IN THE MATTER of the *Insurance Act*, R.S.O. 1990, c.I.8 Section 268 and Regulation 283/95;

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

AND IN THE MATTER of an Arbitration

BETWEEN:

LANARK MUTUAL INSURANCE COMPANY

Applicant

AND;

NORDIC INSURANCE COMPANY OF CANADA

Respondent

DECISION

COUNSEL:

Crystal A. Schultz for the Applicant

Marni E. Miller for the Respondent

ISSUE:

The Parties have disputed their respective liability pursuant to Section 268 of the *Insurance Act*, R.S.O. 1990, c. I.8, to pay statutory benefits (benefits) to Shawn Wright as a result of injuries he sustained in a motor vehicle collision that occurred on February 10th, 2008. In order to determine which of the parties were liable to pay those benefits, the following issues were submitted for resolution:

1. Lanark Mutual Insurance Company (Lanark) seeks a declaration that it complied with the provisions of Section 3 of Regulation 283/95 of the *Insurance Act* R.S.O. 1990, c.I.8 in serving Nordic Insurance Company of Canada (Nordic) with a Notice of Dispute Between Insurers and is therefore

entitled to proceed with an arbitration to determine whether Nordic was in priority to Lanark in accordance with Section 268 of the *Insurance Act* and therefore liable to pay benefits to Shawn Wright.

The central question to be determined on this issue is whether 90 days was not sufficient time for Lanark to have made a determination that Nordic was liable to pay benefits to Shawn Wright and that Lanark made reasonable investigations to determine within that 90 day period if another Insurer was liable to pay those benefits.

2. If the answer to issue #1 is in Lanark's favour, Lanark also seeks a declaration that Nordic is in priority to Lanark and is therefore obligated to reimburse Lanark for any benefits paid to or on behalf of Shawn Wright and is further obligated to pay for any future benefits to which Shawn Wright may be entitled.

RESULT:

1. Ninety days was a sufficient time in which to determine there was another insurance company that might be liable to pay benefits and Lanark failed to make reasonable investigations to determine if another insurer was liable within the 90 day period. Consequently, Lanark is not entitled to dispute its obligation to pay benefits under Section 268 of the Insurance Act.

2. The Applicant shall pay to the Respondent its costs of the Arbitration on a partial indemnity basis.

HEARING:

The Arbitration was held in Ottawa, Ontario, on January 5th, 2010, before me, Brian Parnega, pursuant to the provisions of Regulation 283/95 of the *Insurance Act* R.S.O. 1990, c.I.8, the Arbitration Act, 1991 and an Arbitration Agreement (See APPENDIX A) executed by both parties.

EVIDENCE:

On the Arbitration, the Parties submitted the documentation set out in APPENDIX B and in accordance with an agreement between the parties, the Applicant submitted the Affidavit of Roxanne Vaillancourt as her evidence in examination in chief and Ms. Vaillancourt was cross-examined by Counsel for the Respondent. The Respondent did not call any viva voce evidence.

After a careful review of the documents submitted by the parties and of the evidence of Roxanne Vaillancourt, I find the following facts:

a) Shawn Wright (Shawn) was involved in a motor vehicle accident (MVA) on February 10th, 2008 (all dates referred to herein are in 2008 unless otherwise specified). At the time of the MVA, Shawn was operating a vehicle owned by his father, Lawrence Wright (Lawrence) and insured by the Applicant, Lanark

b) On February 12th, Lanark interviewed Lawrence by telephone who advised that Shawn was still in the hospital and that Shawn did not have his own policy of insurance.

c) On February 13th, Lanark retained the services of CGI Adjusters Inc. (CGI to obtain a statement from Shawn and to investigate the priority issue. Roxanne Vaillancourt (Vaillancourt) was the adjuster who took carriage of the file on behalf of CGI and therefore, on behalf of Lanark.

d) Vaillancourt testified that she has been an accident benefit adjuster since 1996 and handled only accident benefit claims. She also testified that she would have had free reign in dealing with a "full handle" file as opposed to a "specific task" file. This was a full handle file.

e) At the time of the MVA, Lawrence lived in the Kingston area and Shawn lived in Toronto. As a result, on February 14th, Vaillancourt enlisted the assistance of CGI's office in Markham in order, among other things, to obtain a statement from Shawn to investigate the issue of priority and any other information the adjuster may have felt relevant.

f) On the same day, February 14th, Vaillancourt wrote to the police force that investigated the MVA to request a copy of their report and to obtain Shawn's driver's license number which would aid in her investigation of the priority issue. She also called Shawn that day on the telephone but she was unable to state whether, during that conversation, she asked him if he had an insurance policy.

g) The CGI adjuster assigned to the file in Markham was Garfield Adamson (Adamson), who referred to himself alternately in correspondence as a Senior Accident Benefit Specialist and as a Senior Claims Adjuster.

h) A law firm communicated with Vaillancourt on February 14th, stating that they had been retained to represent Shawn in respect of the accident and requested that CGI not contact Shawn directly.

i) On February 25th, Adamson sent, by mail, an application for benefits to Shawn. That correspondence indicated that "...any benefits available to you through another plan are primary. All claims should be submitted to that Insurer first; unpaid balances may be submitted here for consideration." It was also indicated that any information requested by the Insurer was "required within 10 business days" of the request.

j) On February 29th, Adamson advised Vaillancourt that he had scheduled an appointment with Shawn to take a statement on February 28th, but that Shawn had cancelled that appointment and Adamson was attempting to reschedule.

k) On March 12th, the Markham office of CGI received a completed application for benefits on Shawn's behalf. That application indicated that Shawn was not covered under his own policy of insurance but was covered under his father's policy.

l) March 12th is therefore the commencement of the 90 day period referred to in Regulation 283/95. By my calculation, the 90 day period ended on June 10th.

m) On March 19th, Vaillancourt wrote to Shawn with a copy to his Counsel, advising that she still required a statement from him and that he was to contact Adamson for that purpose. No time deadline was mentioned in her letter. It was also stated that if the taking of a statement was not possible, Lanark would require Shawn to undergo an "Examination under Oath" in accordance with the Statutory Accident Benefits Schedule.

n) On the same date, March 19th, Vaillancourt also corresponded with Adamson and again requested that he obtain a statement from Shawn through his Counsel. She also advised that Shawn's driver's license number was needed "ASAP" so that priority could be investigated and that the "clock was ticking now", presumably a reference to the fact that Adamson had received a completed application for benefits within the meaning of the Regulation and that the 90 day time period had commenced.

o) On March 25th, Vaillancourt wrote to Shawn's Counsel requesting that Shawn's driver's license be produced so that an insurance search could be done in order to determine priority of payment.

p) On April 2nd, Adamson met with Shawn and Nancy Gaetano, a law clerk with his Counsel's office and obtained an unsigned statement from Shawn in which he stated that he owned an ATV at the time of the MVA and that he did not know who the insurer was. A signed statement was received on April 9th containing the same information as the unsigned version regarding Shawn's vehicle and insurance. Adamson did not call or write to Vaillancourt to advise her of these developments on either date.

q) On April 10th, Vaillancourt telephoned Adamson to ask whether he had obtained a statement. She was told that a statement had been taken and she was provided with Shawn's driver's license number. Adamson did not tell Vaillancourt at that time that Shawn owned an ATV but did not know the identity of his insurer. Similarly, Vaillancourt did not ask that the statement be read to her or immediately be sent to her.

r) The same day, April 10th, Vaillancourt, using Shawn's driver's license number, had an Autoplus search done which revealed that Shawn had been insured with Primmum Insurance Company, that the recorded dates of such insurance were between September 2002 and September 2004 and that the vehicle insured was an ATV.

s) Although the Autoplus search also revealed that "previous inquiries" were made of Belair Direct/Nordic Ins. in 2007, Vaillancourt did not think to make an inquiry of Nordic to see if Shawn had insurance coverage with them. When cross-examined on this point, she thought that she may have needed Shawn's consent to make that inquiry but agreed that asking for verification of coverage was different than simply asking if a particular person was covered. In any event, no inquiry was made of Shawn or of his Counsel or of that Insurer, whether he was or had been covered by Belair Direct/Nordic Insurance.

t) Vaillancourt concluded that Shawn did not have insurance after September 2004.

u) The information contained in the statement on April 2nd, and confirmed on April 9th, was mailed by Adamson to Vaillancourt in a

letter dated April 25th but was not received in Vaillancourt's office until May 5th and not seen by Vaillancourt until May 15th.

v) Vaillancourt testified that company reports were usually sent by Insurance Courier and were received within 2 to 3 days. She conceded that she did not ask Adamson to fax Shawn's statement to her but relied on CGI employees to get her important information as soon as possible. No explanation was given as to why the report dated April 25th was not received until May 5th.

w) Vaillancourt did not read Shawn's statement until May 15th. When asked to explain that delay she stated that she was busy and that she had 80 – 90 open files but did concede that this was likely the only file she had with a priority issue and that she knew of the importance of the 90 day time period. She also testified that she had assumed that there would have been no information of assistance in the Shawn's statement.

x) Vaillancourt testified that she assumed that Lanark had the priority on Shawn's claim because she had been told that there was no other insurance and because the Autoplus search produced negative results.

y) When Vaillancourt reviewed Shawn's statement on May 15th, she noted that Shawn owned an ATV "which may carry insurance" despite the information received through the Autoplus search. That same day she wrote to Shawn and to his Counsel advising that: i) she had now reviewed Shawn's statement; ii) because she was conducting a priority investigation she needed the insurance information on the ATV; iii) he or they should contact her at their earliest convenience so they can put Shawn's insurer on notice on the priority issue and; iv) to contact her even if Shawn had no insurance, "so that the matter might be put to rest".

z) Having received no response from either Shawn or his Counsel, Vaillancourt telephoned Shawn's Counsel and left a voicemail message. That was done on May 28th.

aa) On June 4th, Vaillancourt spoke with Shawn by telephone. Shawn had called to say that he was now aware that a claim was being made against him arising out of the same MVA. Vaillancourt's notes of the conversation do not reveal any mention of an inquiry about his insurance policy or the priority issue or the time constraints involved.

Vaillancourt conceded that if there was no mention of those topics in her notes, she likely did not ask those questions.

bb) Also on June 4th, Shawn's Counsel's office called to advise that the insurance information regarding the ATV was "at the cottage". Vaillancourt has no note of this conversation and did not call either Shawn or Lawrence to ask where the cottage was located or, I note, to request that he immediately provide the identify the Insurer, given that the 90 day period was quickly coming to an end.

cc) On June 13th, Vaillancourt received a fax from Shawn's Counsel advising that Nordic was the insurer of the ATV and providing the Nordic policy number. This was 29 days after she read Shawn's statement and sent out her letter on May 15th.

dd) On June 16th, approximately one week after the end of the 90 day period, Vaillancourt reviewed Counsel's fax of June 13th and immediately sent a Notice to Applicant of Dispute Between Insurers.

ee) Lanark concedes that its Notice was served on Nordic outside of the 90 day period.

THE LAW

Section 3 of Regulation 283/95 of the *Insurance Act*, R.S.O. 1990, C. I.8 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. O. Reg. 283/95, s. 3 (1).
>
> (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. O. Reg. 283/95, s. 3 (3)

ANALYSIS

The case law establishes several principles among which are those that follow.

Regulation 283/95 of the *Insurance Act* sets out in precise and specific terms a scheme for the resolution of disputes between insurers. Insurers are entitled to assume and rely on the requirement for compliance with those provisions. Insurers subject to this Regulation are sophisticated litigants who deal with these disputes on a daily basis. The scheme applies to a specific type of dispute involving a limited number of parties who find themselves regularly involved in disputes with each other. In this context, clarity and certainty of application are of primary concern. Insurers need to make appropriate decisions with respect to conducting investigation, establishing reserves and maintaining records. Given this regulatory setting, there is little room for creative interpretations or for carving out judicial exceptions designed to deal with the equities of particular cases.

Kingsway General Insurance Co. v. West Wawanoosh Insurance, (2002) O.J. No 528 (C.A.)

The onus on the insurer seeking to give notice after the ninety day period is to establish that the period of ninety days was not sufficient time to make a determination that another insurer was liable and that it made reasonable investigations within the ninety day period to determine if another insurer was liable.

Ontario Municipal Insurance Exchange v. Liberty Mutual Insurance Company (October 10, 2000, Arbitrator G. Jones) (*OMEX*)

Liberty Mutual Insurance Company v. Zurich Insurance Co. 88 O.R. (3d) 629

The conclusion that an insurer undertook reasonable investigations and did not make a determination within 90 days does not mean by itself that 90 days was not a sufficient time nor does a conclusion that 90 days was not sufficient time for a determination relieve an insurer from showing that it made reasonable investigations.

Liberty v. Zurich, supra.

Section 3(2) of the Regulation is to operate strictly, because an insurer is entitled to know at an early stage that it will be managing and be responsible for the payment of benefits and Section 3(2) is designed to immediately engage the provision of benefits for the insured and to encourage the insurer who is providing the benefits to promptly exercise due diligence to make a determination whether another insurer should be responsible to pay:

Liberty Mutual. v. Zurich Insurance Co., supra
Canadian General Insurance Co. v. Axa Insurance Co.(1996) 1996 Carswell 821
State Farm Mutual Automobile Insurance Co. v. Ontario (Minister of Finance) (2001), 53 O.R. (3d) 436
Kingsway General v. West Wawanoosh, supra
Primmum Insurance Co. v. Aviva Insurance Co. supra
Guardian Insurance Co. v. Wawanesa Mutual Insurance Co. (Malach,k August 5, 1999)
Axa Insurance Co. v. Cooperators Insurance Co. (Rudolph, May 1, 2000

Section 3(2) requires a reasonable investigation, not perfection.

OMEX, supra.

Because of the criteria of a "reasonable investigation", the facts of each individual case must be examined.

Ontario (Minister of Finance) v. Cooperators General Insurance Co. (2002) CarswellOnt 4400, 62 O.R. (3d) 755

Many factors must be taken into consideration including the cooperation provided by the various parties concerned and the accuracy of the information provided.

State Farm v. Lloyd's, TTC and Economical Mutual (January 16, 2002, Arbitrator Guy Jones)

The cooperation or non-cooperation of the accident victim or the insured and any advertent or inadvertent misrepresentation of information are relevant but not in themselves determinative of whether the insurer had sufficient time.

Primmum Insurance Co. v. Aviva Insurance Co. of Canada, 2005 CarswellOnt 1463
Liberty v. Zurich, supra.

An Insurer may have greater difficulty meeting the onus of justifying an extension when it did not employ obvious or readily available means that had a reasonable likelihood of finding the information it needed, even when the insurer satisfies the onus of showing that it made reasonable inquiries.

Liberty, supra.

Lanark has admitted that it did not serve its Notice of Dispute within the 90 day period and therefore must rely upon Section 3 (2) of the Regulation in order to be able to dispute its obligation to pay benefits under Section 268 of the *Insurance Act*.

SECTION 3 (2)(a)

Section 3 (2)(a) of the Regulation requires an Insurer seeking to give a Notice of Dispute after the 90 day period demonstrate that 90 days was not a sufficient period of time in which to determine another Insurer was liable under Section 268 of the *Insurance Act*.

The evidence in this matter shows that once Lanark, in the person of Vaillancourt, had the important information from Shawn's statement, (namely that Shawn owned an ATV at the time of the MVA and that it was likely insured) she was able to obtain the identity of "another insurer" in less than 30 days. That important information was obtained by Adamson on April 2nd, within 21 days of the receipt of the application for benefits on March 12th.

In other words, had the important information been acted upon promptly, it would appear that the 90 day period was sufficient for Lanark to make the necessary determination pursuant to the Regulation. The late delivery of the Notice occurred because the information referred to above, and received on April 2nd, was not acted upon until May 15th, a period of 43 days or approximately 6 weeks.

Lanark therefore has the onus of establishing in these circumstances that the 90 day period was not sufficient to make the required determination. In the facts of this case, it is also relevant to ask whether

Lanark was misled by the initial information it received from Lawrence and Shawn and later from the Autoplus Search to the extent that it could not make its determination in the required time period.

In this case, the initial information received by Lanark indicated that Shawn had no insurance of his own, which could suggest that the insurance policy on his father's vehicle (which he was operating at the time of his injury) namely Lanark's own policy, was the only applicable insurance policy.

That suggestion was strengthened by the information contained in the application for benefits submitted by Shawn on March 12th.

Notwithstanding that Lanark may have been misled by the representations of Lawrence and Shawn, it continued to investigate the priority issue as seen in Vaillancourt's letter of March 19th to Shawn, in which she again asked for Shawn to give a statement, failing which he would have to submit to an "Examination under Oath", and in her email to Adamson of the same date, confirming that priority was still an issue and that the "clock was now ticking". If, in fact, Lanark was misled at this point, and that is not at all clear, it would appear to have been only temporarily misled as Vaillancourt continued with her priority investigation.

On April 2nd, Adamson obtained the important information from Shawn referred to above. As of that date, Adamson knew that priority was an issue and that the 90 day period had begun on March 12th, the day he received Shawn's completed application for benefits and he now had facts that clearly indicated there was another policy of insurance. This was 21 days after the commencement of the 90 day period.

Adamson did not testify and the only evidence adduced from him was by way of production of various pieces of correspondence which he authored. No explanation was given as to why Adamson, a senior claims adjuster and a senior accident benefit specialist, either on April 2nd, April 9th (when he received Shawn's signed statement) or on April 10th (when Vaillancourt telephoned him to inquire as to whether or not a statement had been received), did not:

a) immediately advise Vaillancourt of the information in Shawn's statement;
b) do an Autoplus search himself; or
c) make an effort to obtain, either from Shawn or his Counsel, the identity of the Insurer of the ATV.

The evidence suggests that when Vaillancourt learned of the important information, she acted upon it promptly: when she received Shawn's driver's license number, she immediately had an Autoplus Search done; when she read Shawn's statement and learned of the likelihood of another policy of insurance, she immediately wrote to him to obtain his insurance particulars.

If Adamson had passed on the information from Shawn's statement obtained on April 2nd in a prompt manner, I conclude that it is likely that Vaillancourt would have acted promptly and would likely have then sent out a letter as she did on May 15th, requesting the particulars of Shawn's insurance policy. She may also have considered as significant the information in her Autoplus Search, namely the information that inquiries had been made of an Insurer, Nordic, possibly as recent as several months prior to this MVA and that the vehicle referred to in the search was an ATV, which could reasonably have prompted her to investigate further.

In the circumstances, those would have been reasonable investigations for her to make.

It is instructive to note that, as already stated, once Vaillancourt made the inquiry about the ATV policy on May 15th, it took less than 30 days for Nordic's policy to be confirmed. Had that been done on April 2nd or 9th or 10th, or within a reasonable time thereafter, the determination of the existence of another policy of insurance would likely have been made within the 90 day period.

While Lanark was only six days late in serving its Notice, cases decided under this Regulation stipulate that its' time period is to operate strictly because an insurer is entitled to know at an early stage that it will be managing and be responsible for the payment of benefits and Section 3(2) is designed to immediately engage the provision of benefits for the insured and to encourage the insurer who is providing the benefits to promptly exercise due diligence to make a determination whether another insurer should be responsible to pay.

The Ontario Court of Appeal in *Kingsway*, supra, stated that in this regulatory setting where Insurers are sophisticated litigants who deal with these disputes routinely, there is little room for creative interpretations or for carving out judicial exceptions to deal with the equities of a particular case.

I therefore conclude in all of these circumstances that 90 days was a sufficient time in which to make the necessary determination under Section 3 (2) (a) of Regulation 283/95. Put another way, I conclude from the evidence

that Lanark has not met the onus of satisfying the requirements of Section 3 (2)(a) of the Regulation that 90 days was not sufficient time within which to determine that another Insurer was liable under Section 268 of the *Insurance Act*.

SECTION 3 (2)(b)

The central issue in this matter, in my view, is whether, pursuant to Section 3 (2)(b) of the Regulation, Lanark made reasonable investigations necessary to determine if another insurer was liable within the 90 day period. In my view, such reasonable investigations were not made and in coming to that conclusion, what was not done is equally, if not more, important that what was done.

The decisions in priority cases pursuant to that Regulation and a plain reading of the Regulation itself, indicate that an Insurer does not have to know conclusively that there is coverage under another policy before it delivers a Notice of Dispute, only that there may be another insurer that provides coverage.

As Arbitrator Guy Jones observed in *State Farm v. Lloyd's* supra: "The Insurer receiving the application does not have to wait until another insurer concedes coverage before it serves a Notice of Dispute. It is sufficient if it has a reasonable belief that another Insurer may be liable." Put another way, as Arbitratror, Stephen Malach stated in *ING Halifax Insurance Company v. Liberty Mutual Insurance Company* (January 2 2002),: "Simply, the Regulation requires that an insurer make 'reasonable investigations' necessary to determine if another is liable. If there is a suspicion about other coverage, that must be thoroughly checked out." I would add that any such suspicion ought to be "a reasonable suspicion".

While Adamson did not promptly advise Vaillancourt of the information from Shawn's statement, it is also true that Vaillancourt did not share the information from the Autoplus search with Adamson. If there had been a mutual sharing of information, both of these experienced adjusters would have known in early April that:

i) Shawn owned an ATV at the time of the MVA;
ii) That he had an insurance policy but did not recall the identity of his insurer;
iii) That the Autoplus search showed he had coverage with Primmum between September of 2002 and September of 2004;

iv) That inquiries had been made of Nordic as recently as 2007; and
v) That his insurance coverage was on an ATV.

Clearly, those facts indicate the existence of another Insurer and therefore it would have been reasonable to further investigate the potential coverage of Shawn's ATV with those insurers, with Shawn and with his Counsel. That was not done until the legislated time period of 90 days was almost at an end and when an answer would not likely have been obtained within the required time period.

As was said in *Liberty Mutual v. Zurich Insurance Co.*

> *"it seems obvious that an insurer may have greater difficulty meeting the onus of justifying an extension when it did not employ obvious or readily available means that had a reasonable likelihood of finding information it needed, even when an insurer satisfies the onus of showing that it made reasonable inquiries."*

Here, Lanark had the information that Shawn owned an ATV at the time of the MVA, that he likely had his own policy of insurance along with the identity of several possible insurance companies but it made no attempt to follow up on that information until it was too late. When a follow up investigation was finally done, Nordic was identified in less than 30 days.

Looking at Lanark's investigation as a whole, there does not appear to be a recognition of any urgency in their investigation, notwithstanding the relatively short time period of 90 days set out in the Regulation.

In attempting to explain any delay on her part, Vaillancourt testified that during the currency of this investigation, she had 80 to 90 files. While it is not doubted that she had a busy workload, it was her evidence that this was likely the only file she had with a priority issue and she acknowledged that she knew of the importance of the 90 day time period.

Nordic submitted, and I agree, that CGI, and therefore, Lanark, did not address the issue of the 90 day time period. The only reference in that regard is found in the email of March 19th, from Vaillancourt to Adamson where she stated "we have the clock ticking now" with no mention of any urgency thereafter. At no point was that time period or deadline mentioned, let alone emphasized, in any of the communications between CGI and Shawn. It is therefore difficult for Lanark to have a valid complaint about a lack of cooperation on the part of Shawn or the law clerk handling his file.

While Vaillancourt may have been misled by the Autoplus Search, no explanation was offered why Adamson did nothing with the important information in Shawn's statement and why he did not follow up with further investigation or promptly advise Vaillancourt of it as he could have done in a number of ways. It was open to him to send that information by fax or by email or to mention it in their telephone conversation of April 10th, rather than mailing her a copy of the statement several weeks later, which mail did not reach her office for a further ten days and which she did not read for another ten days.

Furthermore, there was no explanation as to why there was no mention of the time constraints or of the issue of the identity of the Insurer in the June 4th conversation between Vaillancourt and Shawn when her deadline was only days away. Those would certainly have been reasonable inquiries to make.

What is required by the Regulation, is a reasonable investigation, not a perfect one and while several reasonable investigative steps had been taken initially, nothing was done with the information in Shawn's statement for approximately six weeks. The failure to address the time issue suggests that reasonable investigations were not made within the necessary time period.

The Regulation requires that reasonable investigations *"necessary to determine if another insurer was liable within the 90-day period"* be made. In my view, the investigations made in this case were not reasonable because they were not made in a timely fashion.

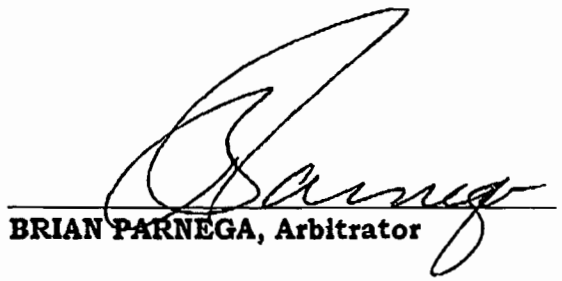
For the reasons given, I conclude that Lanark has not met the onus of establishing that they made the required reasonable investigations pursuant to Section 3 (2)(b) and accordingly, is not entitled to dispute its obligation to pay benefits under Section 68 of the Insurance Act.

COSTS

If the parties are unable to agree on the matter of costs, Counsel may provide me with written submissions: Counsel for the Applicant's submissions to be due within fourteen days from the delivery of this decision and submissions of Counsel for the Respondent shall be due seven days

thereafter. If these time lines are not suitable, I would ask Counsel to so advise.

Dated at Ottawa, this 25th day of February, 2010.



BRIAN PARNEGA, Arbitrator

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APPENDIX A

(Arbitration Agreement)

APPENDIX B

ON BEHALF OF THE APPLICANT:

1. ARBITRATION SUBMISSION;
2. APPLICANT'S CLAIM;
3. STATEMENT OF FACTS OF THE APPLICANT;
4. ARBITRATION BRIEF;
5. AFFIDAVIT OF ROXANNE VAILLANCOURT;
6. STATEMENT OF LAW OF THE APPLICANT

ON BEHALF OF THE RESPONDENT:

1. CLAIM OF THE RESPONDENT;
2. STATEMENT OF FACTS;
3. FACTUM OF THE RESPONDENT;
4. BOOK OF AUTHORITIES OF THE RESPONDENT

IN THE MATTER of the *Insurance Act*, R.S.O. 1990, c.I.8 Section 268 and Regulation 283/95;

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

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AND:

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Respondent

ARBITRATION DECISION

BRIAN PARNEGA, Arbitrator

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