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, as amended;

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

CERTAS HOME and AUTO INSURANCE COMPANY

Applicant

- and -

AIG INSURANCE COMPANY

Respondent

DECISION

COUNSEL:

Adam Fox for the Applicant

Michael Kealy for the Respondent

BACKGROUND:

1. Nisanth Suthakaran was employed as a "U-Box Customer Care Representative" with U-Haul from August 5, 2019 until he was injured in a motor vehicle accident in early November 2019. He worked at the company's "Stockyards" location and drove a "U-Box" truck between warehouses and customers' locations, in order to pick up and drop off U-Box containers.

2. Mr. Suthakaran was involved in an accident while driving home on the night of November 6, 2019. He was driving a U-Box truck at the time. AIG Insurance Company ("AIG") insured the vehicles used by U-Haul in the operation of its business at the time of the accident.

3. The Claimant had a personal vehicle that was insured with Certas Home and Auto Insurance Company ("Certas"). He submitted an application for payment of accident benefits under the *SABS* to Certas. Certas contends that U-Haul made a vehicle available for his "regular use" at the time of the accident, and that he was accordingly a deemed named insured under the AIG policy insuring U-Haul's vehicles, pursuant to section 3(7)f of the *SABS*.

4. Mr. Suthakaran advised at an EUO that he had received permission from his District Manager, Nasik Arrafih, to drive a U-Haul vehicle home from work on various occasions, if he did not have enough gas in his car to get home. Mr. Arrafih acknowledged that he had allowed the Claimant to do this, but advised by way of a sworn affidavit that he had revoked this permission prior to the accident in question.

5. On the night of the accident, Mr. Suthakaran asked his supervisor, Tanya Bryan, if he could drive a U-Box truck home. Ms. Bryan acknowledged by way of affidavit that she had permitted the Claimant to do so. While Mr. Arrifah deposed that he had told Ms. Bryan that he had revoked the permission that he had granted to Mr. Suthakaran to drive company vehicles home, Ms. Bryan's affidavit provides that she did not recall having been advised of this.

ISSUE:

1. Did U-Haul make a vehicle available for Mr. Suthakaran's "regular use" at the time of the accident, such that he was a 'deemed named insured' under the AIG policy issued to U-Haul ?

The parties agree that if the answer to this question is yes, section 268(5.2) of the *Insurance Act* requires that the Claimant seek benefits from AIG, given that he was an occupant of a U-Haul vehicle at the time of the accident.

RESULT:

1. Yes, U-Haul did make a vehicle available for Mr. Suthakaran's regular use at the time of the accident. He is therefore a deemed named insured under the AIG policy by virtue of section 3(7)f (i) of the *SABS*, and AIG is consequently in higher priority to pay his claims.

EVIDENCE:

6. The parties filed various documents in advance of the hearing, including the transcript from the Claimant's Examination Under Oath conducted in September 2020, and affidavits sworn by both U-Haul's District Manager Nasik Arrifah and the General Manager of the Stockyards location, Tanya Bryan. Mr. Arrifah and Ms. Bryan were cross-examined on their affidavits, and transcripts of those examinations were also filed. Counsel relied on these and other documents in their submissions. No *viva voce* evidence was called at the hearing, which was conducted via videoconference.

7. The Claimant stated at his Examination that one of his main tasks was to deliver empty U-Box containers to various customers' homes, and pick them up once they were packed. He then transported them to a U-Haul storage facility. He drove a special truck designed to transport these large containers, called a U-Box truck. He stated that he also served customers at the Stockyards location when required, and performed other administrative tasks such as completing rental and storage agreements. He sometimes transferred pickup trucks or cargo vans between U-Haul locations, as required.

8. Mr. Suthakaran explained that he would generally drive his own vehicle, insured by Certas, to and from work. He stated that he was permitted to drive a U-Box truck home in the evening if he was scheduled to pick up a container the next morning, and the customer's location was on his way to work. He also stated that he sometimes obtained permission from head office to drive one of the pickup trucks or a cargo van from the Stockyards lot home from work because it was a 40 km commute from where he lived in Ajax and it "took a lot of gas". When asked how frequently that had occurred, he responded that he was given permission "whenever I asked…if I asked they would be okay with it, most of the time".

9. Mr. Suthakaran was driving a U-Box truck at the time of the accident, which occurred at approximately 10 p.m. He was on his way home. He explained that he had asked his manager if he could drive one of the trucks home that night, as he did not have enough gas in his car and did not have money to buy gas. He was not scheduled to do any U-Box pickups the next morning, but recalled that Ms. Bryan "said it was fine". He explained that the traffic on Highway 401 was very heavy, and he decided to stop at a friend's house to wait it out. He recalled leaving that location at around 10 p.m., and the accident occurred shortly after that.

10. As noted above, the evidence of the two U-Haul witnesses differed on the issue of whether the Claimant had permission to drive a U-Haul vehicle home after work at the time of the accident. Nasik Arrafih is U-Haul's Regional Manager for the eastern Ontario region, and stated that he is responsible for the vehicles at all locations in that region, including the Stockyards location at which Mr. Suthakaran worked. He swore an affidavit in which he stated that employees were generally not permitted to use U-Haul vehicles outside of work hours, unless they made arrangements to rent them. He acknowledged that he had made an exception for the Claimant, because he did not have much money and "we needed him for this role". Mr. Arrifah deposed that Mr. Suthakaran was the only employee for whom he had made this exception during his time at U-Haul.

11. Mr. Arrifah recalled that Mr. Suthakaran had asked him to borrow a pickup truck to drive home on one occasion because he had "car trouble". He allowed him to do so, and informed Tanya Bryan, the General Manager at the Stockyards location, that he had authorised this. He deposed

that he made sure that Mr. Suthakaran knew "that he had to contact me to ask me for this favour". He estimated that the Claimant called him approximately ten times during the few months that he worked for U-Haul to ask permission to drive the pickup truck home. He confirmed that he had allowed him to do so on each occasion without paying any rental fees.

12. Mr. Arrifah stated that the Claimant was involved in an accident one evening while driving a U-Haul pickup truck home. He explained that Mr. Suthakaran was not at fault for the accident, and that he continued to allow him to drive company vehicles home. The Claimant was then involved in a second accident. Mr. Arrifah deposed that he advised him at that point that he was no longer prepared "to make an exception for him" and permit him to drive the pickup truck home. He stated that he then informed Ms. Bryan that the Claimant "would no longer be able to borrow U-Haul pickup trucks to drive home due to car trouble or issues".

13. Mr. Arrifah deposed that he was surprised to hear about the accident that occurred on November 6, 2019, as he had not authorised Mr. Suthakaran to use any U-Haul vehicles since his second accident. He later learned that the Claimant had asked Ms. Bryan if he could drive the U-Box truck home, and that she had permitted him to do so. He deposed that this was a "mistake due to a misunderstanding", explaining that Ms. Bryan, who was not authorised to permit employees to use company vehicles outside of work hours, had assumed that Mr. Arrifah had provided permission to the Claimant to drive the U-Box truck, when he had not done so.

14. When cross-examined on his affidavit, Mr. Arrifah testified that he had not made a written record of the conversation with Ms. Bryan, in which he told her that the was Claimant no longer permitted to drive U-Haul vehicles home, and could not recall when it had taken place.

15. Tanya Bryan deposed that she has been the General Manger of the company's Stockyards location for about five years, and was the Claimant's direct supervisor. She recalled that Mr. Arrafih advised her at one point that he had authorised the Claimant to drive a U-Haul pickup home, as he was having car trouble. She stated that Mr. Suthakaran subsequently did this on a few occasions, which she assumed was either because he was experiencing car trouble or did not have

enough money to pay for gas to drive his vehicle home. She confirmed that he was the only employee who was permitted to do this at the Stockyards location.

16. Ms. Bryan deposed that Mr. Suthakaran had asked her if he could drive a U-Box delivery truck home on the night of the accident. She stated that she permitted him to do so, as she assumed that he had "cleared this request with Mr. Arrifah". She stated that she has since spoken with Mr. Arrifah about this and that he recalls advising her prior to that night that the Claimant was no longer allowed to drive a pickup truck home. She provided, however, that she does not recall having had that conversation.

RELEVANT PROVISIONS:

The following provisions are relevant to my determination of this matter:

Insurance Act

> ***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,*
>
> ***268(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 ("SABS")

> ***3.*** *(7) For the purposes of this Regulation,*
>
> > *(f) an individual who is living and ordinarily present in Ontario is deemed to be the named insured under the policy insuring an automobile at the time of an accident if, at the time of the accident,*

> *(i) the insured automobile is being made available for the individual's regular use by a corporation, unincorporated association, partnership, sole proprietorship or other entity*

PARTIES' ARGUMENTS:

17. Counsel exchanged detailed written submissions in writing in advance of the hearing, and made further oral submissions at the hearing regarding whether the Claimant was a deemed named insured under the AIG policy.

Certas' submissions

18. Counsel for Certas submitted that the evidence supports the finding that the Claimant had "regular use" of U-Haul vehicles after his work shifts ended, and that the requirements under section 3(7) of the *SABS* have been met. He noted that it was not disputed that Mr. Suthakaran was driving a U-Haul vehicle at the time of the accident, and that his direct supervisor had given him permission to drive it home on the night in question. He referred to the Claimant's EUO evidence that he often drove a U-Box truck home at night in order to facilitate the drop off or pickup of U-Boxes the next morning, and the evidence from both Mr. Suthakaran and Nasik Arrifah, the District Manager, that he had requested and obtained permission on several occasions to drive a pickup truck home after his shift ended, if his own vehicle was low on gas.

19. Counsel contended that I should not accept Mr. Arrifah's evidence that he had revoked the permission he had previously granted to Mr. Suthakaran to drive vehicles home after his shift ended, and that he had advised Ms. Bryan of this decision before the accident in question. He noted that there was no written record of this change, or of the conversation having taken place. He contended that Mr. Arrifah's statement was self-serving, while Ms. Bryan's evidence that she did not recall having the conversation was a statement against her self-interest, given that she remains employed by U-Haul and Mr. Arrifah is her boss. He suggested that Ms. Bryan would likely have remembered this discussion if it had taken place, as it represented a change in practice related to an unusual exception made for an employee, and would have stuck in her mind.

20. Counsel urged me not to accept AIG's contention that Mr. Suthakaran had misled Ms. Bryan when he asked her if he could drive the U-Box truck home the night of the accident, and that he knew that he was not entitled to do so. He emphasized that the Claimant was not asked about that at his EUO and was not given the opportunity to respond to the evidence provided by Mr. Arrifah that the permission he had provided to drive vehicles after hours had been revoked.

21. Finally, Mr. Fox cited Justice Belobaba's statement in *ACE INA Insurance v Co-operators General Insurance* (2009) CanLii 13625 ONSC that the key question in a "regular use" analysis is whether the employer made a vehicle available to an employee for his or her use *at the time of the accident*. While he noted that the circumstances in that case did not meet that threshold, counsel argued that Ms. Bryan had clearly provided Mr. Suthakaran with access to the vehicle at the time of the accident, and that I should find that the requirements in section 3(7)f(i) of the *SABS* were satisfied.

22. Counsel also cited my decision in *TD v Dominion & Northbridge* (September 30, 2017, upheld on appeal (2018) ONSC 2594) in which I stated that in order for the requirement that a vehicle be "made available" be met, an active intention must be demonstrated on the part of an employer. Counsel submitted that this requirement was satisfied in this case, as Ms. Bryan clearly provided Mr. Suthakaran with access to the U-Box truck by giving him keys to the vehicle on the night of the accident.

AIG's submissions

23. Counsel for AIG contended that the evidence did not support a finding that U-Haul had made a vehicle available to the Claimant on the night in question. He disputed Mr. Fox's contention that Mr. Arrifah had not advised Ms. Bryan that he had revoked the permission granted to the Claimant to drive rental vehicles home after his shift ended, and submitted that Mr. Arrifah was not shaken on cross-examination on this point.

24. Counsel submitted that it was not surprising that no written record of this change or of the conversation with Ms. Bryan were made, as Mr. Arrifah testified that he usually communicated with Ms. Bryan through phone calls. Counsel suggested that the evidence of these two witnesses

was not really inconsistent on this point, and that I could accept both that Mr. Arrifah advised Ms. Bryan that the Claimant was no longer permitted to use a pickup truck from the lot to drive home, and that she did not recall the conversation.

25. Counsel for AIG stated that it was clear from the evidence that the Claimant regularly drove vehicles owned by U-Haul, such as the U-Box truck and rental vehicles that needed to be transferred between locations, and that his client did not dispute that these were made available for his "regular use" by U-Haul during business hours. He contended, however, that the evidence did not support the conclusion that this was also the case in the evenings, after his shifts ended.

26. Mr. Kealy noted that the Claimant's statement at his EUO that he occasionally drove U-Box trucks home at night was not put to the U-Haul witnesses in their cross-examinations, and that it should therefore not be accepted. He contended that the evidence as a whole supports the view that the Claimant drove U-Box trucks to pick up and drop off containers during his work shifts, and that he received special permission on occasion to drive pickup trucks home after his shifts ended, when he did not have enough gas in his own vehicle. He emphasised that that had changed, however, when Mr. Arrifah revoked the permission that had been granted.

27. Mr. Kealy suggested that when the principles from the case law on "regular use" are applied here, it is clear that the Claimant was not a deemed named insured under the AIG policy. He specifically noted my determination in the *TD v Dominion & Northbridge*, *supra,* decision that an employer must take deliberate action to make a vehicle available for an employee's personal use at the time of the accident. He submitted that Mr. Arrifah clearly stated that employees were not permitted to use any company vehicles outside of work hours, and that while an exception had been made for Mr. Suthakaran for a period of time, that was no longer the case at the time of the accident.

28. Counsel contended that if the person with the sole authority to provide permission for the use of an employer's vehicles after hours revokes that permission, it cannot be said that an employer is "making a vehicle available" for an employee's regular use. He urged me to accept Mr. Arrifah's evidence and conclude that despite the fact that Mr. Suthakaran may have been in a

U-Haul vehicle at the time of the accident, the company had not made a vehicle available for his regular use after the completion of his work shifts, and that he was accordingly not a deemed named insured under the AIG policy.

Reply submissions - Certas

29. Mr. Fox noted that the Respondent's arguments rely entirely on the contention that Mr. Arrifah revoked the permission he had given to the Claimant to drive U-Haul vehicles after his shift ended, and that he is the only one of the three witnesses who provided evidence under oath that referenced this. He contended that once Mr. Arrifah's evidence about having revoked the permission was provided, AIG should have recalled the Claimant to testify, and sought his response to that allegation. He submitted that it is improper for counsel for AIG to simply say that the Claimant lied about having had permission to drive a vehicle home, and that he should have been asked whether he had been aware that permission to drive U-Haul vehicles after his shifts ended was revoked by Mr. Arrifah.

30. Counsel for Certas argued alternatively that even if Mr. Arrifah had revoked the permission he had granted earlier to the Claimant, Ms. Bryan had clearly "made a vehicle available" for his use on the night of the accident. He noted that she had also provided permission for him to drive U-Box trucks home when he had a morning pick up on many prior occasions, and that section 3(7)f of the *SABS* refers to a corporation making a vehicle available for an individual's use rather than a particular individual. He urged me to find that Mr. Suthakaran was a deemed named insured under the AIG policy, and that AIG was therefore in higher priority to pay the claim by virtue of section 268(5.2) of the Act.

PRODUCTION OF EMPLOYMENT FILE AND ADVERSE INFERENCE ARGUMENT:

31. I issued an Order directing U-Haul to produce Mr. Suthakaran's employment file on June 8, 2020, at the request of counsel for Certas. Some documents were provided to Mr. Fox in the few months that followed, and others were provided in April 2021, the day before the cross-examinations of the two U-Haul witnesses. Some, but not all, of Mr. Suthakaran's Driver Daily Records were produced. A document titled Report of Potential Claim – described as an internal

report generated when an employee is involved in an accident while driving a U-Haul vehicle – was provided as well, referencing the accident in question.

32. Further documents were then provided by counsel for AIG the day before the hearing. Mr. Kealy advised that it came to his attention that there were two entries on the Report of Claim document that had not been produced earlier through inadvertence, and while they were not directly related to the issues in the case, he forwarded them to Mr. Fox in order to complete the record. Mr. Fox complained about the late production of documents and suggested that other documents likely exist that may indicate that the Claimant drove other vehicles that were not referenced above. He urged me to draw an adverse inference from what he contended was U-Haul's failure to disclose all of the documents that they were ordered to produce.

33. Counsel for AIG contended that there was no basis for me to draw any adverse inferences against his client. He acknowledged that the Driver Daily Records produced do not include all of the days on which Mr. Suthakaran worked, but stated that his client had produced all of the records in its possession. He noted that Mr. Fox did not ask either Mr. Arrifah or Ms. Bryan why a complete set of records (which identify the vehicles that an employee drives each day) were not produced when he cross-examined them. He contended that if the frequency of Mr. Suthakaran's driving of U-Haul vehicles was in issue, the rule in *Brown v Dunn* requires that this question be put to the witnesses.

34. I decline to draw any adverse inferences in these circumstances. While parties should certainly comply with production Orders issued in a timely manner, I am not persuaded that any documents were intentionally withheld by U-Haul in these circumstances. As noted by counsel for AIG, Mr. Fox had the opportunity to ask the witnesses produced by U-Haul for cross-examination on their affidavits why certain Driver Daily Reports were missing. He did not do so, and instead asked more general questions, such as whether they had been asked to produce any documents related to the case. If the witnesses had, for example, been asked why some of Mr. Suthakaran's driving records had not been produced, and responded that these records were all readily available but had either not been requested, or that counsel had only asked for some of them, I would have accepted Certas' argument. This, however, is not the evidence before me.

35. Further, I am not convinced that the documents ordered to be produced are as central to the issue in dispute as counsel for Certas suggests. Counsel for AIG made it clear – if not in his written submissions, then at the oral hearing – that he accepted that U-Haul made a vehicle available to the Claimant for his regular use during his work shifts. Given this concession, the crux of the dispute is whether a vehicle was made available to him for his regular use in the evening, after his shift ended. The Daily Driver Reports only record driver activity during work hours, so are not helpful in this regard. Given Mr. Arrifah's evidence that no records were kept of the dates on which he authorised Mr. Suthakaran to drive vehicles home in the evening, or of his alleged conversations with the Claimant and Ms. Bryan regarding this permission having been revoked, the documents from the Claimant's employment file do not provide any guidance on the question I must decide.

ANALYSIS & REASONS:

36. It is clear from the evidence that U-Haul made a vehicle available for Mr. Suthakaran's regular use during his work shifts. He was a "U-Box Customer Service Representative" and regularly drove a U-Box truck between customers' locations and the U-Haul storage facilities. He also drove rental vehicles between U-Haul locations when they needed to be transferred. AIG essentially conceded that if the accident in question had occurred during work hours, they would not dispute that a vehicle had been made available to Mr. Suthakaran for his regular use.

37. However, the accident in question took place after 10 p.m., well after the Claimant's shift ended and he had left the Stockyards lot where he worked. He was driving a U-Box truck at the time. The evidence of both Mr. Suthakaran and Ms. Bryan his supervisor was that he had asked her if he could take the vehicle home, and that she permitted him to do so and gave him the keys. The question then becomes whether this satisfies the requirement in section 3(7)f of the *SABS* that a vehicle was being made available by U-Haul for the Claimant's regular use at that time.

38. The evidence from the U-Haul witnesses indicated that employees were generally not permitted to drive vehicles belonging to the company after work hours, unless they made arrangements to rent them. Mr. Arrifah stated, however, that he had made an exception in Mr. Suthakaran's case and that he allowed him to drive the pickup truck home when he had car trouble

or did not have enough gas to get home. He estimated that this had happened approximately ten times in the roughly three months that the Claimant was employed with U-Haul. Mr. Suthakaran's evidence was that he was given permission to drive company vehicles home "whenever I asked…they would be okay with it, most of the time".

39. While there are no written records confirming the number of times this took place, this evidence is sufficient in my view to satisfy both the "being made available" and "regular use" requirements set out in section 3(7)f of the *SABS.* As the courts have determined in *ACE v Co-operators, supra,* and *Intact Insurance v Old Republic* (2016) ONSC 3110, if an employee has specifically been given use of an employer's vehicle outside of their working hours, they will be deemed to be a named insured under the employer's policy.

40. The complicating factor here is that Mr. Arrifah deposed in his affidavit that he had revoked the permission granted to the Claimant to drive the vehicles after his shifts ended, and that he had advised Ms. Bryan of the change. As noted above, Ms. Bryan did not recall being so advised. The Claimant did not mention anything about this when he gave evidence at his EUO, and he was not provided with the opportunity to respond to this "new" evidence, which was tendered by Mr. Arrifah well after he had been examined. Counsel for AIG submitted that the Claimant had essentially lied to or at least misled Ms. Bryan when he asked to drive a vehicle home from the lot on the night of the accident, suggesting that he was aware that Mr. Arrifah had revoked the permission he had granted to him earlier, but chose not to tell Ms. Bryan. Counsel for Certas contended that there was no evidence to support this assertion, and that it was incumbent upon AIG to have recalled Mr. Suthakaran as a witness to question him on this point.

41. I have not had the benefit of hearing evidence from any of the above three witnesses. While I understand the parties' interest in having as streamlined a process as possible, it leaves me in the difficult position of having to make a credibility assessment without having had the benefit of either observing the witnesses testify, or asking clarifying questions. It would have been helpful to have had the opportunity to hear Mr. Suthakaran's response to Mr. Arrifah's contention that he had revoked the permission granted him to drive vehicles after hours, or at least to have reviewed a transcript of his testimony on this point. I make no finding as to which party should have sought

his reattendance; but I am not able to simply conclude, as counsel for AIG suggests I should, that he lied to or misled Ms. Bryan by not revealing to her that Mr. Arrifah no longer permitted him to drive vehicles home.

42. On balance, and without the benefit of hearing any *viva voce* evidence or watching the witnesses testify, I accept counsel for Certas' contention that Mr. Arrifah's statement that he had revoked permission for the Claimant to drive vehicles home after work should not be accepted. The Claimant did not mention this in his evidence, and while he might not have wanted to admit that he had disregarded what his supervisor's boss had told him, I note that he left U-Haul shortly after the accident in November 2019, and would likely not suffer any consequences from having done so. I also accept the suggestion that Ms. Bryan would likely have recalled being told that the permission granted to the Claimant was being revoked if Mr. Arrifah had told her so, given that he was her boss, and that the practise of allowing Mr. Suthakaran to drive vehicles home at night was unusual enough that he was the only employee who was permitted to do so.

43. I also find that even if Mr. Arrifah had revoked the permission granted and had advised Ms. Bryan of that fact, Ms. Bryan's actions on the night in question satisfy the requirement in section 3(7)f of the *SABS* to "make a vehicle available". She was Mr. Suthakaran's supervisor, and it is not disputed that she agreed to his request to drive the vehicle home and provided him with the keys. In *TD v. Dominion & Northbridge, supra,* I discussed what an employer must do to satisfy the requirement of making a vehicle available for an employee's use. I stated (at para. 45) that the company must "actively make a vehicle available, and inherent in that…is that it must expressly consent to the claimant having use of the vehicle at the time in question". I am satisfied that such consent was provided in this case, either by Mr. Arrifah or by Ms. Bryan.

44. For the reasons expressed above, I find that U-Haul made a vehicle available for the Claimant's regular use at the time of the accident, and that he was therefore a deemed named insured under the AIG policy. By virtue of section 268(5.2) of the *Act*, AIG is in priority to pay his claims under the *SABS*.

ORDER:

Certas' application is hereby granted. AIG is the priority insurer in accordance with section 268(5.2) of the *Insurance Act* and shall reimburse Certas for benefits paid and assume the adjusting of the claim going forward, if it remains open.

COSTS:

Given the result, Certas is entitled to payment of its legal costs from AIG, on a partial indemnity basis. If counsel cannot agree on the quantum of costs payable, I invite them to contact me and a teleconference will be arrange to address the issue.

AIG is responsible to pay all arbitration fees incurred in regard to this matter, and I will direct my final account to Mr. Kealy's attention.

DATED at TORONTO, ONTARIO this 2nd_DAY OF SEPTEMBER, 2021

Shari L. Novick
Arbitrator