IN THE MATTER OF THE INSURANCE ACT, R.S.O. 1990,
c. I. 8, section 275;

AND IN THE MATTER OF THE ARBITRATION ACT,
S.O. 1991, c. 17;

AND IN THE MATTER OF AN ARBITRATION:

BETWEEN:

ALLSTATE INSURANCE COMPANY OF CANADA

Applicant

- and -

ROYAL & SUN ALLIANCE INSURANCE COMPANY

Respondent

DECISION

COUNSEL:

John Pavoni for the applicant

Derek Greenside for the respondent

ISSUES:

1. Which sections of the fault determination rules apply to this motor vehicle accident or do the ordinary rules of law apply?

DECISION:

None of the fault determination rules apply to this motor vehicle accident and accordingly the ordinary rules of law apply.

HEARING:

This arbitration was held on November 2, 2004 in the city of Toronto. The hearing proceeded by way of an agreed statement of facts. No witnesses were called.

FACTS AND ANALYSIS:

The facts of this accident are as follows. On May 18, 1999, a motor vehicle accident occurred on Steeles Avenue at or near its' intersection with Bramalea Road in the city of Brampton. At this location there are three lanes for westbound traffic on Steeles. Bramalea runs north and south and there are three through lanes for southbound traffic as well as right and left turn lanes. The intersection is controlled by traffic lights and the southbound traffic on Bramalea turning right onto Steeles is also controlled by a yield sign.

Prior to the accident Mrs. Kamaljit Deol was driving her husband's motor vehicle, insured by Allstate, westbound on Steeles approaching Bramalea. She was travelling in the left lane of the three westbound lanes. Mr. Leo Hackett was travelling behind Ms. Deol. He was operating a 1994 Mack Truck, a heavy commercial vehicle within the meaning of section 9 (1) of Ontario Regulation 664 as amended, and is therefore subject to loss transfer pursuant to section 275 of the Insurance Act, 1990, as amended. This truck was insured by Royal & Sun Alliance.

A tractor trailer driven by Mr. Albert Peolstra was also travelling westbound in the centre lane, slightly ahead of the Hackett truck.

Ms. Loretta White was driving southbound on Bramalea Road and attempted to turn right onto Steeles Avenue. At the time, the light for southbound traffic was red and the light for westbound traffic was green. On making her turn, Ms. White entered the centre lane of Steeles Avenue and was travelling westbound. She was then struck in the rear by the truck driven by Mr. Peolstra. The collision occurred in the centre lane. The White vehicle then spun counter-clockwise and to the south and came to rest partially in the median and partially in the westbound left lane. The

Deol vehicle then collided with the White vehicle in the left lane. The Hackett vehicle then rear-ended the Deol vehicle, also in the left lane. Ms. White plead guilty to section 141 (2), improper right turn and section 144 (19) failed to stop and yield right of way before turning, of the Highway Traffic Act.

As a result of the accident, Ms. Deol was injured and applied to and received accident benefits from the insurer of her motor vehicle, Allstate Insurance Company. Allstate subsequently served Royal & Sun Alliance with a notification of loss transfer, taking the position that Royal & Sun Alliance is responsible for reimbursing them pursuant to the loss transfer provisions. More specifically, they take the position that rules 6, 9, 11, 14 or 15 apply and therefore Royal & Sun Alliance is responsible to pay loss transfer.

Before examining the potentially applicable rules, it is worthwhile to briefly review the loss transfer system in Ontario.

Loss transfer was established in Ontario in conjunction with the expanded no fault benefit system implemented in Ontario in June 1990. It allowed the insurer of certain specified motor vehicles to pay accident benefits to their insured but then pursue the insurer of the other motor vehicle of repayment of the accident benefits paid out. This is an exception to the general rule that there is no recovery for accident benefits from other parties. It was done in recognition of the fact that collisions involving certain types of vehicles would likely result in greater payment of accident benefits to injured parties. Loss transfer attempts to balance the cost of providing accident benefits between the various insurers. Without such loss transfer, it was feared that insurance for accident benefits on the specified motor vehicles would be difficult to obtain and the cost of insurance to those motor vehicles would be prohibitive.

Section 275 of the Insurance Act is the enabling legislation for this system and states:

> (1) the insurer responsible under subsection 268 (2) for the payment of statutory accident benefits to such classes as persons as may be named in the Regulation 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 by 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 statutory accident benefits arose.

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

It is important to note that the rules do not, and are not intended, to perfectly reflect what would occur if the ordinary rules of law were applied. The fault determination rules are to provide a quick and simple system of indemnity in certain cases. As numerous arbitrators and judges have commented, they are not always perfect and provide an element of "rough justice". In some ways they trade off precision for simplicity, certainty and efficiency.

I will now turn to the individual rules in order to determine which, if any, apply or whether the ordinary rules of law are to be applied.

RULE 6 (2):

Rule 6 states:

(1) this section applies when automobile "A" is struck from the rear by automobile "B", and both automobiles are travelling in the same direction and in the same lane.

(2) If automobile "A" is stopped or is in forward motion, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 % at fault for incident.

If this accident were simply one of Mrs. Deol's vehicle, "A", being struck by Mr. Hackett, I would agree that Rule 6 (2) applies. That is simply not the case, however. The accident was more complex, that involving four cars in at least two lanes of traffic. Rule 6, in my view, applies to two motor vehicles travelling in the same direction and in the same lane.

Mr. Justice Pitt, in GAN General Insurance Company vs. State Farm Mutual Automobile Insurance Company [1999] O.J. No. 4467, dealt with a multi vehicle accident. He found that Rule 6 had no application in multi vehicle "chain reaction" accidents. I am in agreement with Justice Pitt and accordingly find that Rule 6 does not apply here.

RULES 14 & 15:

Rules 14 and 15 are part of the Regulation that governs accidents that occur in an intersection. Rule 14 applies to incidents that occur at an intersection with traffic signs. Rule 15 applies to incidents that occur at an intersection with traffic signals. The intersection in question was controlled with both a "yield" sign and traffic lights and so both could potentially apply. There is no doubt but that Ms. White failed to obey the "yield" sign and the traffic light. She was charged and convicted of failing to stop and yield the right of way before turning pursuant to section 141 (19) of the Highway Traffic Act as well as improper right turn at an intersection contrary to section 141 (2) of the Highway Traffic Act.

I have a number of difficulties in applying these section to the accident in question. Rule 14 (2) states:

> If the incident occurs when the driver of an automobile "B" fails to obey a stop sign, a yield sign, or similar sign, or flares or other signal on the ground, the driver of automobile "A" is not at fault for the incident.

Rule 15 (2) states:

> If the driver of automobile "B" fails to obey a traffic signal, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 % at fault for the incident.

An examination of both these rules suggests that it contemplates a two vehicle accident and this is clearly not the case. There is an additional difficulty in that I am not convinced that either of these rules sufficiently describes the accident to be applicable. When looked at its' entirety, this was not simply an intersection incident. It was a multi vehicle accident that started with maneuver at tan intersection but developed into a multi vehicle pile up. Accordingly, I find that rules 14 and 15 do not apply in this case.

RULE 9:

Rule 9 applies to incidents involving three or more automobiles travelling in the same direction and in the same lane. A "chain reaction". While Mrs. Deol and Mr. Hackett were in the same lane at the time of the accident, the incident clearly involved an adjacent lane and arguably an incident at the intersection. As such, this rule is inapplicable.

RULE 11:

The final rule that may apply to this incident is Rule 11. This section applies with respect to incidents involving three or more automobiles that are travelling in the same direction and in adjacent lanes. In such cases, for each collision between two automobiles involved in the pile up, the driver of each automobile is fifty percent at fault for the accident. Thus, in this case, if the rule applies, Royal & Sun Alliance, as insurer of the Hackett vehicle would be fifty percent

responsible for the incident and would therefore pay fifty percent of the accident benefits already paid out to or on behalf of Mrs. Deol.

The issue is whether or not the facts of this particular accident are such that they come with the scope of Rule 9. Clearly there were three or more automobiles involved that were travelling in the same direction and in adjacent lanes. If one were to look at it only in these terms, Rule 9 would apply. The difficulty, however, is that it ignores the action of Ms. White, a fundamental aspect of the incident. Counsel for the applicant submit that the fault determination rules were meant to be a quick and somewhat rough tool used to sort out loss transfer cases and that they should be applied if they fit the general fact situation. I am in agreement that they are to be applied, if possible, and if they generally fit the situation. The idea behind the fault determination rules was to have a fairly quick, simple, and efficient way of determining loss transfer. However, in this particular case, the actions of the White vehicle were so fundamental to the incident that Rule 9 no longer, in my view, properly describes the incident. As I stated in Primmum vs. Allstate Insurance Company of Canada (unreported decision, released September 15, 2004).

> . . .when the other considerations are so fundamental to the happening of the incident to the point where the rule no longer properly describes the incident, then the rule is not applicable, as it no longer accurately describes the fact situation.

Before concluding I will deal with the effect, if any, of section 3 of the fault determination rules, which states:

> The degree of fault of an insured is determined without reference to;
>
> (a) the circumstances in which the incident occurs, including weather conditions, road conditions, visibility or the actions of pedestrians; or
>
> (b) the location of the insured's automobile at the point of contact with any other automobile involved in the incident.

Arbitrator Samis in Dominion of Canada General Insurance Company vs. Kingsway Insurance Company (unreported decision dated August 23, 1999) dealt with a question of whether he should, because of section 3 (a), ignore the actions of a heavy commercial vehicle in applying the rules, since there was no contact with that vehicle, even though it clearly played a role in the incident. Arbitrator Samis stated:

> I interpret rule 3 to exclude references to ambient conditions and the actions of pedestrian. Section 3 does not require me to exclude the action of the Tremblay vehicle in this case, and to do so would be to ignore one of the main events leading to these injuries.

I am in agreement with Arbitrator Samis in this regard and, accordingly, the actions of Ms White are to be taken into account. In light of the above, I find that none of the above referred to fault determination rules apply. Accordingly I find that rule 5 applies and the degree of fault is to be determined with accordance with the ordinary rules of law.

Accordance with the agreement reached during the hearing, I will leave it to the parties to arrange to forward the necessary evidence to me with regard to the applicability of the ordinary rules of negligence and to arrange for submissions in this regard.

Dated in the city of Toronto, this _____ day of November, 2004.

_____

M. Guy Jones
Arbitrator