IN THE MATTER OF THE INSURANCE ACT, R.S.O. 1990,
c. I. 8, and s.275, and ONTARIO REGULATION 664/90, s.9;

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

AND IN THE MATTER OF AN ARBITRATION;

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE (MOTOR VEHICLE ACCIDENT CLAIMS FUND)

Applicant

- and -

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Respondent

DECISION

COUNSEL:

Lorraine Takacs for the Applicant

Lee Samis for the Respondent

ISSUES:

1. Was State Farm obligated to give its insured written notice or confirmation when the insured gave oral notice to continue with comprehensive coverage rather than liability coverage?

DECISION:

1. No further notice or confirmation need be given by State Farm.

HEARING:

This hearing in this matter was held in the city of Toronto, in the province of Ontario on May 13, 2008. It proceeded by way of viva voce evidence and documentary evidence filed.

FACTS & ANALYSIS:

This preliminary issue arises out of a motor vehicle that occurred on April 15, 2003. On that date, Ms. El-Haj Daoud was driving her friend, Ms. Noor Sahar, to a social event when she was involved in an accident. Ms. Sahar was apparently injured in the accident. Ms. Sahar filed an application for accident benefits with the Motor Vehicle Accident Claims Fund ("the Fund"). While it made payments to the injured party as required by the Statutory Accident Benefits Schedule, the Fund has taken the position that Ms. El-Haj Daoud had a valid motor vehicle liability policy with State Farm Mutual Insurance Company ("State Farm") at the time of the accident and accordingly State Farm should pay the benefits. State Farm on the other hand takes the position that the policy in question had been reduced from a motor vehicle liability policy to a comprehensive policy prior to the accident and accordingly it was not responsible to pay the accident benefits.

The central issue to be determined in this preliminary hearing is what obligations, if any, the insurer has when the insured purports to make a change in the insurance coverage. In order to do this, a brief review of this case must be undertaken.

Ms. El-Haj Daoud originally obtained a full motor vehicle liability policy through State Farm under policy number 250417-E15-60 effective November 15, 2001. On or about November 22, 2002, Ms. El-Haj Daoud reportedly telephoned the Andrew Lau Insurance Agency, through which she had obtained the policy, and requested that the liability coverage be removed until March 1st, 2003, at which time the full liability policy was to be reinstated. An "Acknowledgement of Vehicle Withdrawal from Use" form was then issued to the insured. The form indicated that it was issued on November 25, 2002 and was effective as of December 2,

2002. The form also indicated, apparently pursuant to the conversation between the insured the agent, that

> " Provided your policy is still in effect, suspended coverages will be reinstated on March 1, 2003 unless you request an earlier date."

On the reverse side of the form was an explanation of coverage.

State Farm has alleged that on or about February 21, 2003 Ms. El-Haj Daoud called the agent and advised them not to reinstate the full liability policy as previously planned but to leave only the comprehensive coverage in place. There was no confirming correspondence arising out of this alleged phone call and no "Acknowledgement of Vehicle Withdrawal from Use" form was issued confirming the instructions. The Fund does not concede that the call as alleged was made, however, for the purposes of this preliminary hearing, I am dealing with it on the basis that if such a phone call were made, what obligations, if any, did State Farm have to confirm the instructions from the insured. If I should find in favour of State Farm in the preliminary matter, then there will be separate hearing to resolve the factual dispute.

Subsequent to the above noted phone call, on April 5, 2003, Ms. El-Haj Daoud was involved in the motor vehicle accident. The State Farm policy was cancelled in writing by Ms. El-Haj Daoud on May 18, 2003. The note from Ms. El-Haj Daoud does not specify if it was a liability or comprehensive policy that was being cancelled.

OBLIGATIONS OF THE PARTIES

The Insurance Act and the Statutory Conditions impose different obligations upon the insurer and the insured when either party wishes to terminate or alter a policy. If the insurer wishes to terminate coverage then Section 1.7.2 of the Ontario Automobile Policy, and Section 234 of the Insurance Act requires that the insurer provide five days written notice if delivered in person or fifteen days by registered mail. Furthermore, Section 236 (1) of the Insurance Act requires that an insurer who does not intend to renew, or wishes to vary the terms of the policy, to provide thirty days notice in writing of any such intention and the policy is considered to remain in force until there has been compliance with the notice requirements.

The obligations of the insured are covered by Statutory Conditions 11 (2) and (4) and Section 1.7.1 of the Ontario Automobile Policy.

Statutory Conditions 11 (2) and (4) state:

> 11(2) This contract may be terminated by the insured at anytime on request.
>
> 11(4) Where this contact is terminated by the insured, the insurer shall refund as soon as practical the excess premium actually paid the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired term be deemed to be less than any minimum retained premium specified.

Section 1.7.1 of the Ontario Automobile Policy states in part:

> "you may cancel you insurance at any time by advising us."

State Farm relies on the case of Ashe v. Peace Hills General Company [2007] A.W.L.D 3770, a decision of the Alberta Provincial Court. In that case the insured told the insurance agent that he wished to cancel a policy immediately. The agent told the insured to put the notice in writing and only then did the agent cancel the policy. In dealing with a statutory framework similar to that found in Ontario, the court found that the cancellation took place when the insured verbally advised the agent, and no written notice was required.

State Farm also relies upon the Ontario Court of Appeal decision in Zurich Canada et al v. Fortin [2003] Carswell Ont. 48 (c.a.). In that case the insured told the insurance company's broker to cancel coverage on a truck. The broker faxed written instruction to the insurer specifying a date and time the coverage was to cease. Subsequent to the fax, but prior to the processing by the company's head office, the truck was involved in an accident. The court held that once that the insured gave oral instruction to the broker, no further action was required by the insurer. The court went on to state:

> "after the cancellation had been effectively accepted by Jacobs [the agent] on Zurich's behalf the remaining process was merely administrative. The fact that the premium had not yet been returned did not affect the validity of the cancellation."

Counsel for the Fund made a number of submissions as to why State Farm's actions were inadequate in the circumstances. She submitted that the insurer and its agent had an obligation in the circumstances to advise their insured of the implications of changing or deleting coverage and providing and explanation, by way of at very least a brief covering letter and notice. In support of this position the Fund relied on, among other cases: Fletcher v. Manitoba Public Insurance Company, [1990] 212 S.C.R. 651; Kadaja v. CAA Insurance Company, 23 O.R. (3rd) 275; and Nat v. Wawanesa Mutual Insurance Company, [2001] O.J. 2877 (O.S.J). Tied to this argument is the suggestion that in cases of ambiguity, the ambiguity must be resolved in favour of the insured.

The difficulty that I have with the Fund's position in this regard is that the statutory condition as the courts have interpreted it, is very clear. There is no restriction upon how the insured gives notice to the insurer. There would not appear to be any ambiguity in this case.

Counsel for the Fund also submitted that in cases of deletion or cancellation of coverage, formal notice should still be given to the insured. In support of this proposition, counsel relies upon, among other cases, Transportaction Lease Systems Inc. v. The Guarantee Company of North America, [2006] I.L. R1 – 4465 (Ont. C.A.); York Fire and Casualty v. Economical Mutual Insurance Company , (unreported decision Arbitrator Jones, release August 2003) and Jackson v. Dennis [1988] O.J. 228, (O.C.J.). These cases are somewhat different than ours. Those cases dealt primarily with notice being given by an insured, when there was a leased vehicle, and the obligation in those situations to give notice to the lessor. In our case there is no third party or lessor that might require notice. You simply have they insured and the insurer, as represented by the broker.

Counsel for the Fund submitted that there is an obligation upon the insurer to ensure that sufficient documentation is provided to the insured so that the insured fully understand their rights and obligations. I fully agree that an explanation letter or form would be desirable in this and similar situations. It would avoid, among other things, factual disputes such as have arisen in this case, as to whether a call was in fact made. While this may be desirable from an evidentiary

point of view it is not a statutory obligation nor one at common law, at least in this particular situation.

Both counsel have drawn my attention to Section 232 (3) of the Insurance Act, which states:

> " subject to subsection (5), the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, the policy or a true copy thereof and every endorsement or other amendment to the contract."

Counsel for the Fund submits that this requires that State Farm should have sent out a written notice of the change from having the suspended coverage reinstated on March 1, 2003, to continuing the suspension indefinitely.

Counsel for State Farm submits that what happened in this instance was not an amendment to the insurance contract. The contract itself remained as before, and simply the timing of the reinstatement changed. In effect, the suspension of liability coverage would remain until the insured requested that it be reinstated, and then the insurer would issue a "reinstatement of use" form.

On balance, I accept the submissions of counsel for State Farm in this regard. The insured originally advised the insurer to suspend coverage, which the insurer did and acknowledged by the " Acknowledgment of Vehicle Withdrawal from Use" form. What then transpired at least for the purposes of the preliminary hearing, was simply an extension of that suspension. As such, no notice to pursuant to Section 232 (3) of the Insurance Act was required.

Before closing, I would simply point out that there is no provision in Section 232 of the Insurance Act to deal with non-compliance with the Section, unlike Section 236 of the Insurance Act where non-compliance results in the policy staying in place. Accordingly, even had there been non-compliance, which I find there was not, it is unclear what the consequences would be. Certainly if one were to follow the approach of the Ontario Court of Appeal in Zurich Canada vs. Fortin; 2003 Carswell Ont. 48 (C.A.), it would be considered an administrative matter and not effect the suspension of coverage.

For the above reasons, I find that State Farm was not obligated to give its insured written notice of the continuation of the suspension of liability coverage. The parties may contact my office to arrange for further pre-hearing with regard to a hearing on the evidentiary issues which remain.

Dated at Toronto, this _____ day October 2008.

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M. Guy Jones
Arbitrator