CITATION: St. Paul Fire & Marine Insurance Company v. Intact Insurance, 2014 ONSC 6039
COURT FILE NO: CV-14-502433
DATE: 2014117

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	
ST. PAUL FIRE & MARINE INSURANCE COMPANY	*Andrew A. Evangelista*, for the Applicant/Appellant in Appeal
Applicant/Appellant in Appeal	
- and -	
INTACT INSURANCE	*Joseph Lin*, for the Respondent/Respondent in Appeal
Respondent/Respondent in Appeal	
	HEARD: October 10, 2014

WHITAKER J.

[1] The appellant (St. Paul Fire & Marine Insurance Co.) appeals from the award of Arbitrator Scott Densem dated March 21, 2014. The arbitrator was retained jointly by the parties to arbitrate a loss transfer dispute pursuant to the *Insurance* and *Arbitration Acts*.

[2] The dispute arises from a motor vehicle collision that occurred on November 6, 2009. A Mississauga Transit bus insured by St. Paul collided with a GMC cube van insured by the respondent, Intact Insurance.

[3] Eight passengers applied for accident benefits.

[4] Pursuant to the *Insurance Act*, St. Paul was the insurer liable to the eight claimants for the benefits sought. St. Paul was obliged to pay the benefits claimed.

[5] St. Paul sought indemnification from Intact, pursuant to the loss transfer provisions of the *Insurance Act* and *Ontario Regulation 664*.

[6] The parties put an agreed statement of facts before the arbitrator.

[7] Among other things, the parties agreed for purposes of the arbitration, the van was completely responsible for the accident. The van was a heavy commercial vehicle and the bus was not.

[8] Pursuant to a side agreement with the third party City of Mississauga, the City paid the benefits to the 8 passengers on behalf of St. Paul.

[9] The issue before the arbitrator was whether St. Paul can seek loss transfer for benefits paid by the City on behalf of St. Paul.

[10] The parties agree that the standard of review in this appeal is one of correctness. Despite this, considerable deference should be given to arbitrators who hear these matters and are familiar with the scheme of the governing legislation and the underlying policy considerations.

[11] The provisions of the *Insurance Act* and *Regulation* 664 govern loss transfer applications. Most significantly, every contract of vehicle insurance in the province has or is deemed to have such provisions. These provisions set out who is to pay benefits, who has liability and how the process of indemnification works.

[12] St. Paul took the position before the arbitrator that it could pursue indemnification as against Intact – this position reflecting their reading of the provisions of the *Insurance Act*.

[13] The difference between the parties was one of statutory interpretation: Intact saying that indemnification was only possible when there was a loss suffered. In this case, if St. Paul did not suffer loss then it could not seek indemnification.

[14] The appellant correctly describes the appropriate and modern approach to statutory interpretation. The task is one of discerning the common plain language of the terms under construction and in a manner which makes sense in the context of the section of the *Act* or regulations and the legislative scheme in its entirety.

[15] Intact provided authority for its proposition.

The purpose of loss transfer

A number of decisions have commented on the purpose of loss transfer. In the 2003 arbitration decision of *The Co-operators v. Gore Mutual Insurance Company*, Arbitrator Robinson quoted the following passage from an earlier decision of Justice Mandrel:

> The purpose of s. 275(1) is to require all insurers of certain classes of commercial motor vehicles to bear a greater burden to pay accident benefits than the insurers of automobiles ... And the purpose of the

> regulation is to have insurers of heavy vehicles transporting materials indemnify insurers of automobiles for no fault benefits paid by them.

Arbitrator Robinson continued:

> I find that the intention of the Legislation was to spread the cost of accident payments amongst insurers on somewhat arbitrary fashion and by using specific weight of 4,500 kilograms.

In the recent Court of Appeal decision of *Markel Insurance Company of Canada v. ING Insurance Company of Canada*, the Court commented:

> Under s. 268 [of] the *Insurance Act*, insurance companies, known for these purposes as "first party insurers", must pay SABs to their insureds when the insureds are injured in a motor vehicle accident. In certain circumstances, defined by regulation, s. 275 allows a first party insurer to claim indemnification for the SABs paid to its insured from a "second party insurer" that has insured another vehicle involved in the accident. The claim for indemnification is made on the basis of the fault of the second party insurer's insured. This fault-based loss-transfer obligation arises under the regulations when, *inter alia*, the accident involved a heavy commercial vehicle, insured by the second party insurer. The loss transfer scheme was introduced as part of the no-fault SAB regime to achieve an appropriate balance between the insurers of various classes of vehicles in meeting the cost of providing SABs to injured motorists.

[16] The statutory interpretation offered by Intact is more faithful to a plain language construction. The interpretation offered by St. Paul is based on a broad sketch of policy built on the notion that the purpose of the loss preventions provisions is to make available a simple and straight forward scheme for distributing loss in a manner proportionate to the nature of the losses suffered. It is fair to say that this interpretation is not as clearly apparent in the statutory reading proffered by St. Paul.

[17] In my view, both interpretations here can logically and rationally stand for the proposition that this is all about the fair distribution of risk and loss. The position taken by Intact does this while remaining more faithful to the wording of the statute and regulations. For this reason, the Intact analysis should govern and the arbitrator's award is correct.

[18] The parties have agreed on costs. The respondent is entitled to costs inclusive of taxes and disbursements, fixed at $30,000, payable forthwith.

WHITAKER, J.

DATE: October 17, 2014

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SUPERIOR COURT OF JUSTICE

B E T W E E N:

ST. PAUL FIRE & MARINE INSURANCE COMPANY

Plaintiff

- and -

INTACT INSURANCE

Defendant

REASONS FOR DECISION

WHITAKER J.

Released: October 17, 2014