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

Applicant

- and -

BELAIR INSURANCE COMPANY INC.

Respondent

AWARD

Counsel:

State Farm Mutual Automobile Insurance Company (Applicant) hereinafter called "State Farm": Daniel Strigberger

Belair Insurance Company Inc. (Respondent) hereinafter called "Belair": Rohit Sethi

Introduction:

This matter comes before me pursuant to the *Arbitrations Act*, 1991, to arbitrate a dispute as between insurers with respect to a claim for loss transfer pursuant to Section 275 of the *Insurance Act* R.S.O. 1990 c. I.8 and its Regulation 664/90. Specifically this claim is with respect to a motor vehicle accident that occurred on August 30, 2012. As a result of that accident one Kevin Colbourne sustained some injuries and submitted a claim for Statutory Accident Benefits to State Farm.

State Farm claims that Belair is responsible for indemnifying it pursuant to the loss transfer provisions of the *Insurance Act*. The parties selected me as their Arbitrator on consent and this matter ultimately proceeded to a single day hearing on August 18, 2016.

Issue:

An Arbitration Agreement was submitted which identified 3 issues for my determination. However counsel agreed that only the first issue would proceed at this time. That issue is recorded as:

> "What is the respective degree of fault of the motorist insured by the parties for the purposes of Section 275 (c) of the *Insurance Act*?"

The remaining questions deal with quantum and interest and if needed a further arbitration will be scheduled to deal with those issues.

Result:

I have concluded that Rule 12 (5) is applicable to the facts of this case and accordingly Belair's insured is 100% at fault for the incident. Belair is responsible for indemnifying State Farm for 100% of Statutory Accident Benefits paid to and on behalf of Kevin Colbourne.

Exhibits:

The following documents were made exhibits at the arbitration hearing:

Exhibit 1: Arbitration Agreement dated May 6, 2016;

Exhibit 2: Joint Document Brief;

Exhibit 3: State Farm Rule 13 Document Brief;

Exhibit 4: Belair Supplementary Document Brief;

Exhibit 5: Email between counsel dated in or about May 19, 2016;

Exhibit 6: Email between counsel dated in or about May 14, 2016.

In addition counsel filed extremely comprehensive Factums and Books of Authority.

Facts:

The parties filed an Agreed Statement of Facts. Those facts are reproduced below:

1. On August 30, 2012 at approximately 6:07 p.m., a motor vehicle collision occurred at the intersection of Cummings Avenue and Burleigh Private in Ottawa.

2. Kevin Colbourne was the driver of a motorcycle insured under a policy of insurance issued by State Farm Mutual Automobile Insurance Company ("State Farm") under Policy Number 3087-75160.

3. Melissa Marie-Eve Brunet was the driver of an Acura automobile insured with Belair Insurance Company Inc. ("Belair") under Policy Number 6266167.

4. Proximate to the accident scene, Cummings Avenue is a two-lane road, having one northbound lane and one southbound lane. Burleigh Private is a residential street which leads into a townhouse complex.

5. Colbourne was traveling northbound on Cummings Avenue. Brunet was travelling southbound on Cummings Avenue.

6. At the time of the incident, Brunet was in the process of making a left turn from southbound Cummings Avenue onto Burleigh Private.

7. Colbourne's motorcycle struck the right passenger side of Brunet's automobile in the intersection.

8. Before the accident, Colbourne passed a stopped car and bus. The car and bus were stopped approximately 116 meters south of the area of impact, in the northbound lane. The bus was serving a transit stop.

9. To pass the car and bus, Colbourne crossed over a solid yellow line on the road and exited the northbound lane.

10. After he passed the stopped car and bus, Colbourne crossed the sold yellow line and returned to the northbound lane on Cummings Avenue and continued northbound.

11. The motorcycle left a 47 meter long skid mark in the northbound lane. The skid mark stopped at the site of impact.

12. The accident occurred entirely in the northbound lane of Cummings Avenue (the east side of the intersection of Cummings Avenue and Burleigh Private).

13. The Colbourne motorcycle was travelling above the speed limit as it approached the intersection of Cummings Avenue and Burleigh Private. The posted speed limit on Cumming Avenue is 50 km/h.

14. Colbourne had a blood alcohol level of 0.26 upon admittance to the hospital at or around 6:35 p.m. on August 30, 2012.

15. As a result of the accident, Colbourne applied to State Farm for statutory accident benefits. State Farm became the insurer responsible for paying him benefits pursuant to section 268 (2) of the *Insurance Act* and the SABS.

In addition to the Agreed Statement of Facts counsel also provided copies of the police file from the Ottawa Police Service which contained copies of the police report and a number of statements. They also provided the transcripts of the examination under oath of Melissa Brunet and Kevin Colbourne. Additional facts that I draw from those documents are as follows:

1. Kevin Colbourne had no recollection as to how this accident occurred and could not provide any helpful information;

2. The police report notes that this accident occurred when the Brunet vehicle was proceeding southbound from Road 1 (Cummings Avenue) and making a left hand turn into Road 1 (Burleigh Private) when the Colbourne vehicle traveling northbound struck the passenger side of the Brunet car. The police report diagram shows what one could only describe as a picture of one car making a left turn with the motorcycle striking the left turning vehicle;

3. On her EUO Ms. Brunet was asked if she recalled seeing a bus that had been parked and was picking up passengers on Cummings Avenue. Ms. Brunet stated that she has no recollection of seeing the bus. All she reports is seeing cars further down: quite far down. She thought the cars might be at the light at the intersection of Donald and Cummings. She felt she could definitely turn left. Then all of a sudden she saw from her right side a bike helmet and a bike coming directly at her. At this point she describes her turn as being "almost pretty much done".

4. Ms. Brunet's statement on the EUO is consistent with her statement to the police officer. In her statement to the police officer Ms. Brunet says she put her signal on and "saw the coast was clear for me to turn since I only saw a few stopped cars far away close to the set of lights on Donald. I proceeded to turn left as there were no cars or motorbikes coming my way." In her statement she makes no observation of the bus or seeing the motorcycle passing the bus.

5. The only other relevant set of facts relate to the submissions that were made as to whether Burleigh Private (the road to which Ms. Brunet was making her left turn) was or was not a highway. I was provided with documents from State Farm indicating the following:

    a) By-Law number 2003-15 of the City of Ottawa enacted that the schedule listing private roads should be amended as of January 22, 2003 to add Burleigh Private to that list. A copy of the Schedule A was also put into evidence which confirmed that

Burleigh Private was included in a list of private roads within the City of Ottawa.

b) The Planning Development and Committee report of August 1, 2012 in which it was noted that an application had been made for the property (that is the houses located on Burleigh Private) to name the private roadway. The document notes that the property is zoned for residential development and that this private roadway is to service the area by way of a private access roadway.

c) Documents also were produced by State Farm which included a requirement that an agreement be executed between the City and the property owner that was developing Burleigh Private and that that agreement was to contain the standard conditions that were set out in the City By-Law 115-80. The document included the following:

    i. An acknowledgement by the owner that the private roadways affected by the agreement are under the sole jurisdiction of the owner and shall remain private roadways and that the corporation has no intention to assume any civil or criminal liability respecting these roadways.

d) Photographs of the area were provided by counsel for Belair which show a U-shaped road with each end of the U intersecting with the northerly side of Cummings Avenue. The photographs clearly indicate that this is a residential area. Clearly people living on or visiting Burleigh Private would only be able to access their homes on that road.

Position of the Parties:

State Farm takes the position that this is a straightforward left turn case. State Farm submits that I can look no further than the fact that these 2 vehicles at the time of impact were involved in a left turn collision. State Farm submits that I cannot take into consideration the fact that Mr. Colbourne was intoxicated. They submit I cannot take into consideration that he pulled out and passed a bus and was travelling above the speed limit. State Farm also submits that I cannot take into consideration that Mr. Colbourne was at one point in the southbound lanes. State Farm submits that at the relevant time and for the purposes of determining what the incident is that Mr. Colbourne was back in the northbound lane as evidenced by the 47 meter skid mark in the northbound lane that ends at the site of the impact. State Farm takes the position that I need look no further than Rule 12 (5) and that the facts of this case clearly fall

within that Rule. State Farm submits I cannot consider any extraneous events and that there is no need for me to resort to common law.

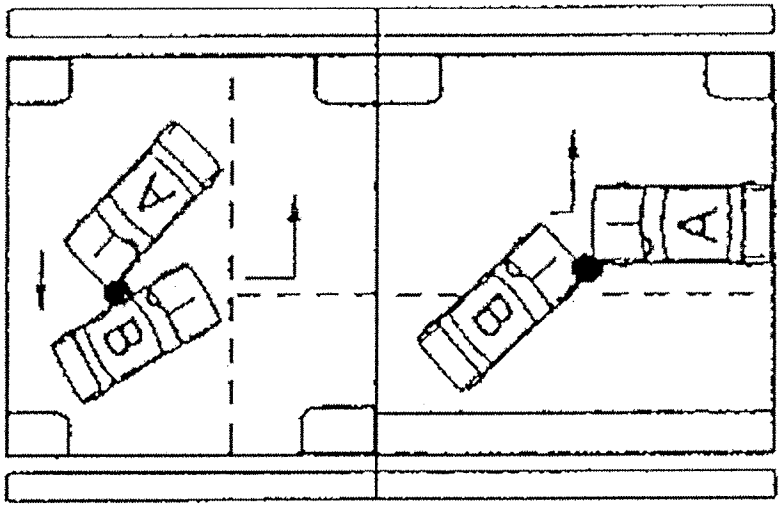
Belair on the other hand takes the position that Rule 12 (5) is not the applicable Rule but Rule 13 is the applicable Rule. Rule 12 (5) states:

Rules for Automobiles Travelling in Opposite Directions

12 (1) This section applies when automobile "A" collides with automobile "B" and the automobiles are travelling in opposite directions and in adjacent lanes.

12 (5) If automobile "B" turns left in the path of automobile "A" the driver of automobile "A" is not at fault and the driver of automobile "B" is 100% at fault for the incident.

I reproduce the picture that accompanies Rule 12 (5) below:



Based on Rule 12(5) State Farm submits that both the vehicles were travelling in opposite directions, the vehicles were travelling in adjacent lanes and that the Brunet vehicle turned left into the path of the Colbourne vehicle and then a collision occurred. Therefore Rule 12 (5) applies and the Belair insured is 100% at fault.

Belair takes the positon that Rule 12 (5) does not apply and rather relies on Rule 13. With respect to Rule 12 Belair submits that I must look beyond the fact of the collision. I must look at the fact that Kevin Colbourne was speeding, passing a bus in the southbound lane and was weaving in and out of the lanes. Belair agrees with State Farm that I have to make a determination as to what the incident is in order to determine what Rule is applicable. However Belair submits that the incident begins at the intersection of Cummings Avenue and Donald Street. This is where Colbourne changes lanes from a left turn lane into the northbound lane on Cummings Avenue and then drives between 2 stopped cars. It is claimed he enters an

intersection on a red light and begins accelerating. Between Donald Street and Burleigh Private Belair submits I need to consider that Colbourne performs at least 3 lane changes and overtakes a stopped bus all while exceeding the posted speed limit. Belair submits that but for these actions by Colbourne there would be no collision between the vehicles. Belair submits that the incident then ends at Cummings Avenue and Burleigh Private with the collision. Belair submits I need to look at the bigger picture in order to fully determine the incident and not limit it to the time of the collision itself.

Belair says Rule 13 (2) is the one that properly describes this incident. Rule 13 states:

Rules for Automobiles in an Intersection

13 (1) This section applies with respect to an incident that occurs at an intersection that does not have traffic signals or traffic signs.

13 (2) if automobile "A" enters the intersection before automobile "B" then the driver of automobile "A" is not at fault and the driver of automobile "B" is 100% at fault for the incident.

Belair submits that the evidence is clear that Brunet entered the intersection prior to Colbourne. Therefore Colbourne is 100% at fault.

Belair further submits that if I find both Rules are applicable then pursuant to Rule 4 (2) as both Rules would find one or other of the insureds 100% at fault there is deemed to be a 50/50 split in terms of fault.

In response to Belair's position State Farm raises 2 issues. State Farm submits that Rule 13 is not intended to and does not apply to vehicles traveling in the opposite direction in adjacent lanes. Only Rule 12 does that. In order to be consistent with the overall scheme of the Fault Chart one must look at and interpret the Rules to ensure consistency. State Farm submits that one should not interpret one subrule in isolation if it then affects the sense or interpretation of a parallel Rule. State Farm submits that Rule 13 is intended to apply only to when 2 vehicles are entering an intersection from intersecting highways (not in opposite direction). State Farm submits that this is consistent with other provisions of Rule 13 which makes reference to the vehicles being "to the right of each other" (see Rule 13 (3)). State Farm therefore says Rule 13 is not applicable for that reason.

However State Farm also says that Rule 13 is not applicable because it only applies to a highway. State Farm submits that the intersection of Cummings Avenue and Burleigh Private is not a highway as it is not 2 intersecting highways but it is a highway and a private road. State Farm submits that I should look to the definition of intersection under the *Highway Traffic Act* and the definition of highway under the *Highway Traffic Act* and if I do so I will conclude that on the facts of this case looking at Burleigh Private as a whole that it would be considered a private

road/driveway and not a highway and therefore Rule 13 cannot apply as the incident did not happen at an "intersection".

Belair in response to this submits that there is a rectangular parcel of land located between the private property and the private line for Cummings Avenue that is publically owned. It is this area which intersects with Cummings Avenue and therefore the "intersection" is entirely on public property. Alternatively Belair submits that Burleigh Private, while a private road, would still be considered to be a common public road/street or driveway under the definition of highway under the *Highway Traffic Act* and therefore would still meet the definition of intersection. Finally Belair submits that irrespective of the above Rule 13 does not exclude an intersection between a private road and a public road. Belair submits that looking at the photographs of the area where these 2 roads intersect common parlance would accept that it was an intersection.

Analysis and Conclusions:

Does Rule 12 (5) Apply or Does Rule 13 (2) Apply?

Since June of 1990 Ontario has had a system by which one insurer can claim Statutory Accident Benefits paid to an insured from another insurer as long as they meet the requirements of Section 275 of the *Insurance Act*. Section 275 allows the first party insurer to claim indemnification from the insurer of the other driver involved in the accident. This is known as loss transfer.

Section 275 (2) of the *Insurance Act* requires that this indemnification is to be made "according to the respective degree of fault of each insurer's insured as determined under the Fault Determination Rules".

The Fault Determination Rules have been found in many cases to be a "rough and ready" way of determining fault. Justice Perell in *ING Insurance Company of Canada v Farmers' Mutual Insurance Company (Lindsay)*, 207 CanLII 20107 (ON SC) stated that the Fault Determination Rules were of a rough and ready nature which favour expediency over accuracy in determining fault. Any approach in interpreting those rules, in my view, must therefore take the aforesaid into account.

The Court of Appeal in the decision *State Farm Mutual Automobile Insurance Company v Aviva Canada Inc.*, 2015 ONCA 920 (CanLII) noted that the legislative scheme of the loss transfer provisions was one to promote an expedient and summary approach for determining fault. In that case the Court of Appeal concluded that Rule 3 of the Fault Determination Rules precluded a pure tort law approach to fault determination. They found that such a rule acts in harmony with the legislative scheme. The Court of Appeal suggested that a lengthy detailed and nuanced process as required in a determination of tort fault is one specifically excluded in the loss transfer scheme by virtue of Rule 3. Rule 3 provides:

"The degree of fault of an insured person is determined without reference to

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

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

Of significance in the case in the Court of Appeal was the fact that they concluded that the Judge hearing the case on appeal from the Arbitrator was wrong in overturning the original decision on the grounds that the Arbitrator had failed to consider whether one of the drivers was at fault because he failed to be alert when approaching the intersection and thus should be found at least partially at fault in a left hand turn case. The Arbitrator had relied on Rule 12 (5) and found that the left turning vehicle was 100% at fault while on appeal it was a 50/50 split. The Court of Appeal stated as follows:

> "The Arbitrator's fault determination could be criticized for being insufficiently nuanced. However, her approach is consistent with the legislative scheme, which is to provide an expedient and summary method of determining fault for the purposes of indemnification. As this court observed in *Jevco v Fire* at paragraph 9, fault determinations under the FDRs are done in a gross and somewhat arbitrary fashion, favouring expediency and economy over finite exactitude."

I approach this case following the directive of the Court of Appeal to consider an approach and an interpretation of the Rules that is consistent with the legislative scheme of expediency in determining fault over finite exactitude.

Counsel agreed that in making my decision I am first obliged to determine what was "the incident". The steps in that task are as follows:

1. What was the incident?;

2. Is the incident described in any of the Rules?;

3. If the incident is described in the Rules then my task is to apply that Rule to the circumstances of the case; and

4. If the incident is not described in any of the Rules then I look at the degree of fault of the insured in accordance with ordinary law (*ING Insurance Company of Canada v Farmers' Mutual Insurance Company* 207 CanLII 20107 (ON SC)).

Therefore in this case what was the incident? In determining what the incident is I am of the view that Rule 3 (referred to earlier) and the case law requires me to look at the incident in a narrow fashion. It is to be made without reference to the circumstances in which the incident

occurs. In my view the relevant time for determining "the incident" is the time of the collision. To go back further and consider the speed of the vehicle, incidents that occurred more than one block before the collision, whether or not the driver was impaired and whether he improperly passed a bus would be contrary to the legislative scheme of the Fault Determination Rules. To do that would require a detailed and nuanced analysis of how this accident occurred overall and would not be an expedient/rough and ready approach. This approach is consistent with Justice Lax in the decision of *Co-operators General Insurance Company v Canadian General Insurance Company* [1998] O.J. No. 2578. In that case in somewhat similar circumstances Justice Lax concluded that the relevant time for determining fault would be at the time of the collision. She also noted that the manner in which the involved vehicles entered the lane in question, the length of time the lane was occupied and the vehicle orientation were irrelevant to determination of fault.

Also on point is the decision of Justice Chiappetta in *Farmers' Mutual v State Farm* 2013 ON SC 2269 (CanLII). In that case a Mr. Humphreys was driving his motorcycle southbound on a country road when it struck the front fender of the Weyrich vehicle which was exiting from the driveway of a gas bar. In that case it was noted that Humphreys was operating his motorcycle at a high rate of speed. Prior to the incident he had passed a number of vehicles in contravention of a double solid line governing his movements. Farmers wanted Justice Chiappetta to consider both circumstances in determining the applicable Rule in order to determine fault. She noted:

> "Returning to the motherhood principles as set out above, it is entirely appropriate that the application of Rule (3) to the facts of this incident may not necessary correspond with actual fault as Rule 7 (3) is to be liberally construed and applied in accordance with its own clear language and factors and not those which would apply under ordinary rules of tort law."

Therefore with respect to the first step of the role of an Arbitrator in a loss transfer case in determining what the incident is, I do not accept Belair's submissions that I must look at the factors of speed, passing vehicles, weaving in and out of lanes or any alcohol impairment. I accept State Farm's submissions that the facts that describe this incident are as follows:

1. State Farm's vehicle collided with Belair's vehicle;

2. The vehicles were travelling in opposite directions;

3. The vehicles were travelling in adjacent lanes; and

4. Belair's insured made a left turn into the path of State Farm's insured.

The incident therefore in my mind is what happens at the time of the collision. I note Rule 12 (1) makes specific reference to "this section applies when automobile A collides with

automobile B." It therefore speaks to a collision. In my view the incident is the collision. The collision clearly involves a straightforward left turn case that is entirely within Rule 12 (5).

However Belair has argued that even I find that Rule 12 (5) is applicable that I could also find that Rule 13 (2) is applicable and then I would be obliged to find a 50/50 split in liability in accordance with Rule 4 (2).

Does Rule 13 (2) Apply?

There is one specific basis upon which I conclude that Rule 13 (2) is not applicable. I do not find that Rule 13 applies to a case where vehicles are travelling in adjacent lanes. I find Rule 13 applies to a case where vehicles are approaching an intersection from intersecting highways. However I also find that Rule 13 would otherwise have applied as I do not accept that the word "intersection" in the Fault Chart Rules is limited to highways. It is my view that such a limited interpretation would not be consistent with the rough and ready nature of this legislative scheme. To require that an intersection only include a private road would require in some cases an exhaustive search by insurers in order to determine whether loss transfer may be applicable. It is my view that word intersection is intended to be in the general parlance (2 roads intersecting one another) and not necessarily the stricter defintion under the *Highway Traffic Act*.

Turning first of all to my conclusion that Rule 13 only applies when 2 vehicles are approaching an intersection from intersecting highways. I reach this conclusion taking into consideration the Court of Appeal's caution that when interpreting the Fault Determination Rules one should not interpret one Rule in isolation if it may affect the sense or meaning of a "parallel rule". In the case of *State Farm Mutual Automobile Insurance Company v Old Republic* 2015 ONCA 699 (CanLII) the court noted that where there are parallel provisions these provisions must be read consistently. It cannot lead to an absurd result. In this case it would make little sense to have 2 rules dealing with vehicles travelling in adjacent lanes meeting in an intersection. It makes much more sense when looking at all the circumstances outlined in Rule 12 and Rule 13 that they are intended to apply to a different set of circumstances. Rule 12 (1) makes reference to there being a collision and specifically refers to automobiles traveling in opposite directions and in adjacent lanes. Rule 13 on the other hand makes reference to "an incident". The opening words of Rule 13 (1) make reference to the directing force of that Rule being that it must take place at an intersection that does not have traffic signals or traffic signs. I do accept that the intersection involved in this case did not have traffic signals or traffic signs. Therefore at first blush 13 (1) might be applicable to the circumstances of this case. However 13 (3) makes reference to "automobile A being to the right of automobile B". In order for Rule 13 (3) to be consistent with the remainder of the Rule it would appear to me that it could and should only apply to vehicles entering an uncontrolled intersection from intersecting highways. Otherwise every time there is an incident involving an uncontrolled intersection with a left turning vehicle there will always be a conflict as to whether Rule 12 or Rule 13 applies. One rule allocating 100% in favour of the left turning driver irrespective of his or her actions and the other

allocating 100% against the left turning driver. Such an interpretation does not in my view meet the legislative scheme and expedient manner of determining fault between 2 insurers. With respect to the question as to whether or not Rule 13 applies because Burleigh Private is a private road, my interpretation of the word intersection is to look at that term in common parlance rather than by specific reference to the *Highway Traffic Act*. The new Shorter Oxford English Dictionary: Oxford University Press 1993 defines intersection as "a place where 2 or more roads intersect or form a junction".

The *Highway Traffic Act* defines intersection as follows:

> ""Intersection" means the area embraced with the prolongation or connection of the lateral curve lines or, if none, then of the lateral boundary lines of two or more highways that join one another at an angle, whether or not one highway crosses the other."

State Farm emphasises that under this definition in order for there to be an intersection there must be a highway.

The *Highway Traffic Act* defines highway as follows:

> ""Highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and include the area between the lateral property lines thereof."

State Farm provided extensive case law to support their argument that Burleigh Private does not fall within the meaning "common and public highway" nor was it a road designed and intended for or used by the general public for the passage of vehicles. State Farm submitted that a private road cannot be considered common and public (*R v Douglas* 1997 CanLII 16238 (ON SC)). State Farm submitted that the word public excludes areas that are privately owned (*Gill v Elwood* 1969 CanLII 304 (ON SC) affirmed 969 CanLII 215 (Ontario Court of Appeal)). State Farm submitted that the owners of Burleigh Private owned the road and in accordance with the agreements submitted also had sole jurisdiction of the road. State Farm also submits that any liability is within the owners of that roadway. State Farm submits that the only individuals that would make use of Burleigh Private would be the individuals residing there and it was not open to the public. Taking into consideration all of the case law provided by State Farm I am satisfied that Burleigh Private was a private road. However I am not satisfied that a private road that intersects with a highway in the context of the Loss Transfer Rules does not constitute an intersection.

Belair provided a case of Arbitrator Samis: *TD Home and Auto Insurance Company v Wawanesa Mutual Insurance Company* a decision of June 3, 2016 which is currently under appeal. That case had a similar issue and that was whether or not there was an intersection as set out in Rule 13 in a case where an individual was operating his snowmobile on Trail 207 when it was

struck by a truck proceeding on an access road. The question for Arbitrator Samis was whether the accident occurred at an intersection. Arbitrator Samis concluded that in the circumstances of the case he was reviewing that it was not unreasonable to look at the *Highway Traffic Act* concept of an "intersection" as a source of definition for the use of that term under the *Insurance Act regulations.* He felt that the *Highway Traffic Act* was also helpful in understanding what the ordinary parlance meaning of that word was. He also felt it would be insufficient to adopt a rule of interpretation under the *Insurance Act* which is at odds with the rule of interpretation under the *Highway Traffic Act* as both of those statutes address the consequences of the same vehicles in the same place. Arbitrator Samis stated:

> "For these reasons I do find it useful to refer to the *Highway Traffic Act* definition at least to the extent that it is not somehow inconsistent with the purpose for which it is sought to be applied in the Fault Determination Rule cases."

Arbitrator Samis goes on to conclude that following the *Highway Traffic Act* definition for there to be an intersection there must be a highway. For there to be a highway there must be an intention for use by the general public or use by the general public for the passage of vehicles. He therefore concluded that Trail 207 and the access road were not highways and that the place where the accident occurred was not an intersection.

I do not disagree with Arbitrator Samis that in certain cases it might be appropriate to look at *Highway Traffic Act* definitions to assist in understanding the definition of an intersection. However the case before me did not involve a snowmobile trail and an access road in Simcoe County. The case before me involves one road that is clearly a highway and a second road that intersects with that highway in 2 locations where there are numerous houses and access by the owners of those houses on a daily basis. A member of the public looking at the photograph of the area where this incident took place would consider it to be an intersection. While I find that the definition of both highway and intersection under the *Highway Traffic Act* can be considered in determining the meaning of intersection under the Fault Determination Rules I do not find that it is determinative in every case. While I find that Burleigh Private is a private road I also find that where this accident occurred was an intersection. Therefore but for my finding that Rule 13 does not apply to the circumstances of this case (left turning vehicles in adjacent lanes traveling in opposite directions) I would find that Rule 13 applied as the incident did take place at an uncontrolled intersection.

Therefore I conclude from the facts of this case that the incident falls clearly and unequivocally within Rule 12 (5). I find the circumstances do not fall within Rule 13 (2) and accordingly Belair's insured is 100% responsible for this accident pursuant to the Fault Determination Rules and is obliged to indemnify State Farm for 100% of the Statutory Accident Benefits paid to and on behalf of Kevin Colbourne.

Order:

I find that Rule 12 (5) is applicable to the incident of this case and accordingly Belair Insurance Company's insured is deemed 100% at fault for this accident and is 100% responsible for the purposes of indemnification pursuant to Section 275 of the *Insurance Act*.

Costs:

According to paragraph 4 of the Arbitration Agreement the expenses of the arbitration and expenses of the Arbitrator are to be apportioned by the Arbitrator taking into account the success of the parties, any offers to settle, the conduct of the proceedings and the principles generally applied in litigation before the courts of Ontario.

Firstly I congratulate both counsel for extremely well prepared oral and written arguments. As State Farm Mutual Insurance Company has been completely successful in the arbitration I conclude that Belair is responsible for both the costs of the arbitration and the expenses of the Arbitrator. If the parties cannot agree on costs then I can be contacted to schedule a costs hearing.

DATED THIS 19th day of October, 2016 at Toronto.

Arbitrator Philippa G. Samworth
DUTTON BROCK LLP