

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KINGSWAY GENERAL INSURANCE COMPANY

Appellant

- and -

ZURICH INSURANCE COMPANY

Respondent

**ENDORSEMENT**

Decision of Justice Aston on appeal from the decision of Mr. Kenneth Bialkowski acting as Private Arbitrator on consent of the parties:

June 12, 2009

Standard of review is correctness; Lombard Canada v. Royal and SunAlliance Insur [ance] 2008 Can LII67898.

The arbitrator characterized the accident as a three vehicle collision, or expressed another way as a single incident involving 2 collisions. As a consequence he held The Fault Determination Rules suggested by Kingsway to apply are inapplicable (middle para. pg 6).

Though the issue before the arbitrator was which of two parties ought to bear the loss, I am of the view the arbitrator was correct in his conclusion. Section 275 of The Insurance Act and the Fault Determination Rules only come into play because of the State Farm vehicle, the 3<sup>rd</sup> vehicle.

Rules 10 and 12 of the Fault Determination Rules only apply to collisions between two vehicles, not three vehicle collisions. Though the collisions here occurred in sequence, not simultaneously, the arbitrator was not dealing with two separate applications under s.275, just one. There is no jurisdiction to discretely use s.275 for the “first” collision between the

snowplow and the transport truck, the two commercial vehicles. The arbitrator was therefore correct in his determination that only Rule 5 of the Fault Determination Rules was relevant, and in resorting to the ordinary rules of negligence. The Appeal is therefore dismissed with costs fixed at \$2000, all inclusive.

“Aston J.”