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

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

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

STATE FARM INSURANCE COMPANIES

Applicant

- and -

ACE INA INSURANCE and HALIFAX/ING INSURANCE COMPANY

Respondents

AWARD

Counsel Appearing

Mark K. Donaldson for the Applicant

Ruth Henneberry for the Respondent, ACE INA Insurance

Joseph Lin for the Respondent, Halifax/ING Insurance Company

Introduction

This priority dispute has been submitted to me for arbitration in accordance with the provisions of the *Insurance Act* and Ontario Regulation 283/95.

The parties to these proceedings are automobile insurers carrying on business in the Province of Ontario. The underlying circumstance which brings them to this dispute is a motor vehicle accident which occurred on September 4, 2008 when the claimant Behrouz T.[1] was injured.

In the circumstances of the accident, Behrouz T. was entitled to make claims for Statutory Accident Benefits and he made those claims against the Applicant, State Farm. State Farm disputes that it is the highest priority insurer having responsibility for payment of the Statutory

[1] In recognition of the privacy interests of non parties I have deleted references to surnames from these reasons.

Accident Benefits. In accordance with Ontario Regulation 283/95, a dispute of this nature is to be submitted for private arbitration in accordance with the provisions of the *Arbitration Act*, 1991 and the parties have taken that step, bringing this matter before me.

The Preliminary Issue to be Determined at this Time

In the circumstances of this case, the parties have identified a preliminary issue which might be dispositive of this proceeding. In accordance with Ontario Regulation 283/95, an insurer that intends to dispute its status as having the obligation to pay Statutory Accident Benefits must address certain procedural requirements set out in the Regulation. Critically, the Regulation calls for a timely Notice of Dispute to be provided to the target insurers, with only very limited circumstances described by the Regulation exempting insurers from the notice requirement.

According to the Regulation, the Notice of Dispute is to be provided within 90 days of receipt of a completed Application. If such notice is not provided, the insurer seeking to dispute its priority status needs to establish that subsection 3(2) of Ontario Regulation 283/95 applies to exempt it from the 90 day notice requirement. The parties have brought this matter before me at this juncture to make a determination as to whether or not State Farm is precluded from pursuing this priority dispute in the circumstances of this case.

The Materials Before Me

This matter proceeded on an agreed record with the parties having submitted an Arbitration Agreement, an Agreed Statement of Facts, and a Document Brief. The Arbitration Agreement was marked as Exhibit #1 to these proceedings and includes the usual recitals identifying the issues involved in this matter and preserving the rights to appeal without leave, should any party desire to do so.

The parties also submitted to me an Agreed Statement of Facts which was marked as Exhibit #2 to these proceedings.

Finally, the parties have provided to me a Document Brief of the Applicant consisting of 23 tabbed productions, which was marked as Exhibit #3 to these proceedings. The parties agreed that these documents could be received by me as forming part of the record in these proceedings without necessarily agreeing as to the truth of the contents of any of the documents.

In addition to the foregoing, each of the parties submitted written arguments in support of their respective positions.

Background Facts

This matter arises out of a motor vehicle accident which occurred on September 4, 2008. The claimant, Behrouz T. was a pedestrian at the time of this event. He was struck by a vehicle operated by Kamal J. Behrouz T. did not have his own policy of automobile insurance at the time of the accident, therefore he was not a named insured under a policy of insurance. Evidently, a week after the event, Behrouz T. became a policy holder of State Farm. The State Farm policy was not in effect at the time of the accident. Of course, in accordance with the Regulation, this does not absolve State Farm from the obligation to deal with the SABS claim if it received a completed Application for Benefits. It is, however, highly material to the issue of

whether or not State Farm is able to invoke Ontario Regulation 283/95 and have the SABS claim assigned to another insurer.

I understand that the Respondent, Halifax/ING, insured Kamal J. on his personal vehicle at the time of the accident[2]. Kamal J. at the time of the accident was operating a rental vehicle. The rental vehicle was insured by the Respondent, ACE/INA.

It seems that Behrouz T. signed an Application for Accident Benefits form, the OCF-1, on or about September 24, 2008, but that form was not immediately submitted to any insurer. The Agreed Statement of Facts indicates that the form was eventually submitted to State Farm under cover of a letter dated October 27, 2008. The Agreed Statement of Facts further indicates that the cover letter and the OCF-1 were date stamped as received by State Farm on October 31, 2008. The Agreed Statement of Facts says "these documents were scanned into State Farm's "paperless" system and reviewed on November 17, 2008."

I note that Behrouz T. was represented by a firm of solicitors with respect to this case. In the covering correspondence submitting the Application to State Farm, the solicitors demonstrated their familiarity with the SABS claim process and set certain restrictions on the activities of the insurer that might respond to the Application. In particular, it was required that all future requests for information were to be directed to Behrouz T.'s solicitor. Pre-emptively the solicitor also indicated that he would not allow a meeting with the client for the purpose of providing a statement. So from the outset, Behrouz T.'s representative but in place significant barriers that would impede State Farm or any other insurer attempting to respond to the claim.

In addition, it is indicated that the submitted Application form contained contradictory information and was lacking particulars. The Agreed Statement of Facts says as follows:

> "At Part 3 of the OCF-1 it is indicated both "yes" and "no" as to whether the accident was reported to police. Particulars as to the officer's name and police department were marked "TBD"."

State Farm's representative contacted the solicitors on November 20, 2008 and made relevant inquiries including requesting:

1. A copy of the police report;
2. Identification particulars of the driver of the vehicle; and
3. The insurance particulars of the vehicle that struck the claimant.

Follow up inquiries were made on January 22, 2009 and January 26, 2009.

Paragraph 20 of the Agreed Statement of Facts includes the assertion that State Farm believed that "any searches that would assist in the priority dispute could not be performed until after the police report was produced".

It appears that the police report was forwarded to State Farm under cover of a letter dated February 3, 2009 and was reviewed by State Farm on February 17, 2009. There was a great deal of activity on February 17, 2009 wherein State Farm's representative contacted ING, contacted the owner of the rental vehicle, contacted AXA Insurance Company, contacted ING/Halifax again, contacted Discount Car and Truck Rentals, and contacted ACE/INA

[2] There are a series of name changes for this insurer, who is sometimes referred to as "Halifax", "ING", or more recently, "Intact".

Insurance Company. On that same day, February 17, 2009, State Farm forwarded a Notice of Dispute to ACE/INA and Intact.

The parties also submitted a Supplementary Agreed Statement of Facts addressing a couple of narrow issues. In particular, it is pointed out that the November 20, 2008 letter from State Farm was sent directly to the claimant and copied to the law firm, but without any reference information for the law firm. Similarly, it is indicated that a phone message was left with the law firm on November 20, 2008, and the Supplementary Agreed Statement of Facts indicates that there was no indication that the message specified any particular request for specific details, that there was any indication that the matter was urgent, or that there was any indication that anyone in the law firm returned the telephone message.

Review of Evidence

The Applicant's Document Brief was marked as Exhibit #3 to the proceedings and all of the parties agreed that this was a joint Document Brief. These documents form part of the record of these proceedings without further proof. None of the parties necessarily accepts the truth of the contents of the documents. It is open to me to accept or reject assertions contained in the documentation.

From my review of this documentation, there is a reasonably complete record of the events of this claim. Most helpful to me are the file notes found at Tab 23 of Exhibit #3. These represent the internal notes of State Farm's claims department with respect to this matter. Counsel has put these in reverse order by page number as this is a forward order with respect to notes. I was also advised that the notes are numbered but there is not always continuity in the numbering system. This is just the way the numbering system works. It is not an indication that any notes have been removed.

The chronology of the claims handling disclosed by the file notes is significant in the context of the case. In particular, I note the initial receipt of the file assignment for the adjuster appears to have been on November 17, 2008. There was an immediate contact with the named insured, Behrouz T. There was discussion about the fact that the State Farm policy was not enforced at the time of the accident. The adjuster made a direct note as follows:

> "Asked if he had a police report, yes, is tp[3] info avail, yes, adv'd to call for AB from them"

The Document Brief also includes the Application for Accident Benefits which is found at Tab 1. This document refers to the accident date as being September 3, 2008. In fact, we now know that the accident date was September 4, 2008. The covering letter which sent this to State Farm was dated October 27, 2008 and that covering lettering also indicates that the date of loss was September 3, 2008. The covering letter is clearly date stamped as received by State Farm on October 31. The Application for Accident Benefits is also clearly date stamped as having been received on October 31.

Turning my mind to the commencement of the 90 day period, I am mindful of the fact that the provision of Regulation 283/95 starts the clock running for giving notice from the time that the insurer, State Farm, receives "a completed Application for Benefits". In the Agreed Statement of

[3] I take this to be the commonly used abbreviation for "third party". As between State Farm and the claimant, the "third party" would be the owner or operator of the vehicle that struck the claimant.

Facts in this matter, it is admitted by State Farm that the OCF-1 was submitted to it under cover of a letter dated October 27, 2008 and was received by State Farm on October 31, 2008.

I note from a review of the documentation, and in particular a review of the OCF-1, that no information was provided with respect to the identity of the investigating police officer. This information would have been entered into part 3 of the OCF-1. Further on in part 4 of the Application, there is a question about the owner of the vehicle, and that is also indicated as "TBD". I interpret these entries to indicate "to be determined". Hence, the OCF-1 is completed in the sense that there is an entry made in each area of the claims form applicable to the case. Admittedly the "TBD" is a placeholder for absent information. This raises some possible argument about whether or not the document constitutes a completed Application.

However, the position of the insurer throughout the handling of the claim was inconsistent with the position that it had not received a completed Application. To the contrary, the insurer processed the claim and dealt with this matter in the ordinary course. At this juncture it is too late for State Farm to change its mind, even if it were so advised, to conclude or argue that the submitted OCF-1 did not constitute a completed Application.

Therefore, I conclude that the 90 days commenced running on October 31, 2008.

However, it is equally clear from the documentary record, particularly the file notes at Tab 23 of Exhibit #3, that the file did not actually become assigned to the claims handler until November 17 or so. There is a significant delay involved here due to the State Farm system of scanning documentation and operating in a "paperless" environment.

Tab 2 of Exhibit #3 contains the covering letter from the claimant's solicitor to State Farm enclosing the initial OCF-1. The text of the letter is troublesome. The legal counsel advises that it has certain stringent requirements about the communications with respect to the SABS claim. While it insists that the insurer must notify the claimant directly of assessments and so forth, counsel have put barriers in a way of information gathering as far as the insurer is concerned. They indicate that it is not their practice to conduct meetings with the client and the insurer for the purpose of providing statements. They therefore insist on any information requirement to be made pursuant to section 33 of the SABS, by written request.

Tab 5 of Exhibit #3 contains a letter dated November 20, 2008, directed to the claimant. A copy of the letter was sent to the office of the solicitors, but without any reference information. State Farm, in its correspondence, formally requested the police report and the identification of the third party operator, as well as the policy number and insurer information with respect to the vehicle that struck the claimant. I note that at this point, State Farm had already been in touch by telephone with Behrouz T. and was told that he had all of this information. So on November 20th, State Farm was diligently formalizing its request for this information and placed reliance upon section 33 of the Statutory Accident Benefits Schedule. It notified the claimant that he was required to provide that information within 10 days of receipt of the letter.

At this point, State Farm's activities with respect to looking at priority went into a hiatus which extended until January 22, 2009. In effect, State Farm took its eye off of the ball with respect to the priority dispute for about two months. In that interval, it did not receive the information that it previously requested about the identification of the third party, or the identification of the third party insurer, nor did it receive the report it requested from the claimant. On January 22nd, it followed up for this information again, and on January 26th it also pursued this information by way of telephone call to the solicitor's office and a discussion with "Alexi".

At note #47 of the log found at Tab 23 of Exhibit #3, State Farm has noted a further letter received February 4, 2009 from the representative indicating that the claimant was in the process of obtaining the requested police report. It appears from the same document, at note #67, that State Farm's claims handler first received the police report on February 17, 2009. It appears that this was communicated to State Farm with a letter dated February 3, 2009, which appears to have been sent by fax on the same date. On February 17, 2009, State Farm finally had information about the owner of the third party vehicle and possible insurance information as a result of having received the police report. It took a number of steps that day, including contacting 2 possible owners of the vehicle, and making three contacts to insurance companies that might have had policies required to respond to the SABS claim. Further than that, State Farm sent out notification letters of a dispute between insurers that day. Those documents are found at Tabs #11, #12, #13 and #14 of Exhibit #3. I note in those letters that the Notice of Dispute indicates "State Farm Insurance received the Application for Accident Benefits on November 17, 2008".

Analysis

It is now clear that State Farm received the Application on October 31, 2008. The document at Tab #18 of Exhibit #3 has, as an attachment, an image list from State Farm's digital system. This document indicates the date on which the system indicates somebody has received the OCF-1, and that date is noted as November 17, 2008. Evidently the record would indicate that this is the date that the document was received "by custom group". So in the circumstances, it appears that some of the internal documentation of State Farm was erroneously indicating to the State Farm claims handlers that the OCF-1 was received on November 17, 2008. This was close to 90 days prior to when the flurry of activity took place on February 17, 2009. However, by my calculation, it is still more than 90 days after November 17, 2008. I calculate this activity on February 17, 2009 to have occurred 92 days after the erroneous receipt date of November 17, 2008.

Therefore, on either basis, State Farm's notification of the priority disputes sent out on February 17th, was out of time in relation to completed Applications received by it on or before November 17th. However, I have no hesitation in finding as a fact that the Application material was received by State Farm on October 31, 2008.

Therefore, the Notice of Dispute was not given in a timely manner.

Unless subsection 3 of Ontario Regulation 283/95 allows State Farm to be exempted from compliance with the 90 day notice, it is not entitled to proceed with this priority dispute.

That section of the Regulation provides as follows:

> **"3. (1) No insurer may dispute its obligation to pay benefits under section 268 of the Act unless it gives written notice within 90 days of receipt of a completed application for benefits to every insurer who it claims is required to pay under that section.**
>
> **(2) An insurer may give notice after the 90-day period if,**
>
> **(a) 90 days was not a sufficient period of time to make a determination that another insurer or insurers is liable under section 268 of the Act; and**
>
> **(b) the insurer made the reasonable investigations necessary to determine if another insurer was liable within the 90-day period. O. Reg. 283/95, s. 3 (2).**

> **(3) The issue of whether an insurer who has not given notice within 90 days has complied with subsection (2) shall be resolved in an arbitration under section 7."**

The application of these provisions has now been considered by a number of arbitrators and judges as this issue repeatedly comes forward for determination in disputes between insurers. There are many different kinds of fact situations where an insurer has failed to put another insurer on notice within 90 days. There are some cases where we see that insurer has been misled by a claimant, with the result that the insurer does not recognize a priority dispute within the 90 day timeframe. There are other cases where insurers have addressed the priority issues, but have come to erroneous conclusions about their right to dispute priority. Most troubling from an analysis point of view, however, are those cases where insurers handle claims and do not learn of a potential priority dispute until late in the process.

But this case is none of those circumstances. This is a case where State Farm must have known from the initial report that it was not the highest priority insurer. Its policy was not even in force on the date of the accident. Accordingly, it must have known, without doubt, that there was either a higher priority insurer with an obligation to deal with the accident benefits or that the Motor Vehicle Accident Claims Fund would be responsible for dealing with the accident benefits. There should have been no doubt about this from State Farm's point of view.

In fact, I note from review of the file logs at Tab #23 of Exhibit #3 that almost every file note has the comment "priority: policy not in force" at the top of the file note. At least in the documentary record, the knowledge of the non-priority status was known continuously from the outset of the claim.

This puts the fact pattern of this case into an unusual subset. It is a case where the insurer knows that it is not the priority insurer and the only task which remains for the insurer is to identify the appropriate insurer to engage. In this respect, the case is much different than those other cases where an insurer fails to notice a priority dispute but where an insurer is misled as to facts which might cause it to suspect a priority dispute. In this case, State Farm knew the facts which would disclose a priority dispute, and those facts were capable of only one conclusion, i.e. non-priority, and State Farm clearly documented its knowledge of that position.

The steps which it took at the outset of the claim were entirely appropriate. It spoke with the claimant and found out that he had the police report. He had in his possession the name and address of the third party. This would be a critical first step in directing the claim to the higher priority insurer. It followed up very quickly with a formal demand for this information. It pointed out to the insured why it needed this information and pointed out the legal obligation to provide the information. It pointed out the 10 day deadline.

Where things seem to have gotten off track was at the next stage. It didn't receive the police report or the information which it had formally requested. It was due at the end of November but it didn't receive it. In all of December State Farm seems to have taken no steps to follow up for this information in any way. In most of January, it did nothing until the latter half of January when it simply started over again making its request that it had already made two months before. I don't doubt that the file handlers had many other things to attend to with respect to this claim. There is ample indication of various claims being submitted and evaluated. Various forms were being exchanged and various benefits were being funded throughout this period. However, for whatever reason, State Farm seems to have lost sight of this priority dispute for a critical interval of about 6 weeks and then, when it refocused on it, it seems likely that it failed to recognize that the 90 day period would expire near the end of January, 2009. The inquiries that

it made in the latter part of January, 2009 do not convey any sense of urgency such as might be inferred from the activities on February 17, 2009.

As I have previously observed, the test set out in subsections 3(1) and 3(2) of Ontario Regulation 283/95 do not stand completely independently. It is convenient to review first whether or not the insurer, State Farm, conducted the reasonable investigations necessary to determine if another insurer was liable within the 90 day period. Thereafter, I should consider if 90 days was not a sufficient period of time to make a determination that another insurer or insurers was liable under the Act. I consider there to be significant overlap between these two provisions.

An abundance of case law, referred to by counsel, confirms that this is a test of reasonableness to be applied in every case. The standard of claims handling is not a standard of perfection. It accomplishes nothing to hypothesize some theoretical line of investigation or inquiry that, if made at the right time and to the right person, would have revealed the necessary information for the priority dispute. In the abstract, such an analysis is completely impractical and meaningless. What we need to understand is whether or not the insurer made the reasonable investigations necessary to determine if another insurer was liable within the 90 day period, and whether or not the insurer, acting reasonably, did not have sufficient time within the 90 days to make the determination about the other insurer's liability.

Looking at the test set out by subsection 3(2)(b) first, I see considerable difficulty with respect to State Farm's position. My view of its actions and the reasonableness of its actions is greatly coloured by the fact that it knew or must have known that it did not have priority in this case, and that it had that knowledge right from the outset. It was not a case where the very existence of a priority dispute remained to be uncovered during the course of claims handling. The certainty of a priority dispute was obvious from the outset. This must be taken into account in looking at State Farm's behaviour as the case unfolded. At the outset, its investigation was very diligent. On November 17, 2008, a new claim was assigned to a new adjuster and that adjuster immediately established contact with the claimant and immediately made the pointed and precise inquiries that would, if answered, have closed the loop on the priority dispute. The claimant was asked whether he had a copy of the police report and replied in the affirmative. He was asked if the information about the third party was available and again replied in the affirmative.

State Farm went further and immediately followed up in writing with a request for that information. It copied that request to the claimant's lawyer, albeit imperfectly, without much reference information to help the claimant's lawyer identify the file within his office. State Farm pointed out to the claimant his obligations to provide the requested information. It pointed out the Regulation provisions which would result in termination of benefits. State Farm unambiguously outlined the 10 day deadline for responding to the information request.

In this respect, State Farm's claims handling was faultless.

For reasons that are not evident from record before me, State Farm did not follow up for this information until the latter part of January, 2009. When it followed up in January of 2009, it did so without the requisite degree of urgency that would have been expected in view of the imminent expiry of the 90 day notice period. I conclude, based on the record, that the claims file handlers did not recognize that the 90 day period had started on October 31, 2008 and instead were operating under the assumption that the 90 day period started on November 17, 2008.

Aside from not following up with the claimant or the claimant's representative in December, 2008 or earlier in January, 2009, and aside from not applying more urgency to the inquiries made in the latter part of January, 2009, State Farm also did not independently obtain the police report in this matter. It is suggested that it was open to State Farm to obtain the police report and it would have obtained the necessary information, independently of any cooperation of the claimant or legal counsel, to identify and put on notice the higher priority insurers.

State Farm's position is that it might not have been able to obtain the police report. At the time, the only information it had about the accident was that it had occurred on September 3, 2008. In fact, we now know that the police report indicates that the accident occurred on September 4, 2008. Additionally, State Farm did not know the name of the other driver or the owner of the other vehicle involved in the accident. Accordingly, State Farm proceeded on the assumption that it would not have been able to obtain the police report with the limited information that was available to it. I am not quite sure about that assertion. But I do see that the claimant was ultimately able to get the police report and to provide it to State Farm. Whatever information the claimant had within his power and control was sufficient to obtain the police report. And whatever information was in the claimant's power and control was available to State Farm by pursuing the line of inquiry which it started pursuant to section 33 of the SABS. So in the end, it does not really matter whether State Farm applied for the police report directly itself, or whether it pursued the claimant for the additional information. The fact of the matter is that State Farm had recognized the priority dispute, recognized the need for very specific information to pursue the priority dispute, and made requests for that information from the SABS' claimant. State Farm had it within its power to know that its information request had not been met and had it within its power to pursue further efforts to obtain this information. Indeed, if State Farm had taken the steps on December 15, 2008 which it took in the latter part of January, 2009, then it appears that it would have comfortably met the 90 day time limit.

I consider it important to acknowledge that it is far too easy for us, remote in time and at a distance from the sometime frenzied activities of the SABS claims departments, to impose too high a standard of conduct on SABS claims handlers. I completely accept the principle that we must be reasonable in our assessments and we need to take into account the numerous pressing demands that are faced by SABS claims handlers in the ordinary course of events. I accept this without question.

Further than that, I note the following extenuating circumstances applicable to this claim:

1. It was a claim made against State Farm with respect to an accident which occurred at a time when it did not even have a policy in force. State Farm's policy came into force a week after the accident.

2. The initial information given to State Farm about the date of the accident was incorrect.

3. The initial information given to State Farm by the insured indicated that he had the additional information which would allow conclusion of the priority dispute, and there was no reason to suspect that that would not be forthcoming directly from the insured.

4. State Farm received an accident benefits claims form and began handling the claim, but was subject to barriers constraining its communication efforts, which barriers were put in place by communications from the claimant's lawyer.

5. There was confusion about whether or not the accident was even reported to the police. The accident benefits claims form indicates both yes and no to that inquiry. That is perhaps now understandable when we see that this accident was indicated to be "FTR" which I take to mean "failed to remain". This would give rise to the inference that one of the parties to the accident reported it to the police and the other did not.

6. The State Farm digital system caused a significant delay between the receipt of claims documents at the company and the receipt of claims documents by the assigned adjusters.

7. The State Farm claims systems apparently caused the claims department to misunderstand the date of receipt of the OCF-1 and thereby may have misunderstood the 90 day period that it was facing.

I have a great deal of sympathy for the efforts of the SABS adjusters who must deal with a system that puts many challenges in their paths. Ontario Regulation 283/95 puts more challenges in their paths than are necessary for the system, but that is the nature of the rules which we are obliged to follow. The notice provision forces claims departments to divert their attention from the good and important work of dealing with the SABS claim to the costly and time consuming work in tracking down priority dispute issues. While this makes little sense from a policy point of view, they are the rules which insurers are required to operate under.

In this case, I find that State Farm knew from the outset that it had a priority dispute that it needed to deal with. Furthermore, it would be readily apparent, and therefore I find that it knew, that the insurer of the vehicle striking the claimant would be a higher ranking insurer to whom priority could be shifted. Furthermore, if there were no higher ranking insurer, the Motor Vehicle Accident Claims Fund would be responsible for payment of the accident benefits. There could have been no doubt from the outset that State Farm was not the highest ranking insurer with respect to accident benefits, and that realization should have guided State Farm's activities with respect to priority. While State Farm's activities with respect to priority were initially quite alive to the issues, somehow its efforts waned at the end of November, 2008. For a period of weeks, notably including the Christmas and New Year's weeks, where manpower shortages and other demands are well recognized, State Farm seems to have been inattentive to the priority dispute. This inattention, given the obvious priority issue and the relatively simple questions in need of answers, was not reasonable in all of the circumstances.

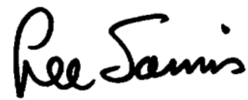
Therefore, I cannot conclude that subsection 3(2)(b) of Ontario Regulation 283/95 has been complied with. The investigations conducted by State Farm could have been more pointed and more timely. If it had been more pointed and more timely, it would have identified the target insurers as it ultimately did on February 17, 2009. It was unreasonable for those inquires to have been delayed as long as they were, and it appears to have been unreasonable for State Farm not to have obtained a police report directly if that option was available to it. On the latter point, I am not satisfied on this record as to whether or not State Farm would have been able to obtain the desired information by requesting a police report, informed only by the limited and partially incorrect information which it had in its possession prior to the expiry of the 90 day time period. However, the absence of any other line of inquiry or any attempt of obtaining a police report appears to me to have been an inadequate course in view of the obvious nature of the priority dispute that it faced.

Conclusion

It is my conclusion that State Farm is not entitled to proceed with the priority dispute in this matter as the Notice of Dispute was not delivered within 90 days of receipt of the completed Application for Benefits, and the circumstances of this case do not exempt State Farm from compliance with the 90 day notice requirements.

Counsel indicated that they expected they would be able to deal with any issues with respect to costs. If there are any matters which you wish me to address further, please contact me within 30 days.

Dated at Toronto this 22nd day of August, 2011.



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Arbitrator