IN THE MATTER OF THE *INSURANCE ACT*,
R.S.O. 1990, c. I. 8, AND REGULATION 283/95 THEREUNDER

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

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

ACE INA INSURANCE

Applicant

- and -

STATE FARM MUTUAL AUTOMOBILE INSURANCE

Respondent

DECISION

COUNSEL

Kevin Adams – Rogers Partners LLP
Counsel for the Applicant, ACE INA Insurance (now Chubb Insurance)
(hereinafter referred to as "ACE INA")

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Counsel for the Respondent, State Farm Mutual Automobile Insurance
(hereinafter referred to as "State Farm")

ISSUES

In the context of a priority dispute pursuant to s.268 of the *Insurance Act*, R.S.O. 1990, c. I.8 and Ontario Regulation 283/95, the issue before me is to determine which insurer stands in priority to pay statutory accident benefits to or on behalf of the claimant Zaheer Shah with respect to personal injuries sustained in a motor vehicle accident which occurred on April 28, 2011.

More particularly the issues before me are:

1. *Was the claimant, Zaheer Shah, an "insured person" as defined in s.3(1) of the Statutory Accident Benefits Schedule (hereinafter "SABS ") in respect of any State Farm Mutual Automobile Insurance Company Policy at the time of the accident on April 28, 2011?*

2. *At the time of the accident, was a vehicle insured by State Farm being made available for the regular use of the claimant, Zaheer Shah by a corporation, unincorporated association, partnership, sole proprietorship or other entity?*

PROCEEDINGS

The matter proceeded on the basis of Factums, Document Briefs, Examination Under Oath transcripts, Books of Authority and the testimony of one Brant Hobbin (insurance agent for State Farm) at an arbitration hearing which took place on May 17, 2017.

PRIORITY DISPUTE LEGISLATION

There are many situations which arise where an individual injured in a motor vehicle accident has access to more than one policy of insurance with respect to payment of statutory accident benefits. Section 268 of the *Insurance Act*, R.S.O. 1990, c.I.8, is a legislative scheme to determine which insurer must pay statutory accident benefits when more than one policy is potentially accessible. If a dispute arises with respect to the application of s.268, commonly known as a priority dispute, then the Dispute Between Insurers Regulation (Ontario Regulation 283/95) sets out the specific details that govern how a dispute is to be processed and provides for an Arbitration with regards to this dispute, to be in accordance with guidelines set out in the *Arbitrations Act*, 1991, S.O. 1991, c.17, as amended.

The hierarchy of priority for a non-occupant of a motor vehicle is set out below:

> *Section 268 (2) – Liability to pay – The following rules apply for determining who is liable to pay statutory accident benefits:*
>
> *2. In respect of non-occupants,*
>
> *i. The non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an*

> *insured.*
> *ii. If recovery is unavailable under subparagraph I, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant.*
> *iii. If recovery is unavailable under subparagraph I or ii, the non-occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose,*
> *iv. If recovery is unavailable under subparagraph i, ii or iii, the non-occupant has recourse against the Motor Vehicle Accident Claims Fund.[emphasis mine]*

If the claimant is found to be a State Farm ”insured”, thereby qualifying under s.268(2)(2)(i), State Farm would stand in priority to ACE INA which would qualify under s.268(2)(2)(ii) as the insurer of the vehicle which struck the non-occupant.

FACTS

As a pedestrian, Zaheer Shah (“the claimant”) was involved in a motor vehicle accident on April 28, 2011, while running westbound on Pine Valley Drive at or near its intersection with Highway 7 in Vaughan, Ontario.

The claimant was struck by a 2010 Dodge Caravan (“the Caravan”) attempting to make a left turn from Pine Valley Drive onto Highway 7 (“the accident”).

The Caravan was owned by Enterprise Rent-A-Car Canada, operated by Anh Tran and insured by ACE INA Insurance (“ACE INA”) under Policy no. CAC 301712.

At the time of the accident, the claimant resided with his family at 199 Westwood Road, Unit #3, Guelph, Ontario (“the Shah household”).

At the time of the accident, State Farm Mutual Automobile Insurance Company (“State Farm”) had issued one or more motor vehicle liability policies of insurance to the claimant and to the claimant’s older brother, Syed Shah (“the State Farm Policyholder”), covering one or more vehicles of the Shah household, as described in further detail below.

Following the accident, an Application for Accident Benefits (OCF-1) was submitted to ACE INA on behalf of the claimant. ACE INA accepted the application and continues to administer the claimant's accident benefits claim.

ACE INA commenced priority dispute proceedings against State Farm with respect to the claimant's accident benefits claim.

State Farm Mutual Automobile Insurance Company Underwriting Procedures

On the basis of the deposed evidence of Laura Bennett (State Farm underwriter), the underwriting procedures of State Farm are set out in the paragraphs to follow.

State Farm policies are placed through Agents on behalf of State Farm.

State Farm policies are issued based on six-month policy periods.

Changes to State Farm policies are made through Agents on behalf of State Farm.

State Farm Policy premiums are determined by State Farm Underwriting.

Factors considered by State Farm Underwriting when determining Policy premiums include the type of vehicle, drivers that are rated on the Policy, age of the driver, territory, where the vehicle is garaged, type of driver's license, license level, driving record, claims history.

State Farm operates a "household" rating system where Policy plans and premiums are based on the driving records of all drivers in the entire household.

A household driver is considered a listed driver on all the State Farm Policies for the household. A listed driver would be someone who has a valid driver's license, and would have exposure to (access to and potential use of) the vehicle or any vehicle in the household insured with State Farm.

State Farm premiums per Policy are based on a household rating, but are further broken down to who the principal driver or a specific assigned driver is to the Policy ("rated driver").

Each vehicle insured with State Farm is given a Policy number. If more than one Policy is issued, the policies are "linked" in the State Farm system. Changes made to one Policy can have an impact on the other household policies.

State Farm Underwriting relies on the Policyholder to tell the State Farm Agent about all drivers who have a driver's license in the household who may drive the vehicles that are insured. State Farm Underwriting does not make any inquiries with regard to household drivers when Offers of Renewal are made.

State Farm Mutual Automobile Insurance Company Policy History

To better understand the policy history, it is important to understand the family make-up:

1. Syed Shah (named insured on all 3 policies and older brother of the claimant);
2. Zaheer Shah (claimant and named insured on policy #3);
3. Ali Shah (other older brother of the claimant);
4. Syeda Shah (sister of the claimant).

Policy #1 - Policy No. 107 2841 60 – Nisssan Maxima

State Farm issued the initial Policy, Policy No. 107 2841 60, to the State Farm Policyholder Syed Shah, older brother of the claimant, effective June 24, 2008, insuring a 2000 Nissan Maxima ("Policy #1").

State Farm issued a total of six Certificates of Automobile Insurance for Policy #1 for policy periods from June 24, 2008 to June 24, 2011 with respect to the 2000 Nissan Maxima, with the subject accident occurring on April 28, 2011.

Effective December 1, 2009, all but comprehensive coverage was suspended for Policy #1 according to the State Farm underwriting file.

Effective January 29, 2010, all coverage was reinstated for Policy #1.

Effective June 9, 2010, all but comprehensive coverage was suspended for Policy #1 according to the State Farm underwriting file.

On June 24, 2010, the policy was renewed. Ali Shah, the claimant's older brother, is listed as the "rated driver". He was assigned to the policy and was the only one generating the premium rate according to the deposed evidence of the State Farm representative.

Effective July 13, 2010, all coverage was reinstated for Policy #1.

Effective August 24, 2010, the claimant was purportedly removed as a listed driver. The circumstances of the removal of the claimant Zaheer Shah as a listed driver on the policy is a major issue in this dispute and is dealt with in great detail in this Decision. The claimant Zaheer Shah had his licence suspended the day before.

The policy was further renewed for the period December 21, 2010 to June 24, 2011. The Certificate listed household drivers as Syed Shah, Syed Ali and Syeda Fatima.

On December 24, 2010, the 2000 Nissan Maxima was involved in a motor vehicle accident and was deemed to be a total loss by State Farm on January 6, 2011 and settlement of the loss claim was paid by State Farm.

It is this 2000 Nissan Maxima that ACE INA claims that the claimant had "regular use" of at the time of his subsequent accident. There was no evidence introduced in this proceeding as to whether the vehicle was repaired after being treated as a total loss.

Effective January 11, 2011, all coverage was suspended for Policy #1. State Farm explained that the suspension of coverage was intended to suspend all coverages on the Policy (as

listed by abbreviations on the Acknowledgment), but State Farm confirmed that the Policy was not cancelled at that time and all coverages could have been reinstated.

The subject accident occurred on April 28, 2011.

The Policy remained in force until, effective December 24, 2011, State Farm advised that Policy #1 was no longer renewable due to “more than one at-fault accident in the past six years”. According to State Farm this effectively cancelled the policy.

Policy #2 - Policy No. 133 3472 60 - 2003 Toyota Sienna

State Farm issued a second Policy, Policy No. 133 3472 60, to the State Farm Policyholder Syed Shah, effective September 30, 2009, initially insuring a 2002 Toyota Sienna and later replaced by a 2003 Toyota Sienna, effective April 1, 2010 (“Policy #2”).

State Farm issued a total of five Certificates of Automobile Insurance for Policy #2 for policy periods from September 30, 2009 to September 30, 2011, with respect to the 2002 and 2003 Toyota Sienna vehicles.

On February 26, 2010, the 2002 Toyota Sienna was involved in a motor vehicle accident.

Effective March 27, 2010, all coverage was suspended for Policy #2.

Effective April 1, 2010, all coverage was reinstated for Policy #2 and the insured vehicle was changed from the 2002 Toyota Sienna to a 2003 Toyota Sienna.

On June 3, 2010, Syeda Fatima (claimant’s sister) was added as a driver to the household.

Effective August 24, 2010, the claimant was purportedly removed as a listed driver.

The policy was further renewed on February 15, 2011 for the policy period March 30, 2011 to September 30, 2011. Zaheer Shah was not listed as a driver on the policy and according to the deposed evidence of the State Farm representative, would not have been taken into consideration when calculating premiums for this policy term.

State Farm Policy #2 remained in force and effect continuously from April 1, 2000 through September 30, 2011, with all coverages in effect.

The subject accident occurred on April 28, 2011.

Effective September 30, 2011, State Farm advised that Policy #2 was no longer renewable due to “more than one at-fault accident in the past six years”. According to State Farm, the policy was cancelled.

Policy #3 - Policy No. 144 8365 60 - 2000 Nissan Altima

State Farm issued a third Policy, Policy No.144 8365 60, to the State Farm Policyholders effective April 20, 2010, insuring a 2000 Nissan Altima (Policy #3).

The claimant, Zaheer Shah, was included as a Policyholder/named insured for Policy #3 (144 8365 60), along with Syed Shah (older brother of the claimant). The total six month premium was estimated at $1,849.58.

State Farm issued a single Certificate of Automobile Insurance for Policy #3 between April 20, 2010 and October 20, 2010 with respect to the 2000 Nissan Altima.

Effective August 5, 2010, State Farm purportedly cancelled Policy #3 for non-payment of premium. A Notice of Cancellation had been sent to Zaheer Shah and Syed Shah, dated July 5, 2010.

ACE INA claims the cancellation was improper and coverage therefore continued through to the date of loss, April 28, 2011 herein.

Claimant Zaheer Shah's involvement with State Farm policies

The claimant, Zaheer Shah, was added as a new household driver at the inception to Policy #3 (144 8365 60) on April 20, 2010, later listed as a household driver for Policy #2 (133 3472 60) and was considered by State Farm to be a listed driver on all the auto policies in the household.

On August 23, 2010, the claimant's driver's license was suspended by the Ministry of Transportation of Ontario ("MTO") for "medical reasons".

The claimant was purportedly removed from State Farm's "Underwriting review" for Policy #1, effective August 24, 2010. State Farm maintains that the request in all likelihood was made by the insured. When the claimant was removed from the underwriting screen, he was deleted by State Farm as household driver on all three household policies as he was no longer a "licenced driver in the household".

State Farm confirmed that the removal of the claimant as a household driver was not communicated by way of any written notice to the named insured or the claimant on the effective date. The only document providing notice of the change was the renewal offer for policy period December 24, 2010 – June 24, 2011, which listed the household drivers on the third page and did not include the claimant.

On March 15, 2011, the claimant's driver's license was reinstated by the MTO and a replacement driver's license was issued on March 16, 2011. State Farm was not made aware of the reinstatement and according to the evidence, would not have made independent inquiries about the status of the claimant's license and expected the claimant to so advise if and when reinstated.

The claimant was never added back onto the State Farm policies as a household driver. State Farm has no information and made no investigations regarding reinstatement of the claimant's driver's license during the policy periods of its Policies. State Farm confirmed that, if the claimant was driving insured vehicles, he should have been considered for premium calculation as a driver on the policies.

State Farm cannot specifically state as to how it became aware of the claimant's unlicensed status or who specifically requested that he be removed as a household driver. Brant Hobbin, State Farm agent, testified that he could not be certain where the information regarding the claimant's license suspension came from. He does not know who specifically directed him to make the change. However, in all likelihood the request to remove the claimant as a driver following his licence suspension came from the named insureds, based on the standard business practices of the agency. If anyone else had provided the information, the electronic transmission would have included notes to State Farm to do a licence search. The agency had no authority to do such searches to determine licence status of an individual. On this basis, the State Farm agent believes the request to remove Zaheer Shah as a listed driver came from the insured.

The employees of the State Farm agency, other than Brant Hobbin, have no specific recollection of the transaction or the insured and have no additional information beyond what is contained in the underwriting documents. The underwriting documentation shows that the agent advised State Farm on August 24, 2010 that the claimant was unlicensed, following which State Farm removed him as a driver on all policies.

"Regular Use" issue

The claimant and his brother, Syed Shah, both worked selling energy products for Summitt Energy.

The claimant and his brother travelled together regularly (up to six days per week), including on the day of the accident, to the pick-up point for their work crew with Summit Energy. There exists an issue as to whether it was the Maxima covered by Policy #1. According to the Applicant ACE INA, the vehicle insured by State Farm Policy #1 (Maxima) was not withdrawn from use, even though totalled in an accident on December 2010, rather it continued to be operated by his brother and himself occasionally up to the date of the accident, even though all coverage was suspended effective January 11, 2011, according to State Farm as reflected in its underwriting file and coverages never reinstated.

The claimant's older brother set-up a company called Syed Bros., which was paid by Summitt Energy for his earnings and occasionally some of the claimant's earnings. His

brother claims to have kept track of the claimant's sales and paid him a portion in cash according to the deposed evidence of the claimant.

The State Farm insured Maxima was rated on the basis that the "ordinary use of vehicle" was stated as "Business or to/and from work over 50km weekly" according to the claimant and as shown on the State Farm records.

The claimant had use of the State Farm insured Maxima, on an as needed basis, approximately two to three times per month according to the claimant's deposed evidence. But as indicated one of the issues being the time frame of such use.

On the day of the accident, a State Farm insured Maxima would have been available for the claimant's use if needed, according to the deposed evidence of the claimant.

ANALYSIS AND FINDINGS

The Applicant ACE INA has taken the position that State Farm ranks higher in priority by reason of S.268(2)(2)(i) than ACE INA pursuant to s.268(2)(2)(ii) on the basis that State Farm policy #3 was improperly cancelled, that policies #1 and 2 were improperly modified to remove the claimant as a driver and/or that the claimant had "regular use" of a vehicle insured by State Farm. The onus would rest with the Applicant ACE INA to prove each one of these assertions.

1. Policy Cancellation - policy #3 – Nissan Altima

ACE INA submits that the State Farm Policy #3 which named the claimant as a Policyholder (named insured) was improperly cancelled for non-payment of premium.

ACE INA submits that State Farm has not proven that the notice of termination of its Policy #3 was properly delivered to the Policyholders personally or by registered mail. Furthermore,

the notice did not give the insured a cash option to pay the balance owing to avoid cancellation. On that basis, the Policy was not properly cancelled.

Ontario Regulation 777/93 which establishes the Statutory Conditions contained in the standard policy of automobile insurance (O.A.P. 1) reads, in part, as follows:

> Termination
>
> 11. (1) Subject to section 12 of the Compulsory Automobile Insurance Act and sections 237 and 238 of the Insurance Act, the insurer may, **by registered mail or personal delivery**, **give to the insured a notice of termination of the contract**. …
>
> (1.2) Subject to subcondition (1.7), if the insurer gives a notice of termination under subcondition (1) for the reason of non-payment of the whole or any part of the premium due under the contract or of any charge under any agreement ancillary to the contract, the notice of termination shall comply with subcondition (1.3) and shall specify a day for the termination of the contract that is no earlier than,
>
> (a) the 30th day after the insurer gives the notice, if the insurer gives the notice by registered mail; or
>
> (b) the 10th day after the insurer gives the notice, if the insurer gives the notice by personal delivery.
>
> (1.3) A notice of termination mentioned in subcondition (1.2) shall,
>
> (a) state the amount due under the contract as at the date of the notice; and
>
> (b) state that the contract will terminate at 12:01 a.m. of the day specified for termination unless the full amount mentioned in clause (a), together with an administration fee not exceeding the amount approved under Part XV of the Act, **payable in cash or by money order or certified cheque payable to the order of the insurer or as the notice otherwise directs**, is delivered to the address in Ontario that the notice specifies, not later than 12:00 noon on the business day before the day specified for termination. …
>
> Notice
>
> 12. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province. **Written notice may be given to the insured named in this contract by letter personally delivered to the insured or by registered mail** addressed to the insured at the insured's latest post office address as notified to the insurer. [emphasis mine]

In *Doran v. RBC* (Arbitrator Matheson - FSCO A13-013090) June 6, 2016, the Arbitrator found that one of the requirements of Statutory Condition 11 for proper cancellation of a motor vehicle liability policy was that the insurer offer a cash payment option. He found:

> "While reviewing the defectiveness of the cancellation letter itself, it is clear, in my view, that the regulations require a cash component to the payment scheme alternative for a possible cancellation of an insurance policy. It is because the consequences of a cancellation can be so severe, all components of Regulation 777/93 section 11(1.3)(b) must be adhered to in the strictest terms."

In *Echelon General Insurance Company v. Her Majesty the Queen*, 2016 ONSC 5019, Justice Matheson found that if a motor vehicle liability policy was not properly cancelled, then it continued in force until the mandatory notice of non-renewal required by s.236 of the *Insurance Act* is delivered by the insurer. Justice Matheson held:

> "The notice obligations required by s.236 make it clear that it is not sufficient to simply rely on the term of the policy itself and termination under ordinary contract law. If that was sufficient, the legislatively-required notice of non-renewal would be unnecessary.
>
> An invalid notice of cancellation does not relieve from this problem. If the policy was not properly cancelled, it was in force and notice of renewal or non-renewal was required.
>
> Section 236 does allow for exceptions under s.236(6). However, s.236(6) does not apply in this case. There is no exception based on the term of the insurance policy in question.
>
> The consequence of a failure to give notice is expressly prescribed by the legislation in s.236(5). The contract is in force until notice is given. Section 236(5) ousts the common law of contract under which an insurance policy may otherwise expire on its own terms. …
>
> The Echelon policy was not effectively canceled. In turn, Echelon had a mandatory obligation to give notice of renewal or non-renewal under s.236(1), and on the agreed facts it did not do so. The Echelon policy therefore remained in force at the time of the accident in question by virtue of s.236(5)."

ACE INA submitted that State Farm improperly cancelled Policy #3 which named the claimant as a Policyholder (named insured) and never delivered a notice of non-renewal for Policy #3, which is mandatory. Therefore, according to ACE INA, the claimant remained

entitled to accident benefits pursuant to State Farm Policy #3 with respect to which he was a Policyholder/named insured.

In response, State Farm claims that proper notice was sent by registered mail. This was supported by the deposed evidence of the State Farm representative and production of the Canadian Registered Mail List date stamped by the post office indicating individual registered letters being sent to both the claimant and his older brother at their Guelph address. The letters according to State Farm were never returned as undelivered. The law is clear as set out in *The Economical Insurance Group v. Wawanesa* (Arbitrator Samis – May 7, 2014), that it is not necessary to show that the letters were received by the insureds, but only that they were sent by registered mail. I am satisfied that the cancellation letters with respect to policy #3 were sent by registered mail, leaving the issue as to whether the letter included the essential elements required by Regulation 777/93 set out aforesaid. Such finding is consistent with the deposed evidence of the claimant that to his knowledge he was not insured by State Farm on the date of loss.

State Farm submitted that its Notice complied with the "essential elements" required by Statutory Condition 11 as set out in Ontario Regulation 777/93. The Notice clearly sets out the amount of $309.01 as the "amount due" before August 5, 2010, the cancellation date; the date on which the termination is to take place: "In accordance with the cancellation provisions, your policy identified in this notice is hereby cancelled effective 12:01 A.M. standard time on the cancellation date specified due to non-payment of the premium."; and that the insured has a right to avoid termination by paying the amount outstanding: "Should you wish to reinstate the policy, please forward your payment immediately. Payment prior to the date and time of cancellation will reinstate your policy." The only potential deficiency in the letter was that it did not state that the amount owing could be paid "in cash or by money order or certified cheque payable to the insurer or as the notice otherwise directs." The Notice of Cancellation states only "please return this portion with your cheque made payable to State Farm". The Notice did not provide the option of paying arrears by cash or money order.

With respect to that issue, State Farm takes the position "the option to pay in cash" was not one of the essential elements cited in the case of *Economical Mutual Insurance Company v. Wawanesa Mutual Insurance Company, Certas, Unifund*, (Arbitrator Bialkowski – February 8, 2011) where the arbitrator stated as follows:

> "I am satisfied that for a letter of termination to be effective, there must be strict compliance to the extent that the "essential elements" of the legislative requirements are contained in the notice letter. I accept the proposition set out in Conway v. Judgment Recovery (N.S.) Ltd., 1990 CarswellNS 262, 111 N.S.R. (2d) 414, that the requirement does not necessarily mean that "every punctuation mark and capitalization in the notice of termination must be correct", but I do believe that the "essential elements" of legislative requirements must be for the termination to be effective.
>
> In my view, the "essential elements" as required by Statutory Condition 11 are as follows:
>
> 1. The amount due, together with any administration fee being sought;
>
> 2. The date on which the termination is to take place; and
>
> 3. That the insured has a right to avoid termination by paying the amount outstanding and the specified administration fee by noon on the day before the date on which the termination is to take place."

Although the "payment method option" was not listed as an essential element in that case, it was only because the method of payment to reinstate was not an issue raised in that proceeding as it has been raised in this proceeding. The "essential elements" listed were those essential and relevant to the issues in that dispute and not meant to be exhaustive for all fact situations. The jurisprudence makes it clear that that the power of cancellation must be strictly exercised. This proposition is supported by the following three decisions:

1. *London & Lancashire Fire Insurance Co. v. Veltre*, (1918), 56 S.C.R. 588, 1918 CarswellOnt 6;
2. *Lumbermens Mutual Casualty Co v. Stone*, [1955] S.C.R. 627, [1955] 4 D.L.R. 167;
3. *Prior v. Dominion of Canada General Ins. Co.*, 2008 CarswellOnt 7241, FSCO Arb., Arbitrator Bayefsky.

In *London & Lancashire Fire Insurance Co. v. Veltre*, (1918), 56 S.C.R. 588, 1918 CarswellOnt 6, the Supreme Court of Canada dealt with the purported cancellation of a fire policy by way of a letter forwarded by registered letter to the insured. At page 9 of the decision, Justice Anglin indicated that the "power of cancellation must, no doubt, be strictly exercised". Justice Brodeur states at page 11 of the decision:

> *"The right which the company possesses to cancel a valid contract is contrary to the ordinary rules affecting contractual relations. If the legislature intended to avoid the necessity of a tender being made personally, they would then have so provided in the clearest of language."*

In *Lumbermens Mutual Casualty Co v. Stone*, [1955] S.C.R. 627, [1955] 4 D.L.R. 167, the Supreme Court of Canada, dealing with the purported cancellation of an automobile policy of insurance, once again indicates that the conditions must be "exactly complied with". Mr. Justice Rand states at page 635 of the decision the following:

> *"No doubt, apart from statutory provisions, if the parties to a contract of insurance for a definite term, the premium for which is paid in advance, choose to do so they may agree that the insurer may cancel the policy and leave the insured without protection although neither the notice of cancellation nor the unearned premium to which he is entitled are received by him and he remains, to the knowledge of the insurer, in ignorance of the fact that the policy has ceased to be in force. But conditions in the contract having such an effect must be exactly complied with by the insurer if it seeks to take advantage of them. If such conditions are ambiguous they will not be construed in favour of the insurer whose words they are. This follows from s.1019 of the Civil Code, which gives statutory force to the maxim verba chartarum fortius accippiuntur contra proferentem."*

In *Prior v. Dominion of Canada General Ins. Co.,* 2008 CarswellOnt 7241, FSCO Arb., Arbitrator Bayefsky, in dealing with the purported cancellation of an automobile policy by way of registered letter, at paragraph 58 states the following:

> *"As is evident from this version of the legislation, and consistent with my finding on the nature of the notice required under the earlier version, termination of a policy can only be effected on the basis of clear and straightforward notice (as to the timing of the termination, the amount due on the policy and the circumstances under which the insured can avoid termination)."*

The circumstances under which the insured could have avoided termination and a choice of payment methods as required by Ontario Regulation 777/93, including cash or money order, ought to have been included in the Notice of Termination. The failure of State Farm to include the various methods of payment required in the Regulations is in my view fatal as per the reasoning of Arbitrator Matheson in *Doran* (supra). Not every insured has a bank account. In all likelihood, it was consumer protection that was the basis for requiring the various methods of payment be set out in the Notice of Cancellation.

The Supreme Court of Canada in *Smith v. Co-operators General Insurance Co*. [2002] 2 SCR 129, deals with the impact of consumer protection in the interpretation of insurance legislation. The Court stated:

> There is no dispute that one of the main objectives of insurance law is consumer protection, particularly in the field of automobile and home insurance. The Court of Appeal was unanimous on this point and the respondent does not contest it. In Insurance Law in Canada 9 (loose-leaf ed.) vol 1, Professor Craig Brown observed, "In one way or another, much of insurance law has an objective the protection of consumers".

This principle was incorporated in the Doran (supra) decision which held that the "methods of payment" were an essential element of any Notice of Cancellation.

This leads to the issue of how long the policy is said to have continued if improperly cancelled. On the basis of Justice Matheson's decision, the policy would exist in perpetuity unless the insured was sent a Notice of Non-renewal as she says was required by s.236 of the *Insurance Act*. State Farm takes the position that such finding is incorrect and the policy would come to an end when the policy term expired. State Farm relies on the Supreme Court of Canada decision in *Patterson v. Gallant* [1994] 3 S.C.R. 1080, which held that "each renewal represents a new contract with its own offer and acceptance". They maintain that for there to be any coverage on April 28, 2011, the date of loss, there would have had to be two further cycles of "offer and acceptance": October 20, 2010 to April 20, 2011 and a further renewal on April 20, 2011 to capture the date of loss.

Unfortunately, Justice Matheson considered *Pattterson* in her decision pointing out that the Supreme Court used the words:

> "In the absence of legislation to the contrary, which did not exist in this case, a lapsed policy does not need to be formally terminated."

Justice Matheson found that s.236 of the *Insurance Act* was "legislation to the contrary". She also referred to two arbitral decisions, *Certas Direct Insurance Company v. Security National Insurance Company* (February 2, 2012) and *The Economical Insurance Group v. Wawanesa Insurance* (May 7, 2014), where the arbitrator relied on *Patterson* with coverages coming to an end when the policy lapsed. It is noted that in both cases, s.236 was not raised or considered.

Was s.236 of the *Insurance Act* designed to be used in situations where an insurer felt they had properly cancelled the policy, or was it designed to be used as a means of not extending coverage beyond the policy period where no purported cancellation had taken place? Would the Notice of Cancellation by registered mail not be enough of a notice to the insured to realize his coverage was coming to an end unless he or she did something? Would a Notice

of Non-renewal not be redundant in the circumstances and particularly here where the claimant deposed that he did not believe he was covered by a State Farm policy at the time of his accident? To think that the individual who received the Notice of Cancellation but no Notice of Non-renewal would have a lifetime of third party coverage while driving any vehicle without paying any premium, is a proposition difficult to accept. Although I do not necessarily agree with the decision of Justice Matheson in *Echelon*, I feel bound by such decision. The facts in *Echelon* were similar to the facts before me. It involved a six month policy that Echelon purportedly cancelled some ten days after issuing the policy. It was cancelled on December 9, 2008. The policy would have lapsed in May 2009. The accident occurred on May 15, 2010, approximately one year after the initial policy term.

I therefore find that the State Farm policy was not cancelled in accordance with the Statutory Conditions and Ontario Regulation 777/93 and on the reasoning of Justice Matheson in *Echelon,* by which I am bound, coverage existed on the date of subject accident.

2. Policy Changes/Modification - policies #1 and #2

ACE INA submitted that the State Farm Policies #1 and #2 which listed the claimant as a household driver were improperly modified (removal of the claimant as a listed driver), with coverage purportedly being reduced without using an approved form, thereby invalidating such modification extending accident benefits coverage to the claimant.

State Farm purportedly removed the claimant as a listed driver on all its motor vehicle liability policies effective August 24, 2010. State Farm maintains that the request was made by the claimant or his older brother, who also was a named insured on all three policies.

Sections 227 of the *Insurance Act* addresses the creation and use of forms for motor vehicle insurance policies. Sections 227 states (in part):

> Approval of forms
>
> 227 (1) An insurer shall not use a form of any of the following documents in respect of automobile insurance unless the form has been approved by the Superintendent:
>
> 1. An application for insurance.

2. A policy, endorsement or renewal.

3. A claims form.

4. A continuation certificate.

In *Jevco v. State Farm* (July 23, 2013 – Bialkowski), the Arbitrator held that any reduction by an insurer in coverage for a motor vehicle liability policy, even at the request of the insured, must be done using a form OCF-16, otherwise coverage for statutory accident benefits continues. The arbitrator described a situation in that case which is remarkably similar to this one:

> "I accept the general proposition that approved forms must be used to modify an existing policy. I am satisfied that Section 227 of the Insurance Act requires all policy endorsements be completed in a form approved by the Superintendent. It is not that Mr. Azizi did not have options available to him. In April 2010, Mr. Azizi had the option of terminating his policy (which cancels all coverage) as contemplated by Section 11(2) of OAP 1 - Ontario Automobile Policy or, in the alternative, execute an OPCF16 - Suspension of Coverage (see Tab 2) which would maintain comprehensive coverage and certain residual coverages.
>
> In any event, I am not satisfied that the form used by State Farm (Acknowledge of Vehicle Withdrawn from Use form – Tab 1) was clear enough on its face to eliminate all coverage, including accident benefits coverage. …
>
> In a situation where an individual removes coverages with respect to the described automobile, there continues in my view to be some residual coverages. The residual liability coverage would arise, for example, if the insured incurred a liability while being the driver of someone else's vehicle. In the circumstance, the insurer of the vehicle would be primary insurer and the driver's own insurer would provide excess protection. Similarly, there would be some coverage for accident benefits, but only when the accident benefits claim did not arise out of the use or operation of the described automobile. This would occur if the claimant was a pedestrian or a passenger in someone else's vehicle, as is the case here."

The Arbitrator's decision in *Jevco* (supra) and two subsequent decisions were endorsed and supported in an appeal decision of Justice Perell in *The Dominion of Canada General Insurance Company v. Optimum Insurance Company*, 2016 ONSC 985. In that case, Justice Perell recognized and confirmed the public policy reasons justifying the use of the OPCF16 form and the continuance of accident benefits coverage if a reduction in coverage is attempted without using the proper form.

ACE INA submits that State Farm's efforts to modify coverage on Policies #1 and #2 were not effective because it failed to use the approved form. As such and according to ACE INA, those policies remained in force with the claimant as a Policyholder and a household (listed) driver until at least December 24, 2011 and September 30, 2011 (after the date of loss) when the respective policies were non-renewed by State Farm.

In response, State Farm submitted that the removal of a driver from a policy is not a transaction that requires use of an approved form. The OPCF 16 is a form used to essentially reduce full policy coverage to comprehensive coverage only. State Farm maintains that this is not the case here. Here we have a driver being removed from the policy on request of the insured by reason of his unlicensed status, while the vehicle remained insured for all the same coverages that existed when the policy was issued. State Farm maintains that it was not a removal of coverage but a removal of a driver at the request of the driver or named insured.

By way of background, it is important to understand State Farm's underwriting procedures as outlined in the deposed evidence of their representative and documents in the underwriting file. State Farm policies are placed through Agents on behalf of State Farm. Changes to State Farm policies are made through Agents on behalf of State Farm. Changes to a policy or any activity on the file is documented by the agent in the Agent's Notes/File. State Farm Underwriting does not see the Agent's ABS Notes. When a change is requested, the agent creates an Echo Policy Transactions document. Changes to a policy (Echo Policy Transactions) are submitted from the agent's office to State Farm Underwriting electronically through Necho – State Farm's computer system that is connected to Underwriting.

The deposed evidence of the State Farm representative indicates that on September 14, 2010, State Farm Underwriting completed a policy change based on the Echo Policy Transactions received from the agent's office. The change was to take place retroactively, effective August 24, 2010. Agents take direction from the named insured. Agents do not make changes on their own initiative. The Agent's Notes contain a corresponding entry to the change requested in the Echo Policy Transactions of August 24, 2010. The entry was created by the same person that created the Echo. No independent investigations would have been done by State Farm or the State Farm agent with regard to the status of Zaheer Shah's driver's licence. State Farm relies on the policyholders to tell their agent who has a licence in their household in order to be added as a driver to the policy and to advise of those no longer licenced to be removed from

the policy. State Farm Underwriting received no requests to add Zaheer Shah back as a driver in the household once his licence was reinstated. If the claimant was operating one of the insured vehicles with a valid licence after he was removed from the underwriting screen, he would be considered by State Farm to be an “undisclosed licensed driver”. This could give rise to coverage issues.

However in fairness, the deposed evidence also was that State Farm was not aware with any certainty of how it became aware of the claimant’s unlicensed status or who requested that he be removed as a household driver. Brant Hobbin, State Farm agent, testified that he could not be certain where the information regarding the claimant’s license suspension came from. He does not know who specifically directed him to make the change. There was no confirming letter of the removal of the claimant as a driver on the policy. The agency has no notes with respect to the transaction. The employees of the agency have no specific recollection of the transaction or the insured and have no additional information beyond what is contained in the underwriting documents. State Farm can only assume that given that agents do not make changes on their own and the timing of the claimant’s licence suspension (the day before the policy change was made), that the change could only have been made at the request of the insured, thereby removing the claimant as a driver of the vehicles. As previously indicated, Brant Hobbin testified that had the information as to the claimant being unlicensed come from someone other than the named insureds, the electronic transmission would have included notes to State Farm to do a licence search. The agency had no authority to do such searches to determine licence status of an individual. Brant Hobbin believed that accordingly, the instruction to remove the claimant as a driver came from the claimant or the other named insured who was his older brother. In an affidavit, the older brother indicated he has no recollection of asking the agent to remove his brother as a listed driver on the policy.

I found Brant Hobbin to be a persuasive witness and most forceful as to his and his agency’s business practices when advised that an insured was no longer a licenced driver. I am satisfied that on the balance of probabilities, the information that the claimant had become unlicensed in August 2010 came from the claimant or older brother given the timing, the day after the claimant lost his licence, the expressed business practices of the agency and Brant Hobbin’s evidence that the Shahs were premium conscious in his various communications with them.

This leaves the issue as to whether State Farm was required to use a form required by s. 227 of the *Insurance Act*. They maintain that no such form is required to remove a driver in the same way that the Statutory Conditions require no notice of any kind where it is the insured that initiates a cancellation of the policy.

ACE INA has referred me to the OPCF-16, OPCF-28, OPCF-28A and OPCF-25A as to approved Ontario Policy Change Forms (OPCF) forms which could have been used to notify the claimant as to the impact of him being removed as a driver from all of the State Farm policies.

In my view, the use of the OPCF-16 is not applicable to the facts of this case. It is a form used when coverage on the vehicle is reduced from full coverage to comprehensive. The transaction of August 24, 2010 was not one involving the reduction of coverage to comprehensive. The OPCF-28 is also inapplicable to the present fact situation. It is a form used, as the name of the form indicates, in “Reducing Coverage for Named Persons”. The wording is clear that it is used to reduce coverages for ”Liability” and “Loss of Damage “. Neither was reduced by the subject transaction of August 24, 2010. The OPCF-28A is the “Excluded Driver Endorsement” which is used to exclude a listed licenced driver from operating the insured automobile while maintaining certain accident benefits when the excluded driver is not operating the insured automobile. This is different than the case here as the claimant had simply lost his status as a “licensed driver” as opposed to being excluded from driving one or both of the insured vehicles on the two policies. An OPCF-25A is a form used to confirm alterations to coverage on a policy. It includes a number of boxes which can be checked off. There is no box for adding or deleting listed drivers. There is a box entitled “other” which ACE INA claims could have been used to confirm the removal of the claimant as a listed driver on the policy. The form requires the signature of the insured where coverage is deleted or reduced. The “insured” on policies #1 and #2 was the claimant’s older brother Syed Shah. State Farm has submitted that the coverages on each of the automobiles insured were never deleted or reduced by the subject transaction which involved the removal of a household member as a listed driver as he was no longer a “licenced” member of the household. Therefore use of an OPCF-25A was not required. As indicated, it was simply a request by the insured to remove a driver and just like an insured cancelling a policy pursuant to the Statutory Conditions, did not require a notice being sent by the insurer. In my view, no approved Endorsement was identified by ACE INA as applying to the facts before me. Unfortunately, no evidence was adduced in this proceeding as

to the industry standard as to forms used, if any, for the simple removal of a listed driver by reason of the listed driver no longer being a “licenced driver”. Similarly, no evidence was adduced by ACE INA as to the OPCF form that they use in such circumstances. No jurisprudence was submitted by ACE INA dealing with the issue as to any requirements imposed on an insurer in providing notice where a driver is removed. On the evidence before me, I find that ACE INA has failed to meet the onus upon it to prove that the two subject policies were improperly modified so as to extend accident benefits coverage to the claimant at the time of the accident. Coverages on the two vehicles did not change. The coverages outlined in the Certificates of Insurance remained identical to those when the policies were issued.

3. Being Made Available for Regular Use

ACE INA submitted that the vehicle insured under State Farm Policy #1 was “being made available for the” claimant’s “regular use” at the time of the accident, either as a driver or as a passenger, and he should be deemed to be a named insured on the State Farm Policy.

ACE INA further submitted that the State Farm insured vehicle was made available for his regular use by a sole proprietorship or joint venture or partnership, Syed Bros. and/or Syed Faraz Shah, for the purpose of engaging in joint commercial activities with his brother.

Section 3(7)(f) of the SABS outlines the following deeming provision:

> (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, or
>
> (ii) the insured automobile is being rented by the individual for a period of more than 30 days

In *ACE INA Insurance v. Co-operators General Insurance Company* 2009 CanLII 13625 (ON S.C.), Justice Belobaba found that the deeming provision requires a point in time analysis, but actual use is not necessary. He stated that the section does not create "a floating charge":

> "It does not confer a portable status that "remains" with the insured – the status is only conferred at, and for, a moment in time, namely the time of the accident. The employer's insurer is liable to pay accident benefits if and only if at the time of the accident a company-insured car was being made available to the employee."

In *Wawanesa v. State Farm* (April 11, 2017 – Arbitrator Bialkowski), the Arbitrator recognized that the application of the deeming provision is not limited to vehicle operators, but may also apply to regular passengers. He held:

> "The jurisprudence confirms that "regular use" does not require that the person for whom the vehicle is being made available, be driving or operating the vehicle."

Similarly, in *Wawanesa v. Royal and SunAlliance* (May 2009 – Arbitrator Jones), the Arbitrator observed that regular use can be relatively infrequent and the deeming provision can apply to regular passengers. He stated:

> "It is to be noted that Justice Morissette upheld the decision of Arbitrator Glass, wherein he found that a delivery driver who made deliveries three to four times per month in a vehicle, was found to have "regular use" of a company vehicle for the purposes of Section 66 (1) (a).
>
> The law is also clear, in my view, that the person in question need not be driving or operating the vehicle. In *Reisner vs. Leia* et al, the Ontario Divisional Court found that an employee situated on the back of a garbage truck who was not operating any of the controls, nonetheless had the truck "furnished for regular use by him"."

In *Wawanesa v. State Farm* (April 11, 2017 – Arbitrator Bialkowski), the Arbitrator further observed, for the deeming provision to apply, the vehicle must be made available by a business entity. He found:

> "I am satisfied on the established jurisprudence that section 3(7)(f) of the Schedule does not apply in circumstances where the insured vehicle was made available to the claimant by an individual, rather than by some sort of business entity."

In *TD v. Pilot* (May 31, 2007 – Arbitrator Torrie), the Arbitrator found that a family vehicle was being made available for the regular use of a nanny and that was sufficient to satisfy the "other entity/business" requirement. He stated:

> "The inclusion of "partnership" and "sole proprietorship" as named entities in the subsection, albeit entities with commercial objectives, suggests that as few as one or two people can form a qualifying entity."

In *Security National Insurance Company v. Markel Insurance Company*, 2012 ONCA 683, the Ontario Court of Appeal upheld the decision of Justice Perell, finding that a sole proprietorship (which is not a legal entity) satisfied the "other entity" requirement for the purpose of s.3(7)(f) of the SABS (formerly s.66). Justice Perell also found that a joint venture satisfied the "other entity" requirement, which finding was not addressed by the appeal court.

ACE INA submitted that s.3(7)(f) should apply and the claimant should be deemed to be a named insured of the State Farm Policy #1, at the time of the accident.

In response, State Farm took the position that the claimant did not have regular use of the Nissan Maxima at the time of the accident and that if he did, it was not provided by "a corporation, unincorporated association, partnership, sole proprietorship or other entity" as required for the deemed named insured provision to apply.

Dealing firstly with whether the claimant was a regular user of the subject vehicle, State Farm indicates that the vehicle was totalled in a motor vehicle accident on December 24, 2010. Coverage was suspended on January 11, 2011 and never re-instated. In the circumstance, State Farm maintains that the vehicle was therefore not being used at the time of the

accident and that any deposed evidence as to use dealt with the time frame before the vehicle was totalled and all insurance coverages suspended. The claimant deposed as to his use of the vehicle insured under policy #1, both to get to the work pick-up point and some personal use, but the questions were phrased “before the accident”. I have no difficulty accepting that the vehicle was used by the claimant in the manner described by him before it was totalled, but question whether that use involving the subject vehicle ever returned. There was no evidence that the vehicle had been repaired or evidence that insurance was placed on the vehicle somewhere else. There is but a single question in the transcript of the claimant with respect to use at the time of the accident:

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Q. Okay, so at the time of the accident was it the Nissan Maxima that he was driving?

A. Yes, my brother.

Otherwise the deposed evidence as to when the vehicle was being used is most confusing. Balancing the totality of the evidence on this issue, I am not satisfied that the Maxima had been repaired after being declared a total write off a few months before the accident and back in use. There exists sufficient confusion in the deposed evidence of the claimant on this point to conclude that the Applicant has not met the burden of proof upon it to prove that the Maxima was back on the road and being available to be used by the claimant, either as a driver or passenger, at the time of the accident on April 28, 2011.

Now dealing with the issue of whether the vehicle was provided by a business entity so as to meet the requirements of s.3(7)(f) of the SABS, State Farm has highlighted the following evidence from the deposed evidence of the claimant. The claimant and his brother, Syed Shah, worked together selling energy products for Summitt Energy. The claimant was self-employed. The work involved going door to door to peoples’ houses to make a sale. The claimant was paid for his sales by Summit Energy by cheque made payable to him directly. Sometimes, Summit Energy would include the claimant’s earnings in a cheque issued to the claimant’s brother’s company called Syed Bros., as the two were living together. The claimant was never employed by Syed Bros.. He has never been paid by Syed Bros.. There was no intention for the claimant to take part in Syed Bros.. The claimant had no knowledge as to whether or not his brother kept track of the claimant’s sales, unlike stated in para. 54 of

the Applicant's Submissions. The claimant explained that when his earnings were put on his brother's cheque, his brother would just give him a portion in cash that he needed for his day-to-day spending and the rest would go to the claimant's mother to pay for the household bills, etc. as they were all living together. The claimant and his brother were picked up by Mohamed Aslim and taken in his van to the different city areas where they would be dropped off. Mr. Aslim decided on the area and where to drop the crew off. Mr. Aslim drove a van and dropped people off to go do the sales. The Nissan Maxima was never used by the claimant or his brother for the purpose of doing sales. The Nissan Maxima was used by Syed Shah to drive himself and the claimant to the meeting point where they would then be picked up by Mr. Aslim. According to the claimant, after he got his licence back, his brother allowed him to drive the Nissan Maxima "sometimes", 2-3 times per month. The claimant has never taken the car without asking for permission first.

On the basis of this evidence, State Farm took the position that the vehicle was not provided by "a corporation, unincorporated association, partnership, sole proprietorship or other entity" as required for the deemed named insured provision to apply. On the available evidence, I am not satisfied that the Maxima, when being used before it was totalled or thereafter, was provided by "a corporation, unincorporated association, partnership, sole proprietorship or other entity" as required for the deemed named insured provision to apply.

I find that the Nissan Maxima, at a time when it was being provided, was not provided to the claimant by Syed Bros., but by the named insured Syed Shah as an individual. Further, I find that it was not used by Syed Bros. in connection with any business or commercial activity. According to the evidence, this was Syed Shah's personal vehicle. He merely used it at some time before the accident to drive himself and the claimant to the pick-up point (the Food Basics plaza) from where the crew was then picked up by Mr. Aslim. The Nissan was never used in connection with the sales activities for Summit Energy. The vehicle remained parked at the Food Basics plaza for the day until they were dropped off by Mr. Aslim at the end of the work day. It was not the vehicle used for the door-to-door sales. Most importantly, the vehicle was not registered to the business of Syed Bros.. The name Syed Bros. appears nowhere on the Certificate of Insurance or State Farm's underwriting file. The only connection with a business use is that the Certificate of Insurance shows for ordinary use of the vehicle "business or to and from work over 50 km weekly" [emphasis mine]. This to me is insufficient to prove that the vehicle was being used in the business in the face of the available evidence.

On the evidence I am satisfied that the relationship between Zaheer Shah and Syed Shah was not a commercial or business relationship. Zaheer Shah had no involvement in the Syed Bros. company. He was never employed by Syed Bros.. There was no contractual or business arrangement between the brothers. The mere fact that Summitt occasionally issued an occasional cheque to Syed Bros., which was then divided between the claimant and his brother, is insufficient to satisfy the requirements of s.3(7)(f) of the SABS. In my view, It was a relationship of two brothers helping each other out.

In *Liberty Mutual Insurance Company v. Markel Insurance Company of Canada* (Arbitrator Jones – July 2006) the arbitrator wrote:

> "Section 66(1)(a) [the identically worded predecessor section to s.3(7)(f) of the Schedule] was designed, in my view, to capture the risk when a business organization is a named insured. In order for an individual to be a "other entity", for the purposes of s.66(1)(a) the individual must be operating, in essence as a business. Based on my findings of facts in this case, the relationship between Mr. Senthilnathan and Mr. Kumaravel was not a commercial or business relationship. It was simply two close friends helping each other out."

Here it was simply two brothers helping each other out. The two of them were not running a business together. They were each self-employed selling energy products for commission.

In *Wawanesa v. State Farm* (Arbitrator Bialkowski – April 11, 2017) observed for the deeming provision to apply, the vehicle must be made available by a business entity. He found:

> "I am satisfied on the established jurisprudence that section 3(7)(f) of the Schedule does not apply in circumstances where the insured vehicle was made available to the claimant by an individual, rather than by some sort of business entity."

The evidence before me falls short of establishing that when the Maxima was being used, it was being provided by a business entity. In my view, it was merely a personal vehicle being used, before it was totalled a few months before the subject accident, to get to the pick-up point during the week and clearly personal use at other times.

For the reasons outlined, the Applicant ACE INA has failed to satisfy the onus upon it to satisfy the deeming provisions of s.3(7)(f) of the SABS.

CONCLUSION

The State Farm policy was not cancelled in accordance with the Statutory Conditions and Ontario Regulation 777/93 and on the reasoning of Justice Matheson in *Echelon (supra),* coverage existed with respect to policy #3 on the date of subject accident by reason of State Farm's failure to provide Notice of Non-renewal to its insureds. As a result, State Farm is the priority insurer.

ORDER

I hereby order that:

1. State Farm is the priority insurer.

2. State Farm is to assume responsibility for the payment of statutory accident benefits to or on behalf of the claimant Zafeer Shah and to reimburse ACE INA for those benefits, which are subject to reimbursement, paid to or on behalf of Zafeer Shah, together with interest calculated in accordance with the *Courts of Justice Act*.

3. State Farm is to pay the costs of ACE INA of this arbitration on a partial indemnity basis.

4. State Farm is to pay the costs of the arbitrator.

DATED at TORONTO this 24th)

day of May, 2017.)

KENNETH J. BIALKOWSKI
Arbitrator