

**IN THE MATTER OF THE *INSURANCE ACT*, R.S.O. 1990 c. I. 8, SECTION 275 and  
ONTARIO REGULATIONS 664 and 668, R.R.O. 1990**

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

**AND IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**OPTIMUM INSURANCE COMPANY INC.**

**Applicant**

**- and -**

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

**Respondent**

**DECISION ON PRELIMINARY ISSUE**

**INTERPRETATION OF THE WORDS "OUTSIDE A CITY, TOWN OR VILLAGE" AS  
CONTAINED IN RULE 17 (2) OF THE FAULT DETERMINATION RULES**

**COUNSEL**

J. Claude Blouin  
Counsel for the Applicant, Optimum Insurance Company Inc.

John D. Withrow  
Counsel for the Respondent, State Farm Mutual Automobile Insurance Company

**ISSUE**

In the context of Rule 17 (2) of the Fault Determination Rules, did the subject motor vehicle accident (which occurred on Highway 401, just west of the Dixon Road interchange and within the geographic boundaries of the City of Toronto) occur "outside a city, town or village"?

**AGREED FACTS**

1. A motor vehicle collision occurred Saturday, April 27, 2002 at approximately 2:45 a.m. on the eastbound portion of Highway 401 just west of the Dixon Road interchange.
2. At the point of the accident, Highway 401 has five eastbound lanes and five westbound lanes of traffic.

3. At the point of the accident, the speed limit on Highway 401 is 100 km/h.
4. The collision occurred within the boundaries of the City of Toronto.
5. The Province of Ontario assumed jurisdiction and control of Highway 401 including the area where the accident happened, on or about July 15, 1966.
6. Frank Broad was operating a 1990 Buick Regal eastbound on Highway 401 when his car ran into the rear of a 1998 Mack Dump Truck operated by Donovan Essue, also facing eastbound on Highway 401 just west of the Dixon Road interchange.
7. Optimum Insurance Company Inc. ("Optimum") is an insurer carrying on business in the Province of Ontario, and was at all material times the insurer of Frank Broad's passenger vehicle, pursuant to an Ontario Standard Automobile Insurance Policy, which includes Statutory Accident Benefits.
8. State Farm Mutual Automobile Insurance Company ("State Farm") is an insurer carrying on business in the Province of Ontario, and was at all material times the insurer of a Model 600 Mack Truck owned by Stanley Weathers and operated by Donovan Essue, pursuant to an Ontario Standard Automobile Insurance Policy, which includes Statutory Accident Benefits.
9. State Farm admits that the Mack Truck being driven by Donovan Essue was a "heavy commercial vehicle" within the meaning of Section 275 of the Insurance Act, R.S.O. 1990, c.1.8 as amended, and Section 9 of Ontario Regulation 664 under the Insurance Act.
10. As a result of the collision, Optimum has paid Statutory Accident Benefits pursuant to the Statutory Accident Benefits Schedule to or on behalf of Frank Broad as a result of the injuries suffered by Frank Broad arising out of the collision.
11. State Farm and Optimum agree that the loss transfer provisions found in Section 275 of the Insurance Act, R.S.O. 1990, c. 1.8 as amended, and Ontario Regulations 664 and 668, made thereunder, apply to this dispute.

## LAW

Rule 17 of the Fault Determination Rules, R.R.O. 1990, Regulation 668 provides that:

- (1) If automobile "A" is parked when it is struck by automobile "B", the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.
- (2) If automobile "A" is illegally parked, stopped or standing when it is struck by automobile "B" and if the incident occurs outside a city, town or village, the driver of automobile "A" is 100% at fault and the driver of automobile "B" is not at fault for the incident.

Rule 3 of the Fault Determination Rules provides that:

The degree of fault of an insured is determined without reference to,

- a) The circumstances in which the incident occurs, including weather conditions, road conditions, visibility or the actions of pedestrians, or
- b) The location on the insured's automobile of the point of contact with any other automobile involved in the incident.

### **ANALYSIS & FINDINGS**

The Applicant Optimum submits that when a highway, under the jurisdiction of the Province, runs through a "city", that it should be considered as having occurred "outside a city, town or village" for the purposes of Rule 17 of the Fault Determination Rules.

The Applicant Optimum takes the position that such an interpretation can be reasonably inferred from the fact that dominion, control and responsibility, as well as ownership of Highway 401 has been assumed by the Province of Ontario and not by a "city, town or village". The Applicant Optimum has set out in its Factum numerous pieces of legislation which confirm that the Province has assumed ownership and control of the roadway where this accident occurred. I have no difficulty in finding that the Province had ownership and control of the subject roadway. In fact, this has been conceded by the Respondent. At the same time, the Applicant Optimum has conceded that the subject roadway is located geographically within the City of Toronto.

The Applicant Optimum further submits that the intention of the drafters of this legislation was to separate out accidents which occur in built-up areas (ie. cities, towns or villages), as opposed to outside of those built-up areas where one can expect the traffic to be moving at higher rates of speed and where one would not expect to see stopped vehicles.

The Respondent State Farm submits that the subject incident did not occur "outside a city, town or village" as defined by Rule 17 (2) of the Fault Determination Rules.

The Respondent State Farm submits that the Applicant Optimum is seeking an interpretation of the words "outside a city, town or village", that is opposite to the English language meaning of the words. The Respondent State Farm submits that if the legislature intended that Rule 17 apply to incidents occurring "outside a city, town or village" and also on "provincially controlled roadways" or "series 400 highways", it would be a simple matter to so express this intention by the use of such words in Rule 17 (2) of the Fault Determination Rules.

The Respondent State Farm also states the arguments advanced by the Applicant Optimum to consider the speed of traffic and the ability of motorists to see stopped vehicles is tantamount to taking into consideration "the circumstances in which the incident occurs". The Respondent State Farm submits that Rule 3 provides that the "circumstances in which the incident occurs" (on a provincial highway, in a built-up area with traffic moving at highway speeds), road conditions (a provincial highway) and visibility (to see stopped vehicles), are prohibited factors in the determination of the "degree of fault of an insured" and are not

proper factors to be referenced in an exercise of statutory interpretation. Rule 3 of the Fault Determination Rules is set out above.

The Respondent State Farm also makes reference to the purpose of the Fault Determination Rules and cites numerous cases:

“The purpose of the legislation under Section 275 of the Insurance Act and companion Regulations is to spread the load among insurers in a gross and somewhat arbitrary fashion, favouring expedition and economy over finite exactitude.

**Jevco Insurance Co. v. York Fire & Casualty Co. (1996) 27 O.R. (3d), 483 (C.A.)**

The scheme of the legislation, under Section 275 of the Insurance Act and companion Regulations, is to provide for an expedient and summary method of reimbursing the first party insurer for payment of no-fault benefits from the second-party insurer whose insured was fully or partially at fault for the accident. The fault of the insured is to be determined strictly in accordance with the Fault Determination Rules, prescribed by Regulation and any determination of fault in litigation between the insured Plaintiff and the alleged tortfeasor is irrelevant.

**Jevco Co. v. Canadian General Insurance Co. [1993], 14 O.R. (3d) 545 at page 547 (C.A.).**

The Fault Determination Rules set out a series of general type accidents and, to facilitate indemnification without the necessity of allocation actual fault, they allocate fault according to the type of a particular accident in a manner that, in most cases, would probably not necessarily correspond with actual fault.

**Jevco Co. v. Halifax Insurance Companies, [1994] O.J. No.3024, page 2 (C.J.).”**

On a review of all of the material and the submissions before me, I find the subject incident did not take place “outside a city, town or village”. I believe the words ought to be given their normal meaning and specifically find that the incident occurred in the City of Toronto. I agree that the purpose of the legislation under Section 275 of the Insurance Act and companion Regulations is to spread the load among insurers in a gross and somewhat arbitrary fashion, favouring expedition and economy over finite exactitude. I am satisfied that if the legislators intended for Section 17 (2) to apply to 400 series highways or provincially controlled roadways within the geographical confines of a city, town or village, then they could have easily done so by making specific reference to them in Rule 17 (2) of the Fault Determination Rules. To suggest that the speed of vehicles and the visibility of their operators are relevant to the fault determination as prescribed by the Fault Determination Rules is contraindicated by Rule 3 of the Fault Determination Rules.

On the basis of the aforesaid, I find that the subject incident did not take place “outside a city, town or village”.

**ORDER**

I order that the costs of the Respondent State Farm with respect to the determination of this preliminary issue be paid on a partial indemnity basis by the Applicant Optimum.

I order that the costs of the Arbitrator with respect to the determination of this preliminary issue be paid by the Applicant Optimum.

DATED at TORONTO this 7<sup>th</sup> )

day of October, 2009. )

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KENNETH J. BIALKOWSKI  
Arbitrator

