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

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

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

AVIVA CANADA INC.

Applicant

- and –

MOTOR VEHICLE ACCIDENT CLAIMS FUND and INTACT INSURANCE COMPANY

Respondents

AWARD

Counsel:

Natalie Rosenthal and Kevin So

Counsel for the Applicant, Aviva Canada Inc ("Aviva")

Jason Goodman and Faiza Ikram

Counsel for the Respondent, Intact Insurance Company ("Intact")

ISSUES:

This matter has a lengthy and somewhat convoluted history. Most of the history is not particularly relevant for purposes of the issues to be decided by me. The claimant, Nowell L., was involved in a motor vehicle accident on March 17, 2017. He made application for statutory accident benefits to Aviva on June 13, 2017. Aviva initiated this priority dispute at some point prior to September 24, 2018, as I wrote to counsel then involved in the matter confirming the initial pre-arbitration teleconference on November 26, 2018. At that time, I convened what was essentially a preliminary pre-arbitration teleconference involving Aviva and the Motor Vehicle Accident Claims Fund [since

removed from these proceedings on consent of the parties] and we discussed ways and means to require Intact to participate in the proceeding. Eventually, Intact appointed counsel and this matter has proceeded to a hearing before me. The parties have consented an extension of the two-year time limit under s. 8 of O. Reg. 283/95 to complete the arbitration.

The parties agreed to proceed by way of written submissions. Intact has conceded priority. **The issue to be decided by me is whether Aviva is precluded from securing reimbursement of some or all benefits paid to the claimant prior to Aviva's receipt of the signed and approved WSIB assignment form**. For the purposes of deciding this issue, it is agreed that Intact has the onus or burden of proof. Consequently, Intact delivered its submissions first, followed by Aviva, with Intact delivering reply submissions. This process was agreed between the parties in the course of one of several pre-arbitration teleconferences. The only exhibit to the proceeding is my arbitration agreement, signed in counterpart by Mr. Goodman on January 7, 2021, and by Ms. Rosenthal's predecessor, Mr. Baker, on May 3, 2022.

I reviewed the application for accident benefits (OCF-1) attached to the factum delivered by Intact. In Part 3, the question "did the accident occur while you were at work?" is not answered. The question "Did you file a claim with the Workplace Safety and Insurance Board?" was answered in the affirmative.

The claimant's description of the accident in the application for accident benefits makes it far from clear that WSIA benefits were or are available to him. It reads, "smoking in parking lot, car reversed at high speed, flew back and hit a back wall". Did the accident occur during the hours of work? Was the claimant in the course of his workday, or was he smoking before or after work or during a lunch break? Who was driving the other vehicle? Was the driver a worker of a Schedule 1 employer in the course of his employment? None of this evidence has been tendered before me.

The assignment of Workplace Safety and Insurance Benefits was signed by the claimant on March 29, 2021, by the insurance company representative for Aviva on March 26, 2021, and consented to and approved by the WSIB on October 25, 2021.

Intact directs me to the Aviva adjuster log notes. In March 2018, efforts were made to obtain the claimant's WSIB file. There are two adjuster log note entries which mention efforts to obtain the claimant's WSIB file. These are very brief and passing references. The focus of the log notes relates to the evaluation and adjustment of claims for benefits. Intact submits that Aviva was aware of the potential WSIB issue and that the delay in obtaining and receiving a signed and approved WSIB assignment form some four years after the accident is unreasonable.

Two thoughts come to mind which will be expanded upon in these reasons. The first is "no harm, no foul". The evidence adduced at this hearing falls short of demonstrating any prejudice suffered on the part of Intact by reason of the delay in relation to the assignment form. There is no evidence that on the assumption that the WSIAT determines that the claimant is entitled to WSIB benefits, the amount that will be paid or payable is affected in any way by reason of the timing in relation to the assignment form.

The second is "those who seek equity must do equity". It would appear from the log notes that Intact was put on notice in relation to this priority dispute on August 10, 2017. Intact did not accept priority until September 30, 2021. Certainly, Intact was entitled to investigate the priority issue and conduct its due diligence. Intact's delay in accepting priority does not impact on or influence the analysis in relation to Aviva obtaining the assignment form, but the irony of this situation is not lost on me.

The SABS provide as follows:

Workplace Safety and Insurance Act, 1997

> **61.** (1) The insurer is not required to pay benefits described in this Regulation in respect of any insured person who, as a result of an accident, is entitled to receive benefits under the *Workplace Safety and Insurance Act*, 1997 or any other workers' compensation law or plan. O. Reg. 34/10, s. 61 (1).
>
> .....
>
> (5) Despite subsection (1), if there is a dispute about whether subsection (1) applies to a person, the insurer shall pay full benefits to the person under this Regulation pending resolution of the dispute if,
>
> (a) the person makes an assignment to the insurer of any benefits under any workers' compensation law or plan to which he or she is or may become entitled as a result of the accident; and
>
> (b) the administrator or board responsible for the administration of the workers' compensation law or plan approves the assignment. O. Reg. 34/10, s. 61 (5).

There is no temporal requirement in the foregoing provisions. In other words, there is nothing authorizing an insurer to decline to pay benefits or suspend benefits or hold benefits in abeyance, pending satisfaction of the conditions stipulated in section 61 (5) (a) and (b). To do so would seem to offend the consumer protection nature of the statutory accident benefits scheme.

In *Basdeo v. Citadel General Assurance Co.*,2005 CarswellOnt 2720, [2005] O.F.S.C.D. No. 19, there was a complicated and convoluted chronology in relation to the claimant seeking both SABS and WSIA benefits, then electing not to seek WSIA benefits. When the matter came before the arbitrator, the claimant was not receiving workers' compensation benefits. There was a dispute as to whether he was entitled to receive

such benefits. Section 61 (5) [then section 59(5)] was applied and the claimant was entitled to receive benefits under the SABS.

The accident occurred on October 7, 2003. There is reference to the claimant having applied to the WSIA for benefits and having applied to the insurer for benefits under the SABS. The dates are not provided in the reasons and, according to the footnotes to the reasons, it is not entirely clear which of these applications were made first. The arbitrator writes "I do not think that much turns on how or when the two claims were launched." (see footnote 4 to the decision)

In *ING Halifax v. Royal & SunAlliance Insurance Co. of Canada* ("RSA"), 2004 CarswellOnt 2141, [2004] I.L.R. I-4320, [2004] O.J. No. 2187, [2004] O.T.C. 450, 12 C.C.L.I. (4th) 272, 131 A.C.W.S. (3d) 520, RSA did not receive an assignment from the claimant of any entitlement he might have had for benefits arising out of the accident under the WSIA. RSA had made this request, but the claimant had not done so as of the date of the trial.

The accident happened on February 15, 1995. On June 30, 1995, RSA forwarded a notification of loss transfer and requested indemnification. On July 27, 1995, an internal e-mail in ING's offices sought determination as to whether or not the claimant had WSIA entitlement and whether RSA, as the accident benefit carrier, had obtained an assignment or should have and whether or not ING could attach itself to such an assignment.

The specific e-mail communication reads:

> *Determine whether MacMorrine has a WCB entitlement, whether his A/B carrier has obtained a WCB assignment or should have, and whether we can attach ourselves to it. I suspect that if this is the case, we could argue that they must pursue WCB and only come after us for the shortfall, if any. I will look into this point. Please let me know if you have any insight on this point.*

RSA requested loss transfer indemnification on November 15, 1996, and November 1997. On February 10, 1998, ING respondent and inquired whether there were any further claims for indemnification and whether the underlying claim had been settled. The claim was settled on March 30, 1999, as between the claimant and RSA.

RSA's position at trial was that at no time prior to the closure of its file did it realize that the claimant may have been acting in the course of his employment when the motor vehicle accident occurred. On May 16, 2000, RSA received correspondence from counsel for ING enclosing a summons to witness to appear at the WSIAT on May 18, 2000. On April 11, 2001, WSIAT released its decision and concluded that the claimant was a worker at the time of the accident, working for a Schedule 1 employer and was in the course of his employment. As a result, his right to sue was taken away pursuant to what is now section 31 of the WSIA.

This particular action was brought in equity for restitution. The court found that it was no answer to ING's claim to say that the statutory regimes at play in this case preclude equitable relief, based on principles of restitution, monies paid under mistake of fact or unjust enrichment. RSA's lack of knowledge of the claimant's status does not afford it a basis to retain the funds that ING seeks to recover in this action.

Intact Insurance Co. v. Insurance Corp. of British Columbia (Kregar), Re, 2013 CarswellOnt 19136 is a decision of Arbitrator Novick. The accident occurred on August 25, 2005. Both the driver and passenger, being wife and husband, submitted claims for SABS to Intact. Intact asserted a priority claim as against ICBC on the basis that the claimants were occupying the vehicle insured by ICBC at the time. Intact also pursued loss transfer indemnification claims.

As the arbitration was proceeding before the arbitrator, the WSIAT heard the parties' applications for a determination as to whether both the driver and passenger were workers in the course of their employment. Both applications were successful, and it was determined that the driver was entitled to benefits under the WSIA, and that the passenger did not have the right to sue in tort.

When the matter came before the arbitrator, Intact had received certain repayments from the WSIB such that there was a shortfall of approximately $70,000 in relation to the driver and over $1,000,000 in relation to the passenger. Intact looked to ICBC for repayment, either by reason of ICBC being in higher priority, or pursuant to loss transfer indemnification. ICBC took the position that it should not be required to reimburse Intact for the shortfall as Intact did not bring its application to WSIAT in a timely manner.

The arbitrator found the driver and passenger to be named insureds or the spouse of a named insured under the ICBC policy. Thus, ICBC was the higher priority insurer. Intact was entitled to full payment for any shortfall between the benefits it paid, and the amounts received by way of reimbursement from the WSIB.

The passenger's assignment was signed on October 6, 2005 and approved by the WSIB on October 17, 2005. The driver's assignment was signed on November 22, 2005, but was not forwarded to the Board and approved until June 9, 2008, over 2.5 years later.

The WSIAT heard the two applications over two days in the spring of 2009. The Tribunal rendered its decision in December 2009, granting both applications. Counsel for the passenger and driver's estate requested a reconsideration of the Tribunal's decision which was denied in March 2010.

Recent case law in the area has confirmed that the failure on the part of a first insurer to bring a timely section 31 application to WSIAT is not *de facto* proof that payments made to a claimant were unreasonable.

Arbitrator Novick wrote the following at papa. 67:

> [67] *As I stated in the RBC case, any assessment of whether payments made by the first insurer are unreasonable must be conducted with the overall structure of the priority scheme in mind. The priority regulation is designed to clarify questions of priority at the earliest possible stage, which operates to the benefit of both parties involved. It is not desirable for a first insurer to continue making*

claims handling decisions as a complex SABS claim matures, and it is similarly awkward for a priority insurer not to be involved in the ultimate resolution of a claim, as can often occur when the priority determination is not made until late in the process. A first insurer has a statutory obligation to adjust the claim and pay benefits (assuming a nexus exists), but it is not properly their file, and the decision-making should be taken over by the proper insurer who is in priority at the earliest opportunity.

Arbitrator Novick wrote the following at paras. 70-75:

[70] *In any event, the question before me is whether ING's actions (or lack thereof) led to payments being made to the Claimants that were unreasonable, given the likelihood of a shortfall between SABS payments and those recoverable under the WSIA. ICBC's submissions on this point were focused on the information that ING had in its possession regarding Ms. Begin's claim: nothing specific was alleged in relation to ING not having brought a WSIAT application challenging Mr. Kregar's right to collect accident benefits. On the evidence before me, I am therefore not persuaded that ING acted unreasonably with respect to payments it made to Mr. Kregar prior to the WSIAT application having been determined, and I find that ICBC is responsible to pay the full amount of the shortfall between payments made by ING to Mr. Kregar, and the benefits received by WSIB.*

[71] *ICBC's arguments relating to ING's delay in bringing an application to WSIAT regarding Ms. Begin's status seem persuasive when the lens is focused solely on ING's actions or inaction. They lose much of their forcefulness, however, when reviewed in the broader context of what was transpiring with these claims and between these parties during the relevant periods. ICBC advised at a relatively early stage that it intended to bring a WSIAT application in order to determine whether Mr. Kregar was an employee or self-employed. Mr. Wright's letter of February 6, 2006 states this clearly, and essentially invites ING to participate in the process. The reason that that did not take place was never*

made clear. No evidence was provided to explain the "gap" between the statement in this letter and the fact that nothing was done in this regard by ICBC until over two years later.

[72] *Ms. Smith then wrote to Mr. Grossman in April 2008 to suggest that ING bring an application with respect to Ms. Begin and ICBC bring one with regard to Mr. Kregar. It is not clear what exactly transpired between the parties in the aftermath of that letter, but ICBC ultimately initiated its application to WSIAT relating to Mr. Kregar's status in July 2008, some two and one-half years after Mr. Wright's letter, and ING did so with respect to Ms. Begin's status shortly afterwards.*

[73] *While there may be some questions regarding the manner in which ING chose to proceed with respect to Ms. Begin's claim, I am not persuaded that its actions were, in the end, unreasonable. It was clear from early on in this proceeding that ICBC would be mounting an aggressive defence to the allegations of priority (and loss transfer). Once the first procedural issue arose regarding the timeliness of the Notice of Arbitration for Ms. Begin's claim, the parties proceeded along a protracted path of litigation, featuring a court application, cross-examinations on affidavits, and several examinations under oath.*

[74] *I have already commented in my earlier decision (relating to ING's request for costs) on ICBC's position that I lacked jurisdiction to decide whether ING had provided the Begin notice of arbitration in a timely manner, which was entirely without merit. While each party contributed in its own way to the length of the proceeding, in the end it was ICBC's resistance to accepting priority for the claims that led to an arbitration process that spanned more than five years. Against this backdrop, and given the fact that there is no statutory requirement on a first insurer to initiate a WSIAT application, I find that it was not unreasonable for ING to have focused on adjusting the claims and pursuing ICBC for priority, as opposed to pursuing the WSIAT applications.*

> [75] *Consequently, I find that ICBC must repay ING for the full amount of whatever shortfall exists between the benefits it has paid out to Ms. Begin, and what it has received to date from WSIB. I do find, however, that as the reason for the late filing of Ms. Begin's assignment was never explained, ICBC should not be responsible for reimbursing ING for any amounts that WSIB withholds as a result of that delay.*

In *Economical Mutual Insurance Company v. Echelon General Insurance Company* (Arbitrator Philippa Samworth, December 7, 2017), the accident happened on October 26, 2012. The priority dispute was initiated on January 29, 2013 and, on January 13, 2016, Echelon accepted priority. There was a dispute in relation to certain benefits paid which gave rise to the arbitration. The case involved reimbursement of disputed items and what was essentially a question of the standard of care employed by the first party insurer and whether this would impact on recovery from the second party insurer.

Arbitrator Samworth referenced her earlier decision in *Commercial Union v. Boreal,* which was a loss transfer claim, and found that the inquiry and determination in relation to quantum would involve an examination as to whether the primary insurer did not act in bad faith, make payments that were not covered under the SABS in existence at the time of the loss or in general so negligently handled the claim that payments were made greatly in excess of that which the insured would have been entitled had the file been managed by a reasonable claims handler. These are the principles in relation to "reasonableness of the payments" and apply to reimbursement in a priority dispute.

Reference is made to the decision in *Progressive Casualty v. Markel* by Arbitrator Malach. This was a loss transfer claim. He noted that one must assume that the primary insurer will process the claims in good faith. He found that "unless it is established the primary insurer acted in bad faith or grossly mishandled the process of claims for benefits under the SABS, the insurer responsible to indemnify the primary insurer must indemnify the primary insurer for benefits paid to the insured person".

Reference was made to the decision of Arbitrator Lee Samis in the case of *Royal & SunAlliance v Wawanesa Mutual Insurance Company* (decision dated April17, 2012). This was a loss transfer case and there was a dispute primarily with respect to documentary production.

Arbitrator Samis noted that claims handling decisions in cases such as this must be looked at realistically. He noted at page 7:

> *Perfection is unrealistic While informed claims experts will often disagree about claims decisions. The existence of such disagreements surprises no one and is far from sufficient to negate an insurers statutory right to reimbursement.*
>
> *At the other end of the spectrum, claims handling that is so deficient from any standard of due diligence showing an indifference or disregard of ordinary prudent claims handling procedures should not be sanctioned by blindly ordering full reimbursement at the expense of the responding insurer that insurer has had no opportunity for input in the claims handling decisions.*
>
> *Furthermore, a rule that calls for full reimbursement regardless of the reasonableness of claims handling would foster inappropriate claims and would take the necessary balance and counterbalance of the claims process out of play.*

The initial burden of proof is on the first insurer to establish the payments were made. The onus shifts to the new priority insurer to prove on a balance of probabilities that there should be no reimbursement as the claim has been grossly mishandled.

In *Kingsway General Insurance Company v. Zurich Insurance Company* [Arbitrator Lee Samis, April 4, 2011], the motor vehicle accident occurred on August 18, 2006. This was a loss transfer claim. The claimant was the operator of a heavy commercial vehicle insured by Markel. The accident involved another heavy commercial vehicle insured by Zurich. The claimant made claims for benefits to Kingsway which was the claimant's personal automobile policy. Kingsway commenced a priority dispute with Markel on

September 29, 2006. It did not commence a private arbitration within one year of the notice. Kingsway could not pursue the priority claim as against Markel. It turned in another direction and sought indemnification from Zurich by way of loss transfer.

Arbitrator Samis noted that Zurich took the position that Kingsway cannot turn to Zurich for indemnity based on loss transfer, having not effectively pursued a priority dispute against Markel. The question turned on whether Kingsway paid benefits which were not its legal obligation to pay. The first party insurer should not be second guessed as a rule. However, there is a range of improper conduct or payment which ought not to be foisted on the second party insurer. Whether one characterizes the payments as made as a result of negligence, gross negligence or otherwise, it seems entirely logical that there should be a dividing line beyond which indemnity cannot be sought from a second party insurer.

Arbitrator Samis found that this case crossed the line. Kingsway should not have paid benefits. Markel was the higher priority insurer. The mishandling was of a degree that goes beyond a mere error in judgment. The arbitrator did not wish to encourage second guessing of ordinary claims handling decisions, but there was no evidence here that this failure was a claims handling decision. This was an oversight, not a misjudgment, and it was an oversight of significance. This omission amounts to gross mishandling. It constitutes a very marked departure from the expected standard of behavior of an insurer handling a SABS claim.

The arbitrator acknowledged the correct theoretical result if all parties had acted in a manner normally expected. Kingsway would have succeeded in the priority claim against Markel. Markel, as a heavy commercial insurer, would not be able to recover lost transfer indemnification from Zurich. To allow Kingsway to recover against Zurich by reason of Kingsway's error militates against the arbitrator having any sympathy for Kingsway's position in the case.

Arbitrator Novick noted that the WSIB ***may*** withhold reimbursement in the absence of an approved WSIB assignment form. Intact argues that in the event that the WSIAT determines the claimant to be entitled to WSIB benefits, it ***may potentially prejudice*** Intact's right to reimbursement of payments by the WSIB for the period prior to the date the WSIB assignment form was approved. Intact submits that Aviva is not entitled to repayment of benefits paid prior to obtaining an approved WSIB assignment form as it ***opens the question*** as to whether the WSIB would reimburse for the same period. ***This may amount to potentially prejudicing Intact's right to reimbursement for a significant amount of the claim***. (My emphasis added.)

Intact submits that Aviva's handling of the claimant's claim for accident benefits amounted to gross mishandling of the claim. Consequently, Intact should not be required to reimburse Aviva for payments made to the claimant in the absence of an approved WSIB assignment form.

Aviva submits that the legislation and case law as it pertains to reimbursement from the priority insurer strongly suggest that it is not relevant when a filed and approved WSIB assignment form is received so long as no WSIB benefits have been paid.

Aviva relies on the decision of Arbitrator Jones in *Wawanesa v. Hartford*. Arbitrator Jones noted that the claimant did eventually submit an approved WSIB assignment form and that the assignment was, in effect, retroactive. Therefore, the date of the assignment and the approval were of no consequence. Wawanesa satisfied section 59 (5) of the SABS [now section 61 (5)]. As Arbitrator Jones noted, until the time that the assignment was filed and the approval given by the WSIB, no WSIB benefits had been paid. Moreover, a letter from a Legal/Policy Analyst for WSIB contained the following:

> *In a claim where no benefits have been paid by the W.S.I.B. and an Assignment of Workplace Safety and Insurance Benefits form is received and approved by the W.S.I.B at a later date, the W.S.I.B. would divert the appropriate funds to the appropriate insurance company who submitted the approved assignment should*

this claim be allowed. The date of the approved assignment would not impact the effective date of the assignment for reimbursement purposes if no benefits have previously been paid by the W.S.I.B.

Arbitrator Jones noted that the date of the assignment and the approval are of no consequence. The assignment is, in effect, retroactive and has been confirmed as such by the WSIB. Accordingly, there has been compliance and Hartford was required to pay Wawanesa the accident benefits paid out up to the date that Hartford took over carriage of the file.

Section 61 of the SABS does not prohibit an insurer from paying benefits to a claimant prior to receipt of the assignment form. The first insurer to receive a completed application has an obligation to make payments to the claimant, irrespective of any defences that may exist except for those specifically stated in the SABS.

Aviva argues that *ING Halifax v. RSA* is not applicable because the claimant did not ever supply a WSIB assignment form. I n the case before me, Aviva did obtain the assignment form and the matter has yet to be adjudicated before the WSIAT. There is no evidence that the delay in obtaining the assignment form and consent will prejudice Intact's ability to make a recovery from the WSIB. There is no factual or evidentiary basis that these delays have or will impact on Intact's ability to seek recovery from the WSIB. Put another way, there is no evidence that had the assignment and consent been completed within weeks or months of the accident and Aviva's receipt of the completed application for accident benefits that the amount payable by the WSIB would be any different.

In the case before me, there are gaps in the evidence. There is no evidence as to whether what is alleged to be late consent on the part of the WSIB will have any impact on the benefits payable under the WSIA. There is no evidence as to what, if anything, has been paid by the WSIB pursuant to the assignment.

I am not prepared to characterize Aviva's conduct as sufficient to disentitle it to a recovery from Intact. It does not amount to gross mishandling of the claim or bad faith behavior in relation to the insurer ultimately responsible on a priority basis.

As noted by Arbitrator Jones in *Wawanesa v. Hartford*, the date of the assignment and approval were of no consequence, given the WSIB position that it would reimburse a SABS insurer for benefits paid out. The WSIB assignment form was found to be, in effect, retroactive. It did not matter when it was filed and approved so long as no WSIB benefits had previously been paid.

There is no question that at the time Aviva received the application for accident benefits, the claimant was not entitled to receive benefits under WSIA or any other workers compensation law or plan. If I understand the evidence correctly, this remains correct to this time. If there is a dispute in this regard, the insurer is required to pay benefits to the claimant, pending the resolution of the dispute if the claimant makes an assignment and if the WSIB approves the assignment. This occurred [albeit late in the views of and submissions by Intact].

Intact argues in paragraph 6 of its reply submissions, that given the significant delay by Aviva in obtaining a signed and approved WSIB assignment form, it is ***entirely possible*** (my emphasis added) that the WSIB will refuse to reimburse for the period prior to approval of the assignment. This is a valid argument but without any evidence to support the argument.

Intact argues in paragraph 9 of its reply submissions, that there is no reason to assume that the WSIB assignment form will have retroactive effect. This may be true. By the same token, there is no reason to assume that it will not have retroactive effect, particularly since the issue of the claimant's entitlement to WSIA benefits has not been determined nor have any such benefits been paid.

For the reasons outlined, I find that Aviva is not precluded from securing reimbursement of some or all benefits paid to the claimant prior to Aviva's receipt of the signed and approved WSIB assignment form. Consequently, Intact should proceed to satisfy Aviva's claim, subject to any reasonable concern in relation to quantum. I remain seized of this matter to determine the reasonableness of payments and the claim for reimbursement to the extent that parties cannot work things out between them.

I remain seized of this matter as follows. I expect Intact to satisfy Aviva's claim in a timely fashion, subject to the needs of the parties to have me involved to adjudicate on issues of quantum. If the WSIAT rules that the claimant is entitled to WSIB benefits and if the WSIB rules that the timing of Aviva's receipt of the signed and approved WSIB assignment form prevents or precludes the WSIB from paying benefits to Aviva and / or to Intact pursuant to the assignment, I am prepared to resume this proceeding and receive evidence and submissions such that Aviva may be required to make a payment by way of reimbursement to Intact. This hearing will not address the monetary differences, if any, between benefits payable under the SABS as compared to benefits payable under the WSIA. Rather, it will address the payment of WSIB benefits to the extent that this amount is impacted by the timing of Aviva's receipt of the signed and approved WSIB assignment form.

I remain seized of this matter to address any issues in relation to the quantum of reimbursement, interest, if any, and legal costs (taking into account the success of the parties, any offers to settle, the conduct of the proceeding and the principles generally applicable to litigation before the courts of Ontario). I will wait to hear from counsel whether I will be required to address any of the foregoing.

Finally, I am most appreciative of the efforts, expertise, and ability of counsel for their courtesy and cooperation extended to me and to each other from the inception of the arbitration through to its conclusion. I wish to thank counsel for their thoughtful, comprehensive, and intelligent written submissions.

Dated at Toronto, this 17th day of November 2022.

Vance Cooper, Arbitrator