IN THE MATTER OF THE *INSURANCE ACT*, R.S.O. 1990, c. I. 8, SECTION 268 and REGULATION 283/95

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

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

CERTAS DIRECT INSURANCE COMPANY

Applicant

- and -

ZURICH INSURANCE COMPANY

Respondent

ARBITRATION DECISION

COUNSEL:

Katie Stanger for the Applicant

Mark K. Donaldson for the Respondent

ISSUE:

1. Which insurer is in higher priority to pay accident benefits to the Claimant – the insurer of the rental vehicle in which she was an occupant at the time of the accident, or the insurer of the driver of the vehicle?

RESULT:

1. Zurich Insurance, the insurer of the rental vehicle that she was in at the time of the accident, is in higher priority to pay benefits than Certas Direct, the insurer of the driver's personal vehicle.

BACKGROUND FACTS:

1. Ashley Richards was injured when the rental car in which she was an occupant was involved in an accident on April 9, 2011. The vehicle was being driven by Melissa Popovic, a friend of Ms. Richards', and was insured by Zurich Insurance Company ("Zurich"). Ms. Popovic was a named insured on an auto policy issued by Certas Direct Insurance Company ("Certas") covering her personal vehicle at the time of the accident.

2. The Claimant was not a named insured under any auto policy, nor a spouse or dependent of a named insured. The parties agree that she was neither a listed driver on Ms. Popovic's policy with Certas, nor her spouse or dependent.

3. Ms. Richards submitted an application for payment of accident benefits under the *Statutory Accident Benefits Schedule* ('the *Schedule*") to Certas. They have paid benefits to her and on her behalf. Certas contends, however, that Zurich, as the insurer of the rental vehicle in which she was an occupant, is in higher priority to pay her claim in accordance with section 268(2)1(ii) of the *Insurance Act.*

4. Zurich denies that it is in higher priority to pay Ms. Richards' claim. It submits that the rental vehicle that Ms. Popovic was driving at the time of the accident would qualify as an "insured automobile" under the Certas policy, given that it was being driven by its named insured. Zurich contends that the Claimant would accordingly meet the definition of "insured person" under section 2(1)b of the *Schedule,* and that Certas would be in priority to pay the claim pursuant to section 268(2)1(i) of the *Insurance Act* .

5. This case raises the question of the breadth of the Justice Browne's decision in *Co-operators General Insurance Company v. Pilot Insurance* [1998] O.J. No. 5551, affirmed by Ontario Ct. of Appeal at [1999] O.J. No. 3471, and two subsequent decisions issued by Arbitrator Bialkowski on the issue of how broad the "coverage net" extends under a driver's policy, when he or she is driving another vehicle. .

ARBITRATION AGREEMENT:

Counsel agreed to the following terms and requested that I incorporate them into my decision:

1. Either party has the right to appeal the arbitration award within thirty days of its issuance, without leave, on a point of law, or mixed fact and law; and

2. the losing party will pay the arbitrators' full account, as well as the legal costs of the other party, with the amount of legal costs either to be agreed upon or assessed by the arbitrator.

RELEVANT PROVISIONS:

Insurance Act - Section 268

> (2) The following rules apply for determining who is liable to pay statutory accident benefits:
>
> 1. In respect of an ***occupant*** of an automobile,
>
> i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,
>
> ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,
>
> iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose,

iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.

(4) If, under subparagraph i or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection (2), a person has recourse against more than one insurer for the payment of statutory accident benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim the benefits.

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

(5.1) Subject to subsection (5.2), if there is more than one insurer against which a person may claim benefits under subsection (5), the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits.

(5.2) 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 a 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.

***Statutory Accident Benefits Schedule* – Section 2**

2. (1) In this Regulation,

"insured automobile", in respect of a particular motor vehicle liability policy, means any automobile covered by the policy;

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

(a) the named insured, any person specified in the policy as a driver of the insured automobile, the spouse of the named insured and any dependant of the named insured or spouse, if the named insured, specified driver, spouse or dependant,

(i) is involved in an accident in or outside Ontario that involves the insured automobile or another automobile, or

(ii) is not involved in an accident but suffers psychological or mental injury as a result of an accident in or outside Ontario that results in a physical injury to his or her spouse, child, grandchild, parent, grandparent, brother, sister, dependant or spouse's dependant,

(b) in respect of accidents in Ontario, a person who is involved in an accident involving the insured automobile, and

(c) in respect of accidents outside Ontario, a person who is an occupant of the insured automobile and who is a resident of Ontario or was a resident of Ontario at some point during the 60 days before the accident;

Ontario Automobile Policy (OAP 1)

2.2.3 Other Automobiles

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

The following coverages apply to other automobiles if a premium is shown for the coverage on the Certificate of Automobile Insurance for a described automobile:

- Liability,
- Accident Benefits,
- Uninsured Automobile, and
- Direct Compensation - Property Damage.

4.1 Who is Covered

For the purposes of Section 4, insured persons are defined in the Statutory Accident Benefits Schedule. In addition, insured persons also include any person who is injured or killed in an automobile accident involving the automobile and is not the named insured, or the spouse, same-sex partner or dependant of a named insured, under any other motor vehicle liability policy, and is not covered under the policy of an automobile in which they were an occupant or which struck them.

EVIDENCE:

6. The parties filed an Agreed Statement of Facts incorporating the facts set out above. None of the facts underlying this matter are in dispute.

RELEVANT CASE LAW & PARTIES' ARGUMENTS :

7. A review of the relevant case law on this issue will assist in placing the parties' submissions and my subsequent analysis in their proper context.

8. The first decision in the line of cases referred to by counsel is Justice Browne's decision in *Co-operators v. Pilot*, *supra.* In that case, Paul Huard was driving a vehicle owned by Gerald Sobka. That vehicle was not insured. Mr. Huard, however, was a named insured on an auto policy issued by Co-operators' Insurance, insuring his own personal vehicle. There was a passenger with him in the Sobka vehicle at the time of the accident, who was not a named insured under any policy, nor a spouse or dependent of a named insured. Pilot Insurance insured the other vehicle involved in the accident. The parties applied to the court for a declaration as to which insurer was in priority to pay accident benefits to the passenger, Ms. Capelazo.

9. Justice Browne determined that Mr. Huard's policy with Co-operators would provide coverage to other automobiles driven by him, by virtue of section 2.2.3 of the Standard Ontario Automobile Policy (OAP 1). He then found that by extension, Co-operators was the insurer of the (Sobka) vehicle that Mr. Huard was driving at the time of the accident, and that the passenger could therefore claim accident benefits from Co-operators. It is important to note that in applying the priority scheme set out in section 268(2) of the *Act*, the judge stated explicitly that "sub-para (i) does not apply", meaning that the passenger was not an "insured" under any policy. He determined, however, that she would be entitled to seek benefits from Co-operators, Mr. Huard's insurer, under subsection 268(2)1(ii), as it was the insurer of the automobile in which she was an occupant.

10. The key paragraph in the brief decision reads as follows:

> *In an examination of sub-para. (ii) I was urged to consider the wording of the policy, the regulations and the scheme of the Act and I have done so. From s.1 of the Insurance Act...an insurer is defined as one who undertakes or agrees to offer to undertake a contract of insurance, and from the statutory accident benefits schedule "insured automobile" is defined in s.1, referable to liability policy coverage, as meaning any automobile covered by the policy. As indicated, these considerations of the Act as a whole and the regulations assist with reference to the otherwise undefined meaning of "insurer of the automobile". It is clear that from the perspective of Huard other automobiles driven by him are insured automobiles. The wording of the policy from s. 2.2.2 (now 2.2.3) extends accident benefit coverage to Huard for automobiles driven by him. By extension, it is my conclusion that further to the policy as issued, Co-operators is "the insurer of the automobile" in which Capelazo (the passenger) was an occupant.*
>
> *(paragraph 5)*

11. Co-operators' appealed the decision, and it was upheld by the Ontario Court of Appeal, with no further analysis.

12. I considered this decision in two arbitration awards I rendered in 2009. In both *Economical Insurance Group v. HMQ/MVACF & Kingsway General Insurance* (January 30, 2009) and *Perth Insurance v. State Farm Mutual & HMQ/MVACF* (May 31, 2009), I found that I was bound by Justice Browne's decision, although I expressed reservations about the outcome arrived at and how the consequences of his ruling squared with the overall scheme of auto insurance coverage.

13. In the first case, my determination led to coverage under a policy issued to the wife of a driver of an uninsured vehicle being extended to an uninsured pedestrian claiming accident benefits. The second case also extended accident benefits coverage under a driver's policy to an uninsured pedestrian, when he was struck by a driver operating an uninsured vehicle. The driver of that vehicle was a named insured on a policy issued by Perth Insurance, but had requested that coverage on the vehicle he was driving at the time of the accident be deleted prior to that date. In both decisions, I found

that the ruling in the *Co-operators v. Pilot, supra,* case required me to interpret section 2.2.3 of the OAP 1 to extend coverage for accident benefits under a policy issued to a driver (or spouse of a driver) of an uninsured vehicle to pedestrians struck by that vehicle.

14. Arbitrator Bialkowski subsequently considered this issue in *Royal and SunAlliance Insurance v. Zurich Insurance* (decision dated February 7, 2011). The claimant in that case was neither an uninsured pedestrian (as in my earlier decisions) nor an occupant of an uninsured vehicle (as in *Co-op v. Pilot*), but rather a passenger in a rental vehicle insured by Zurich. The driver of that vehicle was a named insured on a policy issued by Royal, covering his personal vehicle. The arbitrator found that while it was open to the claimant (herself not a named insured, spouse or dependent of a named insured) to seek accident benefits through the policy in place on the rental car (issued by Zurich), she could also claim benefits through the policy covering the driver's personal vehicle, issued by Royal.

15. The arbitrator referred to the broad definitions of "insured person" and "insured automobile" in section 2 of the *Schedule* to support his determination that the passenger/claimant was an "insured person" under the Royal policy issued to the driver. He found that she "fit the description set out in section 268(2)1(i) as 'an insured' under more than one policy", and that by virtue of section 268(4) of the *Act,* she had discretion to choose the insurer from whom she would seek benefits. As she had submitted her application for benefits to Royal, he found that it was in higher priority to pay her claim.

16. Arbitrator Bialkowski cited the court's decision in *Co-operators' v. Pilot, supra,* as well as my two arbitration awards referred to above as support for the proposition that accident benefits coverage under a policy issued to the driver of the vehicle, covering a different vehicle, can be extended to passengers of a vehicle driven by him or her by virtue of section 4.1 of the Standard Ontario Automobile Policy (OAP 1). He then expressed concern about the redundancy inherent in the two sentences in section 4.1. He states –

> *I am somewhat troubled as to why the description of additional insureds is set*

> *out in the second sentence of Section 4.1 of…OAP1 when pedestrians (without other insurance) and occupants (without other available insurance) appear to have coverage given the basic definition of "insured person" as contained in the Statutory Accident Benefits Schedule.*

17. While Arbitrator Bialkowski purported to follow the court's decision in *Co-operators v. Pilot, supra*, a close reading of his decision reveals that he in fact adopted a different approach. Justice Browne determined that the passenger in his case was entitled to claim benefits under the 'second rung' of the priority ladder pursuant to subsection 268(2)1(ii) from "the insurer of the automobile in which she was an occupant". Arbitrator Bialkowski determined, however, that the claimant in his case was entitled to claim under subparagraph (i) of that section from "the insurer of an automobile in respect of which the occupant was an insured". He also relied on section 4.1 of the OAP 1, while Justice Browne made no reference to that provision in his decision.

18. Arbitrator Bialkowski then issued his decision in *Economical v. Wawanesa, Certas, Unifund and MVACF; Wawanesa v. Economical, Certas, Unifund and MVACF* one day later (February 8, 2011). The facts in that case raised many issues, and an initial determination had to be made about whether three policies that could potentially have responded to various claims had been validly cancelled. Upon finding that the policy issued by Unifund to the driver of one of the two uninsured vehicles involved in the accident had not been validly cancelled, the arbitrator then addressed the question of whether that policy extended accident benefits coverage to a passenger in that (uninsured) vehicle, and the occupants of the other (uninsured) vehicle involved in the collision. He stated (at pg. 14):

> *I am of the view that the "driver's policy" provides accident benefits coverage to other persons involved in an accident involving the vehicle driven by the insured, provided **no other priority insurance is available**.*
>
> *(emphasis added)*

19. Arbitrator Bialkowski ultimately determined that the passenger in the vehicle being driven by the Unifund-insured driver could seek accident benefits through the Unifund policy, as could the two occupants of the other vehicle involved in the collision

"either as a person who was involved in an accident involving the insured automobile or as one of the additional insureds set out in the second sentence of Section 4.1 of OAP 1".

20. I note that while Arbitrator Bialkowski referenced his earlier decision in *Zurich v. Royal, supra*, in arriving at this conclusion, he seems to limit his findings in the second decision by stating that the driver's policy would extend coverage to others involved in the accident if "no other priority insurance is available". His earlier findings in the *Royal v. Zurich, supra,* case were not qualified in this manner, and in fact, the rental vehicle in which the claimant was an occupant was insured by Zurich.

Parties' arguments:

21. Zurich takes the position that in accordance with the findings in *Co-operators v. Pilot, supra,* cited above, the rental vehicle driven by Ms. Popovic at the time of the accident was an "Other Auto" under section 2.2.3 of the OAP 1, and would therefore fall within the definition of an "insured automobile" under the Certas policy issued to her. Mr. Donaldson contended that accident benefits coverage under that policy covering Ms. Popovic's personal vehicle would therefore be extended to her and any occupants of the rental vehicle that she was driving.

22. Counsel relied on Arbitrator Bialkowki's findings in the decisions referred to above that the rental vehicle in this case would be an "insured automobile" under both the Zurich and the Certas policies, and that as the Claimant was involved in an accident involving the "insured automobile", she fits within the definition of an "insured person" under the *Schedule* and section 4.1 of the OAP 1. He noted the Court of Appeal's comments in *Warwick v. Gore Mutual Insurance Company* 32 O.R. (3d) 76 that in the case of conflict between a definition in the *Act* and the *Schedule,* the definition in the *Schedule* should be preferred.

23. Counsel for Zurich contended that as Ms. Richards submitted her application for benefits to Certas, section 268(4) of the Act dictates that Certas is in higher priority to

pay her claim. He also noted that this result is consistent with the general approach that insurance coverage should follow the driver, rather than the vehicle.

24. Counsel for Certas took a different view. She submitted that the hierarchy of priority set out in section 268(2)1 of the *Act* must be followed closely. She contended that as Ms. Richards was not a named insured, spouse or dependent of a named insured, she would not fall within subsection (i) or the first 'priority rung' which provides an occupant with the right to claim benefits from the insurer of an automobile in respect of which she is insured. She submitted that as Zurich was the insurer of the automobile in which the Claimant was an occupant, the second rung or subparagraph (ii) would apply and Ms. Richards would have recourse against Zurich for benefits.

25. Ms. Stanger submitted that while Arbitrator Bialkowksi stated that he was relying on the court's decision in *Co-op v. Pilot, supra,* when he determined that a driver's personal policy would extend coverage for accident benefits to any passenger in a rental car he was driving, he did not do so. She noted that Arbitrator Bialkowski's determination was based on his finding that recourse was available to the passenger under subsection (i) of section 268(2)1, whereas Justice Browne had determined that the passenger "does not have recourse against her own insurer and sub-para (i) clearly does not apply", determining instead that Co-operators was the "insurer of the automobile" in which she was an occupant, and that recovery was available under sub-para (ii) of section 268(2)1. She argued that the arbitrator's finding that the passenger was an "insured person" and therefore entitled to recover under the first rung of the section was in conflict with the courts' determination.

26. Ms. Stanger also contended that Arbitrator Bialkowski's interpretation of the definition of "insured person" in section 2 of the *Schedule* and consequently the first part of section 4.1 of the OAP 1 was too broad. She submitted that his finding that the term "insured automobile" found in section 2(1)(b) of that definition encompassed the vehicle owned by the driver of the rental vehicle and covered by Royal was in error. She submitted that this approach effectively renders the second "rung" of section 268(2)1

meaningless, as it would then only apply if neither the occupant nor the driver of the vehicle in question was a named insured, spouse or dependent, and the vehicle itself was not insured.

ANALYSIS & CONCLUSION:

27. While counsel's submissions on this issue were thoughtful and well-considered, it is difficult to interpret the language in the relevant provisions of the *Act*, *Schedule* and OAP 1 in a consistent manner, and to reconcile the meaning that they have been given with the case law on this issue. As I stated in my earlier decisions cited above, the consequences of Justice Browne's findings in *Co-operators v. Pilot, supra,* can lead to results that are in conflict with some of the established principles of auto insurance coverage. I am, however, bound by his decision, which as noted, was affirmed by the Court of Appeal. To the extent that the facts in this case parallel those in the case determined by the court, I must follow his findings.

28. My task as an arbitrator appointed to determine a priority dispute pursuant to *Ontario Regulation 283/95* is to interpret the provisions in section 268(2) of the *Act,* often referred to as the 'priority ladder', and apply them to the circumstances of each case. That provision outlines a system for determining which insurer is in priority, as it relates to the obligation to pay accident benefits. While it frames the relationship between insurers in this regard, it does not address or impact upon a claimant's entitlement to benefits under the *Schedule.* The *Schedule* dictates the rights and obligations of claimants and insurers to each other, while the priority provisions in section 268(2) of the *Act* dictate the relationship between insurers who may be involved in paying benefits. Different approaches are called for when considering questions under each 'system'.

29. Section 268(2)1 of the *Act* provides that an occupant first has recourse against "the insurer of an automobile in respect of which the occupant is an *insured*". The term "insured" is not defined in the *Act* but has historically been interpreted to include a named insured, listed driver, spouse or dependent of a named insured. The section does not include or refer to the term "*insured person*", and in my view, the definition of that

term found in section 2 of the *Schedule* is not applicable to a determination of priority under section 268(2) of the *Act.* Once that subtle but important difference in terminology is heeded, some of the problems highlighted in the earlier cases fall away and the parameters of the analysis become narrower.

30. While the courts have stated that the *Schedule* is "consumer protection legislation" and that its provisions should accordingly be interpreted broadly and liberally, it does not follow that terms like "insured" appearing in subsection 268(2) of the *Act* should be given a similarly expansive definition. While the clear intention of the drafters of the *Schedule* is to ensure broad coverage for accident benefits, that intention should not be imputed into the priority provisions of the *Act*, which are focused on determining which insurance company is responsible to pay benefits and not *whether* benefits are to be paid.

31. When the term "insured" is given its historical and usual meaning, Ms. Popovic, the driver in this case, as well as Mr. Huard, the driver in the *Co-operators v. Pilot* case, would have recourse against their own insurers (meaning the insurers providing coverage on their personal vehicles) for accident benefits under subparagraph (i) of section 268(2)1 of the *Act.* If either of them were claiming benefits, they would be eligible to do so under their own policies covering their personal vehicles, regardless of what vehicles they were driving at the time of an accident. That is in keeping with the notion, cited by counsel for Zurich in his submissions, that "insurance coverage follows the driver".

32. The Claimant in this case, however, is in a different position. Following Justice Browne's ruling with regard to the passenger in his case, I find that Ms. Richards would not have recourse under the first rung or subsection (i) of section 268(2)1 of the *Act*, as she is not an insured. Moving down the "priority ladder" to subparagraph (ii) of that provision, the question becomes whether she would have recourse against "the insurer of the automobile in which he or she was an occupant". As a passenger in the rental vehicle involved in the accident, Ms. Richards would clearly be entitled to claim benefits from Zurich, the insurer of that vehicle.

33. The more difficult question is whether she would also have recourse against Certas, the insurer of Ms. Popovic's own vehicle, and if so, which insurer is in higher priority to pay her claim. Zurich contends that Certas is also an insurer of the rental vehicle by virtue of Ms. Popovic's policy, and that as the insurer who received Ms. Richards' application for benefits, would be the 'priority insurer'.

34. In *Co-operators v. Pilot, supra,* Justice Browne found that the application of section 2.2.3 of the OAP 1 led to the determination that Co-operators was the insurer of the automobile in which the passenger was an occupant. It is important to note, however, that the (Sobka) vehicle involved in the accident in that case was uninsured, while the vehicle involved in the accident in the instant case was insured. Justice Browne was asked to determine whether the insurer of Mr. Huard, the driver, or the insurer of the other vehicle involved in the accident should pay benefits to the passenger. He determined that the driver's insurer was in priority. It is not clear how he would have determined the matter, or if the case would even have been brought to court seeking a declaration, had the Sobka vehicle been insured, leaving a choice between the insurer of the vehicle in which Mr. Huard and Ms. Capelazo were occupants, and the driver's insurer.

35. Arbitrator Bialkowski was faced with that scenario. He determined that the driver's insurer was in priority by virtue of the claimant in that case being an "insured" under the driver's policy and therefore having recourse under the first rung. Having made that determination, the arbitrator then correctly relied on section 268(4), which gives a claimant absolute discretion to decide which insurer to pursue. As noted above, I agree with counsel for Certas' argument that in arriving at this conclusion, Arbitrator Bialkowski did not follow the court's findings in *Co-operators v. Pilot, supra*, that the passenger had recourse under subparagraph (ii) or 'second rung' of the priority rules.

36. Consequently, I decline to follow the approach in *Royal and SunAlliance v. Zurich, supra.* As stated above, I also do not believe that the definition of "insured

person" in the *Schedule* should find its way into an analysis of priority under section 268(2) of the *Act* and in that regard, my findings also differ from those of Arbitrator Bialkowski.

37. Where does that leave things in this case? It is clear that Ms. Richards can seek recourse against Zurich under subsection 268(2)1(ii). I am also bound by Justice Browne's determination that Certas, as the insurer of the driver of the vehicle would also be a "second rung insurer", although I question whether he would have reached the same result if the vehicle in that case had been insured. We then look back to section 268 for guidance as to which of the two insurers is in priority. While section 268(4) operates as a "tiebreaking mechanism" for the first and third rungs of section 268(2)1, it provides no guidance with respect to subparagraph (ii).

38. The reason for this "gap" is not clear. In my view, when the drafters of the legislation were considering the priority scheme, they did not see the need to have a tiebreaking mechanism for this option because they assumed that there could only be one "insurer of an automobile in which he or she was an occupant". While this undoubtedly seemed like a logical conclusion to have arrived at, given the plain meaning of the words involved, the courts have subsequently interpreted things in a broader manner, creating this "statutory conundrum".

39. One approach would be to interpret the fact that Ms. Richards had submitted her application for benefits to Certas as indicative of her having exercised her discretion to choose among two insurers on the same priority "rung". I note, however, that in subsection 268(5.2) of the *Act*, the legislators have provided that in circumstances in which a named insured (or his/her spouse or dependant) has the option of submitting a claim for benefits to more than one insurer, she is required to claim benefits from the insurer of the vehicle in which she was an occupant at the time of the accident.

40. In my view, this reveals a clear intention on the part of the drafters of the legislation to dictate that an injured person should submit a claim for benefits to the

insurer of the vehicle that they were in at the time of the accident. This approach is also in keeping with the commercial reality of auto insurance involving the evaluation of risk and calculation of premiums. It is also more consistent with the expectations of the parties when insurance coverage is contracted for.

41. Accordingly, I find that Zurich Insurance, as insurer of the rental vehicle in which Ms. Richards was an occupant at the time of the accident, is in higher priority to pay her claim.

ORDER & COSTS:

42. I hereby order Zurich to repay Certas for all benefits that it has reasonably paid out to Ms. Richards and on her behalf to date, and to assume the handling of her claim into the future.

43. Given the parties' agreement summarised above, Zurich shall pay the legal costs incurred by Certas in the course of this proceeding. If the parties cannot agree to the amount of costs to be paid, I invite counsel to contact me and I will review submissions on the point.

DATED at TORONTO, ONTARIO this ____ DAY OF SEPTEMBER, 2013.

____

Shari L. Novick
Arbitrator