

IN THE MATTER OF the *Insurance Act*, R.S.O. 1990
c. I.8 and Regulation 283/95

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

AND IN THE MATTER of an Arbitration between:

THE ECONOMICAL MUTUAL INSURANCE COMPANY

Applicant

- and -

ZURICH INSURANCE COMPANY

Respondent

AWARD

Counsel:

The Economical Mutual Insurance Company: Kevin D.H. Mitchell

Zurich Insurance Company: Martin P. Forget

Introduction:

This matter came before me as an Arbitrator pursuant to the *Arbitrations Act*, 1991, to arbitrate a dispute as between two insurers with respect to a claim for loss transfer pursuant to the *Insurance Act* and its Regulations with respect to a claim for accident benefits of one Joan Hall (hereinafter called "Hall") arising from her motor vehicle accident of July 18, 2005.

The parties selected me as their Arbitrator on consent and the matter proceeded to a single day hearing in Toronto on February 6, 2013.

The Applicant and the Respondent are both automobile insurers and the dispute before me was with respect to a claim by Economical Mutual Insurance Company for loss transfer from Zurich Insurance Company and what portion, if any, of the Applicant's claim for indemnity was statute barred by virtue of the *Limitations Act* of 2002.

This dispute of loss transfer occurs as Ms. Joan Hall was operating a car on July 18, 2005 (insured by Economical) when she was struck by a dump truck insured by the Respondent, Zurich. Zurich has admitted for the purposes of loss transfer that its insured was 100% responsible for the accident and that the dump truck was considered a "heavy commercial vehicle" as defined under Ontario Regulation 664 for the purposes of loss transfer recovery.

Record:

The record in this matter consisted of three exhibits as follows:

Exhibit 1: Arbitration Agreement dated January 30, 2013

Exhibit 2: Arbitration Brief (containing 16 tabs) submitted by the Applicant

Exhibit 3: Arbitration Brief (containing 14 tabs) submitted by the Respondent

The Issue:

Exhibit 1, the Arbitration Agreement, states the issue for determination by me is the following:

"Is the Applicant's claim for indemnity statute barred by virtue of the *Limitations Act*
of 2002?"

The parties agreed at the commencement of the arbitration that this issue would be the only one dealt with although the Arbitration Agreement does identify other issues that may have to be decided once a determination of the preliminary limitation issue is made.

Facts:

While there was no agreed Statement of Facts the facts did not appear to be in dispute as between the Applicant and Respondent but rather what flowed from those facts.

The salient facts are as follows:

1. Joan Hall was involved in a motor vehicle accident on July 18, 2005. A claim for loss transfer flowed from that accident.
2. Notice of Loss Transfer was provided by Economical to Zurich on November 8, 2005 (Exhibit 2, tab 3). The notice was provided both by letter and with the appropriate notification of loss transfer document.

3. The first Request for Loss Transfer Indemnification was submitted by Economical to Zurich (through its agent) by letter dated January 30, 2006 with an accompanying appropriate loss transfer request for indemnification document (Exhibit 2, tab 4).
4. A second Request for Loss Transfer Indemnification was made on February 21, 2008 in the amount of \$119,898.14 (Exhibit 2, tab 6).
5. A third Request for Loss Transfer Indemnification was sent by Economical to the Respondent on April 17, 2008 in the amount of \$127,172.22 (Exhibit 2, tab 8).
6. A Notice to Participate and Demand for Arbitration dated November 25, 2009 was served by Economical through its counsel, Samis & Company, on Zurich on November 27, 2009 (Exhibit 2, tabs 10 and 11).
7. Between the first Notice of Loss Transfer on November 8, 2005 and the service of the Notice to Participate and Demand on November 27, 2009 there was some considerable correspondence between Zurich and Economical. Zurich requested access to the accident benefit file. Economical had difficulties securing the consent of counsel for Hall to produce that file. A consent and a direction were ultimately secured on May 20, 2008 and a copy of the file provided thereafter.
8. According to the documents found within Exhibit 3 there were numerous and ongoing requests through Upper Canada Adjusters on behalf of Zurich to Economical/Crawford & Company (adjuster for Economical) requesting the complete accident benefit file and advising that on receipt of that file a complete audit would be conducted in a timely fashion and a response provided. A review of this correspondence makes it clear that Zurich did not at any time prior to the issuance of the Demand to Submit to Arbitration accept "liability" for the claim for loss transfer. Zurich was also seeking hard copies of the cheques to support the claim for indemnification (Exhibit 3).
9. A review of the Loss Transfer Request for Indemnification indicate that Economical accompanied each request for indemnification with printouts from their computer screen but with no specific explanation or any other supporting document as to how the amount being requested for indemnification was reached.
10. On December 8, 2011 the underlying accident benefit claim was settled on a full and final basis between Hall and Economical and the Settlement Disclosure Notice indicates the total settlement in the amount of \$127,220.00 (Exhibit 2, tab 13).
11. A further Loss Transfer Request for Indemnification was sent out from Economical to Zurich dated January 24, 2012 reflecting the amount of the settlement less costs, disbursements and HST. The amount requested for indemnification was \$95,857.00 (Exhibit 2, tab 14).

12. No payment has been made by Zurich to Economical. While Zurich has accepted its insured is 100% liable for the accident and that this is an applicable case for loss transfer, Zurich has not otherwise accepted liability for the loss transfer claim and relies on the expiration of the limitation period.

Relevant Statute:

The parties agree that the new *Limitations Act*, 2002 is applicable to the circumstances of this case.

Section 5 of the *Limitations Act*, 2002 states:

5. (1) a claim is discovered on the earlier of,
- a) The day on which the person with the claim first knew,
 - (i) that the injury, loss or damage had occurred;
 - (ii) that the injury, loss or damage was caused by or contributed to by an act or omission;
 - (iii) that the act or omission was that of the person against whom the claim was made; and
 - (iv) that having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
 - b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

While the parties all agree upon the applicability of the new *Limitations Act* the question is whether it is appropriate to apply what is commonly known as a “rolling limitation period” both in the circumstances of this case and under the *Limitations Act*, 2002.

Argument of Zurich:

Zurich takes the position that the Applicant is precluded from recovering any amount for loss transfer because the claim for arbitration made on November 27, 2009 was made beyond two years from the date of the first Request for Indemnification which was made on January 30, 2006.

Zurich argues that the limitation period commences to run with the first Request for Indemnification and if no arbitration is commenced within the two years thereafter then Economical has no right to make a claim even though there may have been payments made to the insured (Hall) subsequent to that two year period which could not have been contemplated within the first Request for Indemnification.

Zurich argues that once a claim is asserted by Economical then the second party insurer (Zurich) is under a legal obligation to satisfy it. This therefore triggers the limitation period in accordance with the findings of the Court of Appeal in *Markel Insurance Company of Canada v ING Insurance Company of Canada* 2012 ONCA 218 paragraph 26 and *Federation Insurance Company of Canada v Kingsway General Insurance Company of Canada*. Therefore absent an arbitration being commenced within two years of the date of that first Request for Indemnification, Economical has no right to proceed with any of its claims for indemnification irrespective of the date when the payments were made to the insured.

Zurich submits that Arbitrator Densem in his decision in *Federation v Kingsway* and the review of that decision in the Court of Appeal did not hold that there was a “rolling limitation period”. Zurich argues that neither Arbitrator Densem nor the Court of Appeal held that there would be a separate limitation period for each request for indemnification and/or based on each payment made by the loss transferor to the insured.

Zurich acknowledges that the Court of Appeal in the decision *State Farm Mutual Automobile Insurance Company v Dominion of Canada General Insurance Company* 2005 Carswell 7425 (Ontario Court of Appeal) did conclude that there was a “rolling limitation period” but submits that that is not good law as it was pursuant to the old *Limitations Act* and those conclusions are not applicable to the new wording and provisions of the *Limitations Act, 2002*.

Zurich specifically submits that the Court of Appeal in *Federation v Kingsway* did not hold that there was a separate limitation period for each request for indemnification. Zurich submits that the Court of Appeal was only asked to decide when a first party insurer discovers a loss transfer claim within the meaning of Section 5 of the *Limitations Act 2002* and did not go further and make any findings as to whether there were separate or rolling limitation periods with respect to each Request for Indemnification. Zurich submits that there is no authority for the proposition as submitted by Economical that it is entitled to a new two year limitation period with the service of each Request for Indemnification.

Argument of Economical:

Economical argues that the *Limitations Act 2002* in conjunction with the *Insurance Act* and the Regulation relating to loss transfer together with the decision of Arbitrator Densem and the Court of Appeal in *Federation v Kingsway* (supra) do support a “rolling limitation period”. Economical further submits that from a practical perspective only a rolling limitation period would be able to deal with the very specialized circumstances of the claim that is made in loss transfer.

Economical accepts that the Court of Appeal in *Federation v Kingsway* decided that in loss transfer the limitation period would begin to run from the Request for Indemnification and not from the responding insurer’s denial. There is therefore common ground between Economical and Zurich on this issue.

Economical argues that Arbitrator Densem in the *Federation v Kingsway* case did find that there was a rolling limitation period. They point out at page 13 of the decision that Arbitrator Densem specifically states:

“I would, however, adopt the reasoning and approach taken by the Court of Appeal in *State Farm v Dominion of Canada* with respect to the limitation period renewing itself with each “loss” created by an “act” or “omission” by Jevco.”

They point out that Arbitrator Densem in his decision looks at five separate loss transfer Requests for Indemnification and looks at the two year limitation period with each request for indemnification and ultimately concludes (page 24) that the two year limitation has expired for all five requests. Economical argues that the Court of Appeal upheld Arbitrator Densem’s decision and therefore must have accepted his analysis with respect to the rolling limitation period and its applicability to each of the five separate Requests for Indemnification.

Analysis:

In addition to the wording of the *Limitations Act* 2002 (Section 5) in my view the key cases for determination of this issue are the decisions of Arbitrator Densem in *Federation v Kingsway* and the upholding of that decision by the Court of Appeal. While *State Farm v Dominion* provides some useful comments with respect to policy decisions I do agree with the submissions of Zurich that *State Farm v Dominion* is not instructive in terms of the analysis of a “rolling limitation period” in relation to the new *Limitations Act*.

Let us first of all look at some of those policy issues that are raised in the decision by the Court of Appeal in *State Farm v Dominion* and that are germane to the issue before me.

The court noted that there were persuasive policy reasons under a loss transfer regime to support a rolling limitation period. The court noted that if the limitation period only runs from the first payment then any dispute between insurers about a quantum of payment for which indemnification is requested and arises more than 6 years later could not be resolved by arbitration. This was found to be contrary to the intent of Section 275 (4) of the *Insurance Act* which contemplates that any issue with respect to an indemnification dispute under Section 275 of the *Insurance Act* between the involved insurers should be resolved through arbitration.

Section 275 (1) of the *Insurance Act* states:

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

The Court of Appeal noted in *State Farm v Dominion* that this Section leaves the clear implication that a cause of action arises with every payment for which indemnification can be claimed. It is an entitlement that arises in relation to each benefit paid, not just the first one. Section 275 (1) of the *Insurance Act* has not changed and remains the same. Therefore the conclusions of the Court of Appeal in relation to their comments with respect to Section 275 (1) remain valid. In response to some arguments made by Zurich, it is also relevant to note that the Court of Appeal confirms in *State Farm v Dominion* that Section 275 (1) creates a statutory cause of action and therefore there is

no reason to apply the principles of limitation that have been developed in the common law of torts. Zurich provided a number of cases on the issue of the limitation period that were tort in nature and I did not find those cases to be helpful (*Caboon v Franks* [1997] S.C.R. 455 and *Peixeiro v Haberman* [1997] 3 S.C.R. 549).

In terms of policy I also reviewed the loss transfer standardized forms and procedures bulletin issued by the Superintendent of Insurance: FSCO bulletin number A-11/94.

The bulletin notes that the purpose of loss transfer is to permit insurers who pay accident benefits to be indemnified by another insurer for all or part of the accident benefits paid to the insured person under certain circumstances. It is noted that this loss transfer was introduced in order to balance the cost of providing accident benefits between specified classes of vehicles. It is a fault based system.

The bulletin seems to suggest that insurers should take steps amongst themselves to ensure the smooth operation of the indemnification process. It suggests that once the first party insurer notifies the second party insurer then they should discuss how the loss transfer process should operate with respect to that claim. It suggests that they should agree on the frequency of the indemnification request, take into consideration whether the insured is catastrophically injured, what information is needed to support the request, the timing of the payments and the payment terms. The bulletin suggests that if the insurers engage in a regular dialogue then there is greater likelihood the loss transfer process will operate smoothly. It is suggested that irrespective of any dialogue that the insurers are going to act in a business like manner and pay each request for indemnification promptly. The bulletin does not speak to any limitation periods however it is inherent in the bulletin, particularly in reference to the catastrophic issue, that it is contemplated that there will potentially be many requests for indemnification over the course of a claim. In the case of a catastrophic claim with lifetime coverage, absent a lump sum settlement, benefits will continue to be paid to the insured over their lifetime and accompanying requests for loss transfer indemnification would therefore follow.

It is therefore my view that taking into consideration Section 275 of the *Insurance Act* which remains unchanged since its initial introduction, the interpretation of the Court of Appeal of that statute in *State Farm v Dominion* and for the policy reasons outlined above that there is still available the right to argue a rolling limitation period in loss transfer cases unless it has been eliminated by virtue of the amendments to the *Limitations Act* of 2002. For reasons that follow it is my view and I find that the *Limitations Act* of 2002 has not removed the right in a loss transfer regime to claim a rolling limitation period and that in fact the Court of Appeal in *Federation v Kingsway* supports a rolling limitation period.

This analysis should begin with the decision of Arbitrator Densem in *Federation v Kingsway*. In *Federation v Kingsway* there were five separate Requests for Indemnification for Loss Transfer made by Federation to Kingsway (Jevco). Arbitrator Densem concluded with respect to the *Limitations Act* of 2002 that the limitation period, in general, in loss transfer cases commenced when the Request for Indemnification for Loss Transfer was sent out and not when the party receiving the request refused to pay. I will not go over his analysis with respect to how he reached the conclusion in his review of the new *Limitations Act* but only note that that analysis was upheld by the Court of Appeal and Arbitrator Samis' alternate approach set out in *Markel v ING* (heard by the Court of Appeal at the same time they heard *Federation v Kingsway*) was rejected. In *Markel v ING* Arbitrator Samis had

concluded that the limitation period begins to run from the date the second insurer definitively refused to indemnify the first insurer.

Dealing with the rolling limitation period Arbitrator Densem at page 13 states that he did not consider himself bound by the decision in *State Farm v Dominion of Canada* to decide whether the limitation period for loss transfer indemnity claims runs from the date of each payment made by Federation. I disagree with Arbitrator Densem on this point. As I have reviewed the analysis of the Court of Appeal in *State Farm v Dominion* with respect to a rolling limitation period derives from their analysis of Section 275 (1) of the *Insurance Act* and not necessarily from the *Limitations Act*. In my view I am bound by the Court of Appeal decision in *State Farm v Dominion* that Section 275 (1) does provide a rolling limitation period and the only question to be determined is whether there is any subsequent legislation in the *Limitations Act* of 2002 that would suggest that the Court of Appeal's decision in *State Farm v Dominion* is no longer binding. I have concluded there is not.

However Arbitrator Densem, despite rejecting being bound by the decision of *State Farm v Dominion*, in my view independently concludes that the rolling limitation period remains applicable. He states specifically at page 13:

“I would, however, adopt the reasoning and approach taken by the Court of Appeal in *State Farm v Dominion of Canada* with respect to the limitation period renewing itself with each “loss” created by a “act” or “omission” by Jevco.”

He specifically finds that within the confines of Section 5 (a) (iii) of the *Limitations Act*, 2002 that there is a limitation period that commences each time there is an act or omission by Jevco that results in a loss by Federation and not just one limitation period with the first act. Arbitrator Densem points out, and I agree with him, that this conclusion is consistent with the purpose of the loss transfer scheme set out in Section 275 of the *Insurance Act* which was created to establish a streamlined mechanism to readjust the responsibility for the payment of various Statutory Accident Benefits between two insurance companies and to reduce litigation with respect to that loss transfer.

In response to Zurich's argument that Arbitrator Densem did not deal with the rolling limitation period I do note that at page 20 he specifically finds that the time limit for commencing loss transfer arbitration would expire two years from the first day following Jevco's receipt of **each of Federation's loss transfer requests**. I cannot interpret those words as meaning anything other than the establishment of a rolling limitation period. The same is true with respect to the final conclusions of Arbitrator Densem set out at page 26 where he looks at each of the five loss transfer requests separately and looks at a two year period from the date of each of those requests and ultimately determines that even with a rolling limitation period the commencement of arbitration on November 5, 2008 does not capture any of the five requests.

Before this case made it to the Court of Appeal there was an initial appeal heard before Justice Belobaba and he rendered his decision on July 12, 2011 (*Federation Insurance Company of Canada v Markel Insurance Company of Canada* 2011 Carswell Ont. 13317).

Justice Belobaba was asked to review both the decision of Arbitrator Densem and the decision of Arbitrator Samis in the *Markel v ING* case. He concluded that he was more persuaded by Arbitrator Densem's balanced approach and in particular his policy reasons. It is my view that having accepted Arbitrator Densem's approach that Justice Balobaba, while not specifically making reference to the

rolling limitation period, must have accepted that approach as well as it is inherent in Arbitrator Densem's approach.

Turning to the decision of the Court of Appeal in *Federation v Kingsway*, contrary to Zurich's submissions I find that the Court of Appeal specifically looks at the question of the rolling limitation period. At paragraph 16 the court makes specific reference to Arbitrator Densem following the reasoning of State Farm Mutual Insurance Company in concluding that a two year limitation period is a "rolling period" and that separate limitation periods apply to each loss transfer claim. They note that he ruled that as two years had elapsed before each arbitration proceeding was initiated for each of the five requests that therefore the limitation period was applicable.

The court also in paragraph 15 commented on Arbitrator Densem noting that a loss is sustained each time a request for indemnification is submitted. While the Court of Appeal does not specifically go on further to analyze the rolling limitation period it is my view that having clearly reviewed those parts of the Arbitrator's decision dealing with the rolling limitation period and then upholding his decision that the court has supported the rolling limitation period in loss transfer and in conjunction with the *Limitations Act* of 2002 and that I am bound by that decision as well.

The Court of Appeal states (see paragraph 26) that once a legally valid claim is asserted by the first party insurer's request for indemnification that the second party insurer is under a legal obligation to satisfy it. At that time all the facts are present to trigger the legal obligation of the second party to indemnify the first party for its loss. The court says that the situation is crystallized into a complete and legally valid claim that is immediately enforceable. I interpret this as meaning that this situation occurs each time a Request for Indemnification is made and not that the limitation period begins to run and for all time with the first request. In my view that result urged on me by Zurich would make little sense in the context of a loss transfer scheme where payments could continue years after the first Request for Indemnification is made. In my view it would make the system completely unworkable and contrary to the policy reasons for this very unusual regime if it were to be found that the limitation period precluded all rights to pursue a claim for loss transfer within 2 years after the date of the first notification for loss transfer unless an arbitration were to be commenced.

If one looks at that proposal it would mean that an insurer would in most cases have to commence an arbitration after the first Request for Indemnification for Loss Transfer in order to protect its rights over the entire course of the claim unless that payment was completely indemnified in full. For example if a claim for indemnification was submitted for \$20,000.00 and the indemnifying party only paid \$18,000.00 then because there was a loss or omission that would now trigger the *Limitations Act* of 2002 the arbitration would have to be commenced even though the amount in dispute may only be \$2,000.00. Zurich argues that this arbitration would simply lie dormant in order to protect the limitation period if the parties agreed that it was not worth pursuing the dispute over \$2,000.00. This does not make a great deal of sense from a policy perspective.

Zurich argues that if I find that there is a rolling limitation period that it will allow the party requesting loss transfer to have full control over the process and will encourage them to delay making requests for loss transfer. With respect the decision of the Court of Appeal causes that result and not the rolling limitation period. As the Court of Appeal has determined that the loss transfer limitation period begins to run with the first Notice of Indemnification then insurers, based on that decision, can sit back and not submit Requests for Indemnification for significant periods of time. This would be contrary to the policy and intent of Section 275 and I feel sure that

sophisticated insurers who want to have their indemnification completed would not sit back. Further the FSCO bulletin A-11/94 does not encourage that. I do not accept that as a good reason for finding that in loss transfer there is no rolling limitation period. In that regard counsel did provide me with a decision of Arbitrator Robinson in the case of *Intact Insurance Company of Canada v Lombard General Insurance Company of Canada* rendered on October 31, 2012. The parties made some additional written submissions based on that decision.

Arbitrator Robinson was asked to consider a case where Lombard argued that Intact waited an inordinate period of time before serving the initial Request for Indemnification. Arbitrator Robinson in considering this noted that it was only after the service of the request that the two year limitation period commenced to run and that the Court of Appeal's conclusion did allow the Applicant (initiating the lost transfer) to have control of the limitation process. Arbitrator Robinson was faced with the very issue that Zurich raises as a reason for not allowing a rolling limitation period.

Lombard argued laches in that case in order to deny the claim of Intact. Intact argued that there were no specific requirements under the *Loss Transfer* legislation that required it to provide its notice of indemnification within any particular time period.

The facts showed that there was four years and eight months from the date of the accident until Intact sought loss transfer from Lombard. Arbitrator Robinson found that Intact was aware of its ability to seek loss transfer from Lombard no later than May 31, 2007 the accident having occurred on February 13, 2007. Arbitrator Robinson was asked by Lombard to in essence penalize Intact for their delay in pursuing indemnification for loss transfer, having not served a request until September 7, 2011 to cover the time period of July 25, 2007 to September 7, 2011.

Arbitrator Robinson referred to bulletin A-11/95, noting that the first party insurer should notify the second party insurer promptly. He did note that there was no specific limitation period set forth for timing the delivery of the notice of loss transfer forms. He concluded that the doctrine of laches is applicable to loss transfer. He found that it is inappropriate on the part of an Applicant to fail to seek redress once he knows his or her rights have been violated. Intact chose not to act. Arbitrator Robinson found that there is a significant presumption of prejudice due to laches on the part of Intact and the onus was on Intact to provide evidence to rebut that presumption of prejudice and it had not been done. The ability of Lombard to conduct a full and thorough investigation with respect to the accident had been severely compromised. He therefore concluded that due to its delay Intact was precluded from proceeding with a loss transfer application against Lombard. I have reviewed this case as in my view it alleviates some of the concerns that Zurich may have (and indeed other insurers) with respect to the possible effect of both the decisions of the Court of Appeal as to the commencement of the limitation period in loss transfer and my conclusion that the rolling limitation period is still alive and well in the loss transfer regime.

Conclusion:

I find that pursuant to Section 275 of the *Insurance Act* and the *Limitations Act*, 2002 Section 5 that a rolling limitation period is applicable to loss transfer. Counsel for Economical confirmed that if I find that there is a rolling limitation period that the first Request for Loss Transfer dated January 30, 2006 would be excluded by operation of the *Limitations Act*, 2002 as the arbitration was not initiated

until November 27, 2009. This request for loss transfer was in the amount of \$27,516.12 before the \$2,000.00 deductible was applied.

I find that all subsequent Requests for Indemnification (February 21, 2008, April 17, 2008, March 8, 2011 and January 24, 2012) are not barred as a result of any limitation period and Economical has the right to pursue a claim for loss transfer from Zurich with respect to those requests.

With respect to the questions posed in the Arbitration Agreement I find the following:

- a) Yes: the Applicant's claim for indemnity is statute barred by virtue of the *Limitations Act* of 2002 with respect to the Loss Transfer Request for Indemnification submitted on January 30, 2006 only.

Costs:

According to the Arbitration Agreement (Exhibit 1) paragraph 10, costs are to be awarded at the discretion of the Arbitrator. As Economical has been fully successful in its argument and I have not been made aware of any offer to settle that may affect my determination of costs I conclude that the costs of the arbitration should be borne by Zurich Insurance Company. If the parties are unable to reach agreement on costs within 30 days of the receipt of this award I would ask counsel to contact me so the issue of costs can be dealt with.

Order:

As there potentially remains in dispute the amount of indemnity owed by the Respondent, Zurich, to Economical based on my finding with respect to the limitation period I will defer making an Order until those remaining issues are determined through arbitration or through agreement.

DATED THIS 27th day of March, 2013 at Toronto.

Arbitrator Philippa G. Samworth
DUTTON BROCK LLP