 3, 2011.

Mr. Sheppard confirmed that the vehicle had been rear ended and appraisals had been completed. RSA took the position that the vehicle was deemed a total loss. However RSA and Mr. Fiorica were unable to agree on the value of the vehicle. There was a prolonged dispute between RSA and Mr. Fiorica that was not ultimately resolved until June or July of 2012. Mr. Fiorica believed that based on an OPCF 19 (Exhibit 2 Tab 7 Page 6) that RSA owed him \$50,850.00 for the value of his vehicle. RSA took the position Mr. Fiorica was only entitled to the actual cash value as of the date of loss.

As a result of this ongoing dispute and pursuant to Section 6.2 of the direct compensation provisions of Mr. Fiorica's policy RSA offered to pay and did pay for a rental vehicle pending the resolution of the dispute. Somewhat unusually as the dispute went on for almost a year RSA paid for that rental vehicle from July 12, 2011 until June 14, 2012.

Mr. Sheppard gave evidence that initially as the RSA policy which provided coverage on the Honda Prelude was in full force and effect that it was unnecessary for RSA to purchase a Collision Damage Waiver (CDW). Mr. Sheppard confirmed that from July 12, 2011 until November 21, 2011 RSA paid only for the rental of the vehicle. The invoice provided by Routes Car and Truck Company number 5661 showed "rental for 4 months and 4 days equals \$4,867.62". The invoice confirms that the Collision Damage Waiver was not provided nor paid for.

Once the RSA policy lapsed, Mr. Sheppard said that the Collision Damage Waiver had to now be purchased from the rental company in order to provide coverage for the rental vehicle in the event of damage. Mr. Sheppard's position was that the RSA policy having lapsed or being cancelled as of November 20, 2011 that if the rental vehicle was involved in an accident the RSA policy would no longer provide coverage as a temporary substitute vehicle and other insurance had to be sought. Thus the 2 other invoices found at Exhibit 2 Tab 3 show that for the billing periods November 22, 2011 to May 5, 2012 and May 16, 2012 to June 14, 2012 that in addition to the payment of the rental RSA also purchased and paid on behalf of Mr. Fiorica Collision Damage Waiver coverage.

Mr. Sheppard was specifically asked as to why RSA would continue to pay for the rental when Mr. Fiorica's policy had expired. Mr. Sheppard advised that it was RSA's obligation pursuant to Section 6 of the OAP to pay Mr. Fiorica a rental vehicle under the loss of use provisions. Mr. Sheppard was of the view that the Section 6 obligation continued after cancellation or expiry of the policy until the issue was resolved.

Mr. Sheppard also confirmed that he or someone else at RSA in the property damage department were the contact people for the Routes Car Rental Company. They would be contacted to determine how long the rental vehicle would be paid for by RSA. Mr. Sheppard was taken through Exhibit 2 Tab 2 the Routes Rental notes. This document shows a series of dates and names as well as the confirmation from RSA for the extension of the rental of the vehicle on each date they were contacted. The reason for this according to Mr. Sheppard was that the rental company would not know when a settlement had been reached with Mr. Fiorica

and therefore they had to check from time to time with RSA with respect to the extension of the insurer's agreement to pay. His evidence was that if for some reason RSA then chose not to continue to pay the rental vehicle that Routes would then have to contact Mr. Fiorica to arrange for the payment and/or to try to get the rental vehicle back from him.

Mr. Sheppard also confirmed that when the accident on November 29, 2011 occurred that RSA had authorized an 8 day extension of the rental vehicle cost.

With respect to the accident of November 29, 2011 Mr. Sheppard said that he heard about that accident from an adjuster at Optimum on December 18, 2011. Mr. Sheppard further admitted that while he could not recall the exact date that he contacted Routes Car Rental with respect to the cancellation of the RSA coverage on November 20th that it was at least after he heard about the accident from Optimum. The documents reflect that the likely date that Mr. Sheppard/RSA advised Routes was around December 27th. Mr. Sheppard also admitted that it was after he found about the accident of November 29, 2011 that he contacted Routes to add on the CDW retroactively. Mr. Sheppard did admit that Routes should have been advised that the RSA policy expired earlier.

Vicky Banga

Mr. Banga is the corporate manager for Routes Car Rental and has been so for approximately 14 years. Routes has 14 branches in Ontario and Mr. Banga is responsible for coordinating all the branches, training the managers and employees as well as problem solving.

In or around July of 2011 the branch in Hamilton was being managed by Jas Gill. However the Hamilton branch closed some time in 2012. Mr. Banga was responsible for Mr. Gill's training.

Mr. Banga described two types of car rentals. The first rental is retail or pleasure rental. That is when the person is renting it for their own purposes and paying for it themselves. The second is a replacement rental and that is when a person's car has been involved in an accident and their own insurer is paying for a replacement vehicle on their behalf. In the latter case all payment issues are handled through the insurance company. Further it was Mr. Banga's evidence that it was only the insurance company who was authorized to provide any extension on the time that the individual could rent the vehicle.

With respect to payment Mr. Banga confirmed that in the replacement vehicle scenario that the insurer is only invoiced when the rental has concluded which invariably is around the time the settlement of the property damage claim is completed. His evidence was further that the practice in the industry is that there is generally one payment made and that the insurer is not billed on an interim basis.

With respect to the notes reflecting discussions between the employees of Routes and the employees of RSA concerning extensions, Mr. Banga's evidence was that it was always the insurance company who would give the authorization for an extension and not the insured nor

Routes. The insurer would choose the time that they would agree to continue to cover the cost of the rental and that decision would be made based upon the circumstances surrounding the property damage claim for the vehicle that had been damaged.

Mr. Banga's evidence was also that if a policy lapsed or was cancelled during the time that the rental vehicle was being paid by the insurer that he would have expected the insurer to immediately advise Routes about the policy change. He confirmed that information would be needed to determine whether the CDW should be charged.

In reviewing the documents of the rental agreement (Exhibit 2) Mr. Banga's evidence was that the rental of the vehicle by Mr. Fiorica was approximately one year. Mr. Banga could not explain why the invoices submitted to RSA when the rental was concluded showed one leasing agreement number on the first 2 invoices (invoices for July 12, 2011 to May 15, 2012 showed rental agreement number 5661) but the last invoice for the billing period May 16, 2012 to June 14, 2012 showed rental agreement number 6094). The rental agreement signed by Mr. Fiorica and it bears number 5661. According to Mr. Banga one rental agreement should simply be maintained until the car is returned and he could not explain why there appeared to be a new rental number.

Judy Wilson-Simmons

Ms. Wilson-Simmons confirmed that Mr. Fiorica was her client at Youngs Insurance Brokers. Ms. Wilson-Simmons has been employed there since 2004 as a broker and has been in the insurance business since 2001.

Ms. Wilson-Simmons wrote the original policy for Mr. Fiorica with Optimum Insurance Company. However in 2010 Mr. Fiorica bought a new car which was a performance enhanced vehicle. Wilson-Simmons explained that Optimum refused to provide coverage to a performance enhanced vehicle in accordance with Rule 9 of the Facility Association. She therefore had to find coverage for the Honda Prelude elsewhere and ultimately placed it with Royal and SunAlliance. Ms. Wilson-Simmons confirmed that after the date of loss of July 3, 2011 Mr. Fiorica was under the mistaken impression because he had signed an OPCF 19 for the sum of \$50,850.00 that that was the amount that he was entitled to be paid for the value of his car. Ms. Wilson-Simmons confirmed that the insurer will not pay more than the actual cash value at the time the loss or damage occurs up to a maximum of \$50,850.00. RSA claimed that the value of the car was in fact less.

Ms. Wilson-Simmons identified a cancellation acknowledgement form signed by Mr. Fiorica on October 3, 2011 requesting and acknowledging that the RSA policy cancellation would be effective November 20, 2011 and that all liability of RSA on or after that date would be terminated. The reason for cancellation was noted that the car was a total loss. A copy of this document was faxed by a representative of Youngs Insurance to RSA on October 3, 2011.

Ms. Wilson-Simmons' evidence was that if RSA was paying a rental on a vehicle for Mr. Fiorica then there had to be a policy in force. Her view was that if coverage was terminated on cancellation that no ongoing rental would be payable. However Ms. Wilson-Simmons on cross examination did confirm that the adjuster for RSA could extend the coverage for the rental payment even if the policy was cancelled.

Jas Gill

Mr. Gill was employed by Routes Car Rental as the manager of their branch in Hamilton. He was employed there for about 3 years. His evidence was very much in line with Mr. Banga's evidence concerning the nature of the two types of car rentals, the retail and replacement rental.

Unfortunately, Mr. Gill had absolutely no independent recollection with respect to the facts surrounding the rental of a vehicle to Mr. Fiorica during the time period of July 2011 to June of 2012.

Even with a review of the Routes notes, which appear to be made by Mr. Gill himself, he had no recollection of these events and added little to the evidence already given by previous witnesses.

He was unable to provide any explanation as to why there appeared to be two different policy numbers. He was unable to provide any explanation as to why the Rental Agreement itself showed the name Optimum as the insurer that would be paying for the car rental but then the actual policy number was the RSA number.

He had no recollection with respect to the various extensions that were provided by RSA to Routes for the continued payment of Mr. Fiorica's vehicle.

Mr. Gill did acknowledge that the Rental Agreement would be between Mr. Fiorica and Routes and not between Routes and RSA. RSA would only be responsible for paying the cost of the rental but the agreement was between Mr. Fiorica and Routes.

If RSA stopped paying, Mr. Gill agreed that Mr. Fiorica would either have to pay pursuant to his agreement or would have to bring the car back.

Mr. Gill also agreed that each time an extension was sought for the ongoing payment for Mr. Fiorica's vehicle that he was not obliged to bring the car back into Routes either before or at the time of each extension. Mr. Fiorica kept the car until he had to bring it back at the end of the Rental Agreement. Mr. Gill also confirmed that no new Rental Agreement was signed or was required to be signed by Mr. Fiorica each time RSA extended the payment of the rental.

Legislative and Policy Provisions

Section 268 of the Insurance Act (R.S.O. 1990, c. 1.8) provides a cascading allocation with respect to priority.

Section 268 (2)(1)(i) provides:

“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: (ii) if recovery is unavailable under (i), the occupant has recourse against the insurer of the automobile in which he or she was an occupant.”

In this particular case, Section 268 (2)(5.2) is important. That section provides:

“If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, at the time of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or dependant of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant”.

Also relevant to this priority issue is what is known as the “deemed named insured” provisions of Ontario Regulation 34/10. Specifically, under Section (3)(7)F an insured person is defined as including Section 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, (ii) the insured automobile is being rented by the individual for a period of more than 30 days” .

Pursuant to the Ontario Automobile Policy (OAP1), a temporary substitute automobile is defined under Section 2.2.2 as follows:

“A temporary substitute automobile is an automobile that is temporarily used while a described automobile is out of service. Described automobile must not be in use by anyone insured by this policy, because of its breakdown, repair, servicing, theft, sale or destruction.

Coverage for a temporary substitute automobile is provided under the Automobile Policy of the owner of the temporary substitute automobile”

Other automobiles is defined under Section 2.2.3 as:

“Automobiles, other than a described automobile, are also covered when driven by you, or driven by your spouse who lives with you.”

Analysis and Findings

I am satisfied that the RSA policy was properly cancelled effective November 20, 2011 either by the insured's notice of cancellation which he signed on October 3, 2011 or by virtue of the fact that the policy simply lapsed on November 20, 2011. I find that RSA pursuant to its obligations under that policy continued to make rental payments on behalf of Mr. Fiorica as the property damage portion of the policy had still not been settled. I do not accept the argument that the continuing payment for the rental of the vehicle after November 20, 2011 somehow extends the life of the policy itself. In my view Mr. Fiorica's "entitlement" to the appropriate amount of property damage and any loss of use payments crystallized under the RSA policy on July 3, 2011 and that obligation continued until the matter was resolved one way or the other irrespective of whether the policy cancelled on November 20, 2011. Therefore I find that as of November 29, 2011 there was no policy between Mr. Fiorica and RSA that would have extended coverage for Statutory Accident Benefits on the rental vehicle. At that point RSA was merely the payor of the rental vehicle pursuant to the earlier policy but no longer insured it as a temporary substitute vehicle. Therefore I find that RSA did not insure the vehicle that Mr. Fiorica was an occupant of at the time of the accident of November 29, 2011 and they are therefore out of the running in this priority dispute.

With respect to Dominion I find that they are the priority insurer in the circumstances of this case on the grounds that Mr. Fiorica rented a vehicle from Routes Car Rental for greater than 30 days and thus became a deemed named insured under the Dominion policy. I heard no evidence from any of the witnesses or through the documents made as Exhibits that supported Dominion's submissions that the rental agreement was for less than 30 days. The rental agreement itself suggests that the vehicle is to be returned on July 22, 2011. In fact it was not returned until June of 2012. According to the Routes Rental notes RSA continued from July 20, 2011 until June of 2012 to provide various extensions on the rental. Mr. Banga's evidence was, and I accept, that it was the insurer's choice on what the extension should be and the fact that that extension for payment was never more than 30 days has no bearing on whether the rental vehicle was rented for more than 30 days. I agree with Mr. Gill that the rental contract was between Mr. Fiorica and Routes and that extensions for payment of the rental vehicle by RSA had no bearing on the terms of the contract itself. The Routes invoices support a finding that the rental vehicle was rented for in excess of 30 days.

In an invoice for the billing period July 12, 2011 to November 21, 2011 it is noted "rental for 4 months and 12 days". Similarly on the invoice for the time period November 22, 2011 to May 15, 2012 it is noted "rental for 5 months and 26 days". There was no evidence, documentary or oral to suggest that Routes Car Rental only provided the rental vehicle to Mr. Fiorica for 30 days at a time. There were no new rental agreements entered into and if it was Routes' intention to

only rent the vehicle for less than 30 days each time there should have been a new rental agreement at the end of each 30 day period or some other agreement between Routes and Mr. Fiorica to establish that.

As Mr. Fiorica was an occupant of the rental vehicle and a deemed named insured under the Dominion policy at the time of the accident, I find, therefore, that pursuant to Section 268 (5.2) of the Insurance Act that Dominion is the priority insurer. Mr. Fiorica was an occupant of an automobile in which he was the named insured on the date of loss.

With respect to the argument that Optimum is the priority insurer based on the "other automobile" provisions under the OAP, I find that Dominion is more closely connected with the rental vehicle. Further, as Mr. Fiorica was the named insured of the vehicle in which he was an occupant, Dominion ranks first over Optimum in accordance with Section 268(52).

I find it hard to stretch the definition of "other automobile" in the circumstances of this case to the rental vehicle that was technically a temporary substitute vehicle initially under the RSA policy to replace a vehicle that Optimum had specifically declined to cover.

Dominion relied heavily on the decision the Guarantee Company of North America and ACE INA Insurance Company: a decision of Arbitrator Shari Novick dated October 10, 2014.

The facts of that case are quite different than the facts involving Mr. Fiorica. In that case, there was some question as to whether the vehicle had been rented for less than 30 days at the time of the accident as the accident occurred on the 29th day. There was some argument to be advanced that one must look at the intentions of the party during the period of the rental. Arbitrator Novick relied upon Justice Belobaba in his ruling in ACE INA vs. Co-operators 2009 77 C.C.L.I. (4th) 272 Appeal in stressing the importance of the word under Section 3(7)(F) of the SABS "at the time of the accident".

In Arbitrator Novick's case, looking at the date of the accident (the 29th day of the rental), she therefore concluded that the vehicle had not been rented for a period of more than 30 days.

In this case, on the day of the accident, I am satisfied Mr. Fiorica had been renting the vehicle since July 12, 2011 and as of November 29, 2011 when the accident occurred, the rental was well in excess of 30 days.

With respect to Dominion's argument that Routes had the right to notice of termination of the RSA policy in accordance with the provisions of the Insurance Act, suffice it to say I do not accept that argument.

I do not see how the simple fact that RSA was paying for the cost of Mr. Fiorica's rental to Routes in accordance with their obligations under their policy with him somehow or another brings Routes Rental in as a named insured or some form of insured under the RSA policy.

I carefully reviewed the case law that was referred to by Dominion and in particular the York Fire and Casualty Insurance and Economical private arbitration decision, Guy Jones, August 2003 and Transportation Lease Systems INV. V. The Guarantee Company of North America 2005 Can LII 43896 (ONCA). I did not find either case to be on point.

In the decision of Arbitrator Jones, the situation was quite different where the owner of the vehicle claimed that they had not been given proper notice. Mr. Fiorica was the owner of the vehicle under the RSA policy and not Routes.

The Transportation case involves circumstances where a recognized co-insured was not given proper notice when the policy was cancelled. That case involved a lessor and lessee and clearly both co-insured were entitled to have notice of any cancellation or deletion of the policy. Routes was not a co-insured under the RSA policy and I do not find that the payment by RSA for the cost of the rental vehicle or the fact that the rental vehicle at some point was a temporary substitute automobile somehow or another elevates Routes to being a co-insured under Mr. Fiorica's policy.

Conclusion

I therefore find that Dominion is the priority insurer for the Statutory Accident Benefits payable to Mr. Fiorica with respect to the motor vehicle accident of November 29, 2011 on the grounds that Mr. Fiorica was a deemed named insured pursuant to the Dominion policy as he rented their vehicle through Routes Rental for a period in excess of 30 days.

I therefore find as follows:

1. The Dominion of Canada Insurance Company is the insurer who is priority for payment of the statutory accident benefit claims of the claimant, Joseph Fiorica, arising out of the injuries he sustained in the accident of November 29, 2011.

Costs

Pursuant to Section 3 of the Arbitration Agreement (Exhibit 1), the parties agreed that the unsuccessful party shall pay to the successful parties its costs of the arbitration as awarded by the arbitrator. I therefore find that Dominion, being the unsuccessful party in this arbitration, is responsible for paying costs to both Optimum and RSA. If the parties are unable to agree on costs within the next 60 days, then we will arrange a brief phone hearing to hear submissions on expenses.

DATED THIS 5th day of February, 2015 at Toronto.

Arbitrator Philippa G. Samworth
DUTTON BROCK LLP