

IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c. I.8, Ontario 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 between:

GORE MUTUAL INSURANCE COMPANY

Applicant

And

FEDERATED INSURANCE COMPANY OF CANADA and

BELAIR DIRECT INSURANCE COMPANY

Respondents

AWARD WITH RESPECT TO PRELIMINARY ISSUE

COUNSEL APPEARING

Arthur Robert Camporese for the Applicant, Gore Mutual Insurance Company (hereinafter referred to as Gore).

Kevin S. Adams for the Respondent, Federated Insurance Company of Canada (hereinafter referred to as Federated).

Erica Lewin for the Respondent, Belair Direct Insurance Company (hereinafter referred to as Belair).

BACKGROUND

This matter comes before me by way of a priority dispute pursuant to s. 268 of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, and Ontario Regulation 283/95. While the broader issue in this arbitration is one of priority, a preliminary issue arose which the parties agreed should be heard before any determination of the actual priority dispute under s. 268 of the *Insurance Act*.

This case arises out of an accident that occurred on June 10, 2023. The accident occurred in Manitoba. The claimant was driving a semi-truck insured by Federated. He pulled the truck over to the shoulder of the road due to mechanical issues and then was struck by a Volkswagen Golf insured by Belair.

Gore insures a Honda Civic under which the claimant is the named insured. However, Gore claims there was no insurable interest at the time of the accident as the vehicle had been sold before the claimant left the province.

Gore therefore put Belair and Federated on notice by way of a Notice to Applicant of Dispute Between Insurers advising that it took the position that either Belair or Federated stood in priority to Gore with respect to the June 10, 2023 accident.

Belair and Federated raise a preliminary issue as to whether or not Gore can proceed with this priority dispute on the basis that it did not provide notice within the required 90 days after Gore received the claimant's OCF-1 contrary to s. 3 of Ontario Regulation 283/95.

Gore takes the position that its notice was issued in time based on when Gore received a "completed application" or alternatively relies on s. 3.1(2) and submit that 90 days was not a sufficient time to make the determination that another insurer may be liable and that they made the necessary investigations within the 90 days.

The preliminary issue that is therefore before me relates to whether or not Gore provided proper notice in accordance with s. 3 of Ontario Regulation 283/95 and/or whether they should be able to access the saving provisions of s. 3(2) of the Regulation.

PROCEEDINGS

This matter proceeded by way of a written hearing together with written submissions, case law and a Joint Document Brief submitted by the parties. The Joint Document Brief contained copies of each insurer's respective policy, information from the WSIB, multiple emails between the parties, various log notes from Gore and documents relating to the investigation conducted by Gore with respect to priority.

The parties also provided a signed Arbitration Agreement dated December 17, 2025. No witnesses were called and no transcripts of any examinations under oath were submitted.

RELEVANT LEGISLATION

While this matter involves a priority dispute under s. 268 of the *Insurance Act*, R.S.O. 1990, c. I.8, the key issue in dispute relates to s. 3 of Ontario Regulation 283/95 pursuant to the *Insurance Act* which is set out below:

"3.1(1) No insurer may dispute its obligation to pay benefits under s. 268 of the Act unless it gives 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.

(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 investigations necessary to determine if another insurer was liable within the 90-day period."

Section 6(1) of the Regulation is also relevant to the facts of this case. It provides:

"The insured person shall provide the insurers with all relevant information needed to determine who is required to pay benefits under section 268 of the Act."

FACTS

This accident occurred on June 10, 2023 on Highway 11 and 54 Road East in Reynolds, Manitoba.

It is alleged that the claimant was operating a 2017 Peterbilt tractor with a trailer attached. The owner was Value Trucks Inc. o/a Value Truck Sales and it was insured by Federated. It is alleged that the claimant worked for Value Trucks and had been hired to deliver the semi-truck from Ontario to Alberta. The semi-truck was plated with dealer plates. The Federated policy is a garage policy bearing number P04056434.

It is alleged that the Peterbilt suffered some mechanical issues and as a result the claimant had pulled the truck over to the shoulder of the road. He had exited the truck in order to attend to it.

A 2008 Volkswagen Golf insured by Belair under policy KK4-5627 (Ontario policy) struck the semi-truck and struck the claimant.

The claimant sustained significant injuries.

By letter dated October 17, 2023, through his counsel Gill, Basi Brar, the Applicant delivered an OCF-1 (Application for Accident Benefits) also dated October 17, 2023 to Gore. The OCF-1, with respect to the details of the accident, stated it had happened on the Ontario-Winnipeg border (Highway 11). With respect to whether the police were involved, the OCF-1 indicated "TBO". The OCF-1 incorrectly identified the accident as having occurred on June 3 rather than June 10, 2023.

The Applicant responded no to whether the accident occurred at work and no on to whether he filed a claim with the Workplace Safety and Insurance Board.

As to how the accident happened, he stated, "I was parked on the side of the highway (highway 11). My truck ran out of gas. I was waiting for the company mechanics to show up. I do not recall the remainder of the accident."

He confirmed that he was applying under his own policy with Gore (policy GA7214638194) and that his employment status at the time of the accident was self-employed since April of 2023 as a truck driver with Value Truck Sales. The OCF-1 noted that he was not covered under any other policy of insurance, including an employer's policy, and that his injuries prevent him working since June 3, 2023.

On October 18, 2023 Gore set up the claim (claim number CL-A000-0004-1165). The adjuster assigned wrote to the claimant and his counsel on that same day, noting that "Our investigation indicates that your accident occurred during the course of your employment and as such, you may be eligible for benefits under the Workplace Safety and Insurance Act."

The letter goes on to request an assignment of the WSIB benefits and advising no payments will be made until the assignment has been received and approved by WSIB. Also, the WSIB election form was requested. These documents were enclosed with the letter together with relevant information.

On October 18, 2023, late in the afternoon, claimant's counsel emailed some records to Gore. These were medical records from Health Sciences Centre - Winnipeg where the claimant was hospitalized.

The relevant information from those documents include the following notes:

1. Unstable pedestrian vs. semi;
2. Brought in by STARS, unstable pedestrian vs. MVC;
3. Pedestrian (patient) vs. semi truck polytrauma.

The assigned adjuster emailed back to counsel for the claimant shortly after receiving the hospital records and asked for "details on the truck the claimant was driving at time of loss? Plate number? VIN?".

Also on October 18, 2023 the Gore adjuster ordered an ISB Autoplus report on the claimant.

The Gore adjuster entered a log note on October 18, 2023 after consultation with the claimants counsel. As to the accident details, she notes: "Vehicle was on side of road due to mechanical issues - claimant was outside of vehicle - struck as pedestrian by TP who was in high speed chase with RCMP - accident occurred in Manitoba." The note goes on to indicate that the claimant was working at the time of loss and WSIB was being investigated. On the issue of the WSIB, the adjuster's note indicates that she discussed WSIB with the counsel and advised she will need an election and assignment despite the fact that his counsel advised he will be pursuing a tort claim.

On October 20, 2023 the Gore adjuster sent a number of emails to counsel for the claimant. The first again asked for information with respect to the vehicle the claimant was driving on the date

of loss: plate, VIN or insurance information as well as confirmation as to where the accident took place. She also asked for confirmation as to whether the date of loss was June 3rd or June 10th.

Claimant's counsel responded the same day, confirming that the date of loss was June 10, 2023.

On October 23, 2023 the Gore adjuster requested a CGI Autoplus Gold report on the claimant to see what other available coverage there may be. This resulted in identifying Aviva as a potential source of coverage but it was later determined that the Aviva policy had been cancelled at the request of the claimant.

On October 24, 2023 claimant's counsel sent an email to the Gore adjuster enclosing an executed Assignment of Workplace and Insurance Benefits. The claimant had signed it on October 19, 2023. He also advised they were continuing to wait for the remainder of the information that Gore had been requesting.

The assignment of workplace safety and insurance benefits included information about the claimant's employer. It indicated he was employed by Value Truck Sales. Their address was 6749 Columbus Road in Mississauga, Ontario. They were in the trucking business. A phone number was provided of 877-371-3049.

On October 25, 2023 the adjuster completed a three-year driver record search for the claimant.

On October 30, 2023 the claimant signed an election with WSIB to claim their benefits.

On October 30, 2023 the Gore adjuster sent a s. 33 request to the claimant and his counsel requesting *inter alia* the following:

1. Details of the vehicle he was operating on the date of loss, including make, model and insurance policy;
2. Province in which the vehicle was registered;
3. To confirm whether the loss occurred in Ontario or Manitoba;
4. Whether or not the vehicle was insured under an Ontario policy;
5. If insured under an Ontario policy, was it being made available for his regular use?; and
6. Whether he was operating the vehicle in the course of his employment.

According to the Gore adjuster's log note of October 31, 2023, at 7:33 a.m. she tried calling the claimant's employer at the number from the WSIB assignment form (877-371-3049). Her note indicates that she left a message and a request for a call back.

By letter dated November 14, 2023 the Gore adjuster wrote to the claimant and his counsel again reminding them of the s. 33 request previously sent on October 30th and noting that that

information was due November 14th. As it had not been received, no benefits were payable.

On November 29, 2023 the Gore adjuster spoke to claimant's counsel who confirmed they do not have a full police report but they were able to confirm that the accident happened in Manitoba and as the other driver was an Ontario resident, they believe they have the right to bring a lawsuit in Ontario. For now, they are proceeding to elect WSIB to see if they will take the claim. The adjuster asked for vehicle details that the claimant was driving and was again told that counsel would get it and forward it on.

On November 30, 2023, after the telephone call, the Gore adjuster received an email from the law firm Lofranco Corriero. The letter indicated that they had been retained by the claimant. The letter advised that on the date of loss that the claimant had been operating a tractor-trailer that had mechanical issues. He pulled it off to the side of the highway and a repair person came to assist him. He was out of the vehicle with the repair person when suddenly another vehicle lost control and struck the claimant and as a result he sustained serious injuries.

The letter included a new OCF-1 signed by the claimant November 30, 2023.

This OCF-1 identified the correct date of loss. Once again, it advised that the accident did not happen while he was at work and that he was not making a claim with the WSIB. It did advise that the investigating police department was "Steinbach-RCMP". It did not indicate he had coverage under any other policy. With respect to work, it indicated he was employed and working for Value Truck Sales/Born 2 Haul and had been since January of 2023 up to the date of loss.

According to the log notes, on December 4, 2023, after having received the new OCF-1, the adjuster contacted prior counsel. She was advised that WSIB had accepted the claim. She asked if they were still representing him and he advised they had not heard otherwise. The adjuster advised about the authorization and direction she had received from Lofranco and prior counsel indicated they would be looking into it.

Also on December 4th the adjuster called Lofranco's office and spoke to Maria. The adjuster asked Maria about the WSIB issue and she did not know anything about that. The adjuster requested a call from counsel handling the file to discuss the claim.

The adjuster also called a representative of WSIB who confirmed that the claimant had elected WSIB. As a result of all these conversations, the adjuster made a log note indicating she would send out correspondence to the claimant advising that no benefits were payable under the Schedule as he had chosen to pursue WSIB benefits. There is no evidence that that letter was or was not sent.

On December 6, 2023 the Gore adjuster's log notes indicate she spoke to Tim at Lofranco's firm and advised him that the claimant had elected to receive WSIB and the appropriate forms had been completed and accordingly no benefits were payable. She provided Tim with the WSIB claim number and case manager information.

On December 6, 2023 under the heading "Investigation", the Gore adjuster noted "There is nothing payable under this claim because he has coverage through WSIB."

On December 13, 2023 the adjuster conducted a 60-day review noting "No updates to provide." She also noted "Claimant was working ATOL - claim has been opened with WSIB ... WSIB applies - no benefits payable as per s. 61(1)."

On December 20, 2023 Gore received the third OCF-1. This came in by letter dated December 12, 2023 from Will Trial Lawyers who advised that they had now been retained by the claimant. Their covering letter also indicated that the claimant had been at the side of his vehicle when he was struck by another vehicle and that this occurred near Steinbach, Manitoba. The letter indicated that the claimant had made an application for WSIB but he had not sought counsel at that time and he was going to be de-electing.

The third OCF-1 is dated December 8, 2023. It confirms that the accident occurred when the claimant was at work and that he had filed a claim with the WSIB. It identified the police department as the RCMP. It confirms that the accident occurred when he was struck by another motor vehicle when he was standing by the side of the road. The name of the investigating officer is given, but not a badge number. The claimant is identified both as a pedestrian and a driver at the time of loss and that he has no recall of the collision.

In terms of his employment, he indicates he is employed and working and self-employed and that his employer on the date of loss was Value Truck Sales and had been since 2023. Some prior employers were also identified from earlier in 2023 and in 2022. He did not report coverage under any other policy.

By letter dated December 20, 2023 the Gore adjuster wrote to the claimant and his new counsel acknowledging receipt of the new OCF-1 and advising no benefits were payable as he was entitled to and had elected to receive WSIB. The letter also indicated that should he elect to receive benefits under the SABS, that there was still outstanding information required which included:

- Insurance and registration details of the vehicle you were operating at the date of loss.

Also on December 20, 2023 under the heading "Investigation" the Gore adjuster noted that she had received correspondence from the claimant's new lawyers and advised that they were going to be de-electing WSIB and opting to receive coverage under the SABS. She also noted that she had received an "email from PC" with details of the accident including "Vehicle operated - 2014 Peterbilt transport truck with trailer - PC contacted employer and waiting on information ... Intention to elect both tort and AB ... Insurance and registration information for the vehicle the claimant was operating ATOL."

On December 21, 2023 the adjuster received a voicemail from WSIB noting the claimant's interest in opting out of the WSIB but advising nothing had happened as yet.

Also on December 21, 2023 the adjuster sent an email to the new claimant's counsel requesting

insurance and registration details of the vehicle the claimant was operating at the time of loss, including a request as to whether there was an Ontario garage automobile policy that might respond. The adjuster notes "I am trying to ensure that I have everything that I could possibly be required to allow us to make a determination on coverage as fast as possible."

On January 3, 2024 claimant's new counsel faxed a letter to the WSIB advising that the claimant wanted to de-elect receipt of WSIB benefits and requesting the appropriate forms to re-elect.

On January 11, 2024 the Gore adjuster emailed claimant's counsel indicating she was following up on the information previously requested with respect to the insurance and registration details of the vehicle the claimant was operating on the date of loss.

By email dated January 17, 2024 to Gore, claimant's counsel provided the signed election form indicating that the claimant was electing to pursue a court action as opposed to WSIB. A re-election agreement was also signed. A request was made to commence payment of benefits at that time. The email also noted that they have forwarded a second request to the owner of the vehicle that the claimant was operating to try to get insurance and registration information but to date they have not responded. He noted that this was a priority issue and not an entitlement issue.

Of note is the fact that if one accepts that the first OCF-1 received by Gore as being a completed application, by the time Gore received counsel's letter of January 17, 2024, the 90-day period had already passed. The 90 days would have been up January 15, 2024.

The Gore log notes indicate that on January 17, 2024 the adjuster, after having received the email with the re-election agreement, called the claimant's employer. They called the same number that had been called previously back in October of 2023, 877-371-3049. Whoever answered the phone advised them that they should call Manny at 416-500-2019. The adjuster called that number and spoke to Manny. He advised:

"The vehicle involved had dealer plates and thinks they were Manitoba plates but he will need to confirm - vehicle was being delivered to Winnipeg - CA asked about garage policy OAP-4 - he will have the person in charge of their insurance forward the details - send email to manpreet@valuetrucksales.ca".

The log note indicates that that same day the adjuster received a further email from counsel for the claimant advising they still do not have the police report as the RCMP is delayed due to volume. They provided the occurrence file number of 2023-817935. The adjuster called RCMP at Steinbach. The number she called was 204-326-4452. She spoke with an operator and advised she was looking for vehicle information for the vehicle the claimant had been operating at the time of the accident. She did not need any other information. The operator advised the adjuster to email rcmp.dsteinbach.grc@rcmp-grc-dc.ca. The adjuster sent such an email. She also sent an email to Manny requesting the relevant information with respect to the Value Truck Sales truck.

The Gore adjuster received an email back from Steinbach RCMP on January 17th, shortly after she had sent them an email. She was given an Ontario plate number of 061DRZ.

On January 18, 2024 the adjuster received an email from Manpreet advising that he had already received a request from the claimant's lawyer and that "his team is putting everything together and sending it to them." The address shown on the email for Manpreet/Value Truck Sales is 6749 Columbus Road, Mississauga, L5T 2J9.

The adjuster responded also on January 18th to Manpreet indicating that the issue was time sensitive and could he please give her the insurance number and policy number in the meantime.

On January 20, 2024 the Gore adjuster obtained the results of an Ontario licence plate search that had been done on the Ontario plate number 061DRZ which indicated that it was registered to Value Trucks Inc. but not attached to a VIN so that a VIN search could not be undertaken.

On January 22, 2024, having not received a response to her email to the employer of January 18th, the Gore adjuster retained counsel and requested he send a letter to the claimant's employer asking for a response. That letter was sent on January 23, 2024. It requested a copy of the vehicle ownership with respect to the vehicle operated by the client at the time of loss, in default of which not having been received in seven days they would be bringing an application.

Gore's counsel sent a follow-up email to the employer the next day on January 24, 2024.

On Sunday, January 28, 2024, an email was sent from the RCMP to the Gore adjuster providing their "file report". This was approximately 18 pages and not a typical police report. This report identified that another individual was driving a Volkswagen that hit the semi that was on the shoulder of the road and also hit the driver of the semi who was fixing the truck. It noted that this vehicle was a Volkswagen Golf 2008 and provided the VIN as well as the Ontario licence plate number CPKE254 and the name of the driver.

Gore's counsel followed up again with Manpreet, the employer, by email January 29, 2024 and Manpreet finally responded on February 1, 2024 providing a copy of the vehicle ownership. The ownership identified Value Trucks Inc. at 6749 Columbus Road in Mississauga as the owner of an unlabeled vehicle. It also provided the VIN which resulted in the Gore adjuster obtaining a CGI VIN claims gold report that same day, which disclosed the existence of a policy with The Nordic Insurance Company of Canada.

Between February 5 and February 7, 2024, the Gore adjuster exchanged emails with an individual from Nordic. Ultimately it was determined that the Nordic policy did not come into force until June 12, 2023, after the accident. Further, the application for insurance had been submitted by Maverick HP Logistics Inc. who had purchased the truck from Value Trucks Inc.

On February 5, 2024 the Gore adjuster conducted a corporate search on Maverick and Value Trucks to see if there was any relationship between the two of them.

Also on February 7th she emailed Manpreet again and asked for the insurance information and

whether there was a garage policy. She also emailed the claimant's counsel asking for similar information. She also emailed the broker for Maverick Logistics.

Later in the day on February 7th the adjuster received an email back from someone at Maverick suggesting that she call Value Truck Sales at 905-670-9192.

On February 8, 2024 the adjuster tried contacting Maverick to see if they had any information about who insured the vehicle on the date of loss. She also undertook a plate search on the trailer that was attached to the vehicle and had been referenced in the RCMP file, but the search indicated the plate was not on file.

Once again, Gore's adjuster asked her counsel to send a letter to the claimant's employer for a response and her counsel sent a letter on February 13, 2024 asking for particulars of the insurance coverage available to Value Trucks Inc. and as well for One Value Limited with respect to the vehicle being operated by the claimant.

On February 20, 2024 the adjuster obtained a CGI Autoplus Gold report on the striking vehicle which disclosed the existence of a policy with Belair.

On February 20, 2024 the Gore adjuster faxed a Notice to Applicant of Dispute Between Insurers to Belair, the insurer of the striking vehicle, as well as to the claimant and counsel.

On February 22, 2024, counsel for Gore sent another email to the employer asking for a copy of the insurance slip for the previous year. This email was responded to on February 26, 2024 when a copy of the insurance slip was provided showing Federated Insurance as providing coverage for Value Trucks Inc. o/a Value Truck Sales with an effective date of February 1, 2023.

On February 26, 2024 Gore faxed the Notice to Applicant of Dispute Between Insurers to Federated as well as to the claimant and his counsel.

On March 21, 2024 Gore executed the Assignment of Workplace Safety and Insurance Benefits and it was signed by the WSIB on March 22, 2024.

By letter dated April 26, 2024 Federated advised Gore that they were not accepting priority as the notice of dispute had been received by Federated on February 26, 2024 which was 127 days after the receipt of the OCF-1 received on October 17, 2023. Therefore, Federated took the position Gore had not met the 90-day requirement.

On April 4, 2025 the claimant signed an election pursuant to s. 59(2) of the SABS to elect to receive statutory accident benefits pursuant to Ontario Regulation 34/10 and not under the personal injury protection plan from the Manitoba Public Insurance.

ISSUES

The parties identified the following issues:

1. What date did Gore receive a "completed application"?
2. Did Gore provide notice to Federated and Belair within 90 days in accordance with s. 3(1) of Ontario Regulation 283/95?
3. If Gore did not serve its notice of dispute within the required 90 days, is it entitled to access the saving provisions of s. 3 of the Regulation?

POSITION OF THE PARTIES

A. POSITION OF GORE

1. Gore's Position vis-à-vis Belair

Belair insures the striking vehicle. Gore claims that they received a completed application with respect to Belair on January 28, 2024. On that day, they received the information from the RCMP (their file report) which identified a Volkswagen Golf 2008 as the striking vehicle with respect to the claimant. They provided the VIN number, the Ontario licence plate number and the name of the driver.

Gore submits that prior to that time there was not a functionally adequate OCF-1 that provided the necessary information that allowed Gore to identify that another insurer may stand in priority together with sufficient information to serve a Notice of Dispute.

In the alternative, while Gore submits that there is no need to resort to the saving provisions of s. 3(2), that in the event that it is concluded that a completed application was received with the first OCF-1 on October 17, 2023, then Gore submits that it is entitled to the benefits of the saving provisions. It submits that 90 days was not a sufficient period of time on the information available to determine whether another insurer was liable and who that insurer was.

Gore submits that in the context of a priority dispute a "completed application" is not just an application that is signed by the claimant. Rather, it must contain some substantive information with respect to priority that permits the insurer to then commence its investigations.

Gore references the decision of *Ontario (Finance) v. Pilot Insurance Company*, 2012 ONCA 33 where the court states that a "completed application" for the purposes of s. 3 of Ontario Regulation 283/95 is one that is:

1. Generally complete;
2. Functionally adequate for its legislative purpose; or
3. Treated as complete based on the conduct of the first insurer.

Gore also references the decision of Justice Perell in *R v. Lombard Insurance Company of Canada*, 2010 ONSC 1770. In that case, a claimant was on a bicycle being pursued by a security guard when he was struck by a car. He applied to MVACF and reported he had been hit by a car but no

police report was submitted with the application. Ultimately, through some investigations, MVACF finally found out details of the vehicle and who insured the car. Justice Perell concluded that the first OCF-1 received by MVACF did not provide enough information for MVACF to give notice to another insurer under s. 3(1) but it did trigger the obligation of MVACF to seek that information elsewhere.

Gore submits that a "completed application" for the purposes of priority must contain sufficient particulars to reasonably provide the insurer processing the application with sufficient information to commence their investigation in order to put another insurer on notice.

Gore cited a number of cases which dealt with the OCF-1 that did not have a police report and did not include information about the other vehicle involved in the accident. In those cases, arbitrators and courts concluded that an OCF-1 without a police report would not be considered a complete application. I do note that the majority of those cases involved MVACF and that Regulation 283/95 specifically requires that a police report is provided with an OCF-1 sent to MVACF.

Applying the law to the situation with Belair, Gore submits that there was insufficient information in the first OCF-1 for Gore to commence its work. No information was provided with respect to any other vehicle being involved. There was no reference to the police detachment involved or any information that would have permitted Gore to commence enquiries about whether there was any other vehicle. The claimant did not even identify himself as a pedestrian in the first OCF-1. It was not until the second OCF-1 came that the claimant identified himself as a pedestrian and that the police detachment investigating the accident was noted as Steinbach RCMP.

Gore submits that once it received the police file on January 28, 2024, that then and only then was there a functionally adequate OCF-1 for the purposes of determining priority. Once that information was received, an AutoPlus Gold report was secured on February 20, 2024 which disclosed the existence of the policy with Belair. Notice of Dispute was then provided on February 20, 2024.

Gore therefore submits if you run the 90 days from January 28, 2024 to the date of notice of February 20, 2024, they clearly fell within the 90-day time period. Lastly, Gore made some specific submissions with respect to the log note of October 18, 2023 which is relied upon by Belair with respect to their position as to when there was a completed application. Gore submits that at the time of the October 18 conversation the initial OCF-1 had stated that the claimant did not recall the particulars of the accident. In the conversation between the Gore adjuster and counsel for the claimant, while there was reference about a high speed chase, there was no reference to the type of vehicle involved other than the semi truck which was referenced in the hospital records.

Gore submits that after the receipt of the initial OCF-1 it was unable to make efforts to obtain the police file. Gore submits it lacked particulars to seek the police file as it did not know the location of the accident, it did not have a licence plate number for any vehicle involved, and it was not

aware of what RCMP detachment had been involved in the accident.

B. POSITION OF BELAIR

Belair submits that the 90-day period was triggered when Gore received the first OCF-1 on October 17, 2023. As an alternative, Belair submits that the 90-day period was triggered on October 18, 2023 when it was clear from the hospital records that a third party vehicle was involved in the incident.

Belair submits that in order for there to be a "completed application", that one must not only look at what information was available in the OCF-1, but at any external information provided that would be sufficient to make it functionally adequate and complete.

Belair submits that as of October 18, 2023, when the Gore adjuster spoke to counsel for the claimant, Gore should have been aware that there was a third party vehicle involved in this incident and that Gore needed to track down the ownership and the insurance details of that vehicle in order to pursue priority against any insurer.

Belair submits that there is no evidence whatsoever that Gore made any efforts to seek that information from October 18, 2023 until January 17, 2024. On that day, Gore received information from counsel for the claimant as to the occurrence number with the RCMP. That day, the adjuster called the RCMP at Steinbach and started the process for determining the vehicle information with respect to the striking vehicle.

Belair submits that the only reason that Gore started to look into the striking vehicle information that day was because it had received the WSIB re-election form from the claimant, also on January 17, 2024.

Belair notes that Gore had the following information available to them on October 18:

1. The claimant was outside his vehicle on the side of the road due to mechanical issues;
2. He was struck as a pedestrian by a third party; and
3. The accident occurred in Manitoba.

By October 20, Gore was aware of the correct date of loss of June 10, 2023. Despite this information, at no time did Gore make any efforts to obtain the police file, to identify the parties or the vehicles involved in the accident, or to make any further enquiries into the third party vehicle.

Belair submits further that even after Gore received the police information on January 28, 2024, it was not until February 20, 2024, some 23 days later, that Gore got the AutoPlus report which allowed it to then serve its Notice of Dispute. Belair submits that there is no explanation for that significant delay.

Belair relies on the decision of Arbitrator Novick in *Ontario (Minister of Finance) v. Portage La Prairie Mutual Insurance Company*, 2013 CarswellOnt 19138. Arbitrator Novick commented in that case that adjusters must act quickly to pursue all avenues that may lead to information revealing that another insurer is priority. She stated that when no police report exists, "it now seems clear" that the 90-day clock will begin to run "when an insurer fails to take steps to ascertain potentially helpful information". Belair submits that Gore failed to take steps to ascertain information that would permit them to identify Belair as the insurer.

Belair also refers to the decision of Justice Pinto in *Allstate Insurance Company of Canada v. Wawanesa Mutual Insurance Company*, 2020 ONSC 6275. In that case, Justice Pinto agreed with the arbitrator that Allstate had received sufficient information to commence its priority investigations but had failed to pursue those investigations in a diligent manner. The arbitrator's decision that was supported by Justice Pinto concluded that for an application to be functionally adequate, it need only provide sufficient information to allow reasonable priority investigations to begin. The OCF-1 does not have to have that information within it, nor does it have to have exact priority information to identify the priority insurer.

Belair also referenced the decision of Arbitrator Novick in *RBC Insurance Company v. ACE INA Insurance*, 2018 CarswellOnt 6156. In that case, counsel for RBC had argued that the fact that the claimant was receiving WSIB benefits resulted in the operation of Regulation 283/95 being suspended. Arbitrator Novick did not accept that argument. She noted s. 2.1(6) of Regulation 283/95 is mandatory and requires that the first insurer that receives a completed application "shall" commence paying benefits. Arbitrator Novick felt that this language was mandatory and means that the receipt of a completed application is a triggering event that engages Regulation 283/95 and it is not deferred just because a claimant may be eligible for WSIB benefits. In that case, a delay by the claimant in electing accident benefits did not stop the running of the 90-day notice period.

Therefore, Belair submits Gore's OCF-1 will be considered to be functionally complete at the latest on October 18, 2023, and as they were not put on notice until February 20, 2024, it was 125 days late.

With respect to the saving provisions of Regulation 283/95, Belair submits that Gore has not provided any specific submissions or reasons as to why 90 days was insufficient to determine the insurer of the third-party striking vehicle. Therefore, Gore has not met its onus of proving reasonable investigations.

C. GORE'S SUBMISSIONS WITH RESPECT TO FEDERATED

With respect to Federated, Gore submits that the OCF-1 became functionally adequate and complete once it received the insurance information with respect to the semi truck. This was received from Manpreet Singh on February 26, 2024.

Gore submits that that is the date when it was functionally complete as the semi truck that the

claimant operated had dealer plates. The dealer plates did not have any specific policy attached to its VIN which prevented Gore from being able to search by way of licence number or VIN. In addition, the semi truck was insured under a garage policy (OAP-4) as opposed to a specific policy, which Gore submits also would prevent it from having a functionally adequate and complete OCF-1.

In the alternative, Gore submits that it did not receive a completed application until it received the WSIB re-election from the claimant on January 11, 2024 as up until that time there would have not been any benefits payable under the Schedule pursuant to s. 61 of the SABS.

In the further alternative, Gore submits it did not receive a completed application until it received the third OCF-1 on December 20, 2023 which at that time identified the claimant as a pedestrian and a driver. It identified that the accident occurred while the claimant was working, that he had filed a claim with the WSIB, identified the location of the accident and the police detachment as well as the police officer and identified that the claimant was struck by another vehicle while he was at the side of his truck.

Lastly, in the event that Gore is found to have received a completed application on October 17, 2023, it then submits it is entitled to the saving provisions of s. 3(2). It submits that as the vehicle being operated by the claimant had dealer plates that was covered under a garage policy that did not come up on an AutoPlus search, that therefore 90 days was not a sufficient time period to make a determination that another insurer was liable, even though Gore submits it made reasonable investigations within the 90 days. Gore submits that those reasonable investigations include s. 33 requests, communication with the claimant's employer, VIN gold searches, plate searches and AutoPlus searches.

With respect to their submissions vis-à-vis Federated, Gore relies on the same case law outlined in their submissions with respect to Belair.

With respect to the three criteria outlined in *Ontario v. Pilot (supra)* for there to be a completed application Gore submits that the first OCF-1 received was not generally complete. Further, they submit it was not functionally adequate for the purposes of priority due to the absence of the following information and/or misinformation:

1. The date of loss was incorrectly identified as June 3;
2. The location of the accident was Ontario-Manitoba border;
3. Claimant is identified as a driver and not as a pedestrian;
4. The document says the accident did not occur when the claimant was working and that he did not file the claim with the WSIB;
5. No particulars were provided with respect to the police detachment, officer name, badge

number or Collision Reporting Centre; and

6. The claimant purported to confirm that he was not covered under any other policy including his employer's policy.

Gore outlines in their submissions in detail the actions taken by their adjuster to collect the necessary information in order to be able to determine whether another insurer may be liable. This included conversations with claimant's counsel, a s. 33 request sent on October 30, 2023 which included a request for details of the vehicle the claimant was operating, the province where the vehicle was registered, the location of the loss, whether the claimant had regular use, whether he was operating the vehicle in the course of his employment and whether he had WSIB.

In addition Gore points to a CGI AutoPlus report being requested on October 23, 2023. The adjuster called the claimant's employer on October 31, 2023 and never received a call back.

Gore retained counsel to assist in pursuing information with respect to the vehicle the claimant was operating as it had not been forthcoming.

Gore further submits that the two subsequent OCF-1s that were submitted by different counsel simply complicated matters and that the second OCF-1 was no more functionally adequate than the first one, although some additional information was provided. This included the fact that the accident occurred in Manitoba but it was noted as occurring on Highway 1 when it was actually Highway 11. The claimant is noted to be a pedestrian but it still indicates he was not working. They are advised of the appropriate police detachment but no officer name or badge number. He continues to report he was not covered under an employer's policy.

Gore submits that even with the receipt of the second OCF-1, it was still insufficient to constitute a functionally adequate application because there was no information about the owner of the vehicle the claimant was operating, the type of the vehicle or the licence plate number.

Gore submits that even with the third OCF-1, there was still insufficient information to make it a functionally adequate application vis-à-vis Federated. There was still no information about the vehicle owner's name, the type of vehicle or the licence plate number.

Gore notes that throughout January of 2024 the adjuster continued to contact Manpreet (representative of Value Truck Sales) to determine the insurance and policy number. Again, counsel were retained to assist with that. It was not until February 1, 2024 that a copy of the vehicle ownership was received. The VIN number provided identified a Nordic policy which in fact was a post-accident policy resulting in further delay.

Finally, Gore submits it was not until February 26, 2024 that the actual copy of an insurance slip relating to the semi was provided which showed Federated as the insurer with an effective date of February 1, 2023. Therefore, Gore submits that none of the OCF-1s became functionally adequate until that information was received on February 26, 2024.

Lastly, Gore submits that at no time did it act in a manner in which one could argue that it deemed the OCF-1 of October 17, 2023 as being complete. In fact, the ongoing request for information pursuant to s. 33 and elsewhere clearly indicates that with respect to priority, that Gore did not treat the first OCF-1 as complete.

Gore therefore submits that notice to Federated on February 26, 2024 is well within the 90-day period if you accept that the OCF-1 became functionally adequate and complete on February 26, 2024.

D. SUBMISSIONS OF FEDERATED

Federated's position is that the 90-day notice period under Regulation 283/95 was not met by Gore and that Gore should not be given the benefit of the saving provisions of that regulation.

Federated submits that the claimant's Application for Accident Benefits to Gore was generally complete and functionally adequate on October 17, 2023.

Federated submits that the form contained significant information about the claimant, the accident, the claimant's employment and that that was sufficient for Gore to commence the necessary investigations to determine the insurer of the vehicle that the claimant had been driving at the time of the accident.

Federated submits that with the OCF-1 on October 17, Gore had the following information:

1. It confirmed the claimant was employed as a truck driver for Value Truck Sales; and
2. It confirmed he was a driver parked on the side of the highway waiting for the company mechanics when the accident occurred.

Federated submits that some of the minor inaccuracies in the claimant's information, including the date of loss and whether he was or was not in the course of employment or had applied to WSIB, is not relevant in terms of the necessary information to commence reasonable investigations into another priority insurer.

While Federated acknowledges that the Motor Vehicle Accident Report was not attached to the OCF-1 and did not come until later in 2024, Federated notes that the police report is only a mandatory part of the OCF-1 for the purposes of applying to the Motor Vehicle Accident Claims Fund.

Alternatively, Federated also argues that if on October 17, 2023 the OCF-1 is not generally complete, that it is certainly generally complete on October 18, 2023 when Gore received various medical records in support of the application.

Those medical records disclosed that the claimant was a pedestrian, that a semi was involved, and that the claimant was hospitalized in Manitoba.

Federated submits that a review of the two subsequent OCF-1s suggests that no new information was received in terms of the priority dispute that would have led Gore to a different avenue of enquiry in order to assist in identifying Federated as the insurer of the vehicle the claimant was driving.

Federated notes that it was clear on October 17, 2023 that the claimant was working as a truck driver when this accident occurred. The OCF-1 clearly identified his employer as Value Truck Sales. Further, the OCF-1 noted that the claimant was waiting for his company's mechanic to show up.

Federated submits that this should have led Gore to immediately seek information from Value Truck Sales about the insurer of the truck that the claimant was operating on the date of loss and to make enquiries about the claimant's regular use.

Federated submits that Gore did not need the police report in order to identify Value Truck Sales. It already had that information.

Federated notes that Gore failed to embark upon a thorough and diligent investigation to collect that insurance information. It made only one phone call to Value Truck Sales within the 90-day period. A message was left and there was no further follow-up. Further, Federated notes that call was made at 7:30 a.m., which would likely be outside of normal business hours.

Federated notes that the next time Gore tried to contact Value Truck Sales was not until January 17, 2024, two days after the 90-day notice period had expired.

Federated submits that Gore was distracted by the WSIB claim. Federated submits that Gore was under the impression that as the claimant elected WSIB, that it did not have to pay statutory accident benefits and therefore the priority regulation may not apply.

Federated notes that it was not until January 17, 2024, after Gore received the WSIB re-election, that Gore actually commenced more diligent investigations.

Federated submits that Gore received the relevant insurance certificate on February 22, 2024, only 36 days after it started to diligently investigate who the insurer was. Federated submits that there was no new information provided to Gore during that time period that it did not already have on October 17/18.

Federated submits that if Gore had conducted further investigations using the information it had on October 17 rather than waiting until the WSIB re-election, that it would have identified Federated as the insurer within the relevant 90-day period.

With respect to the law, Federated makes similar submissions to both Gore and Belair and there does not appear to be a significant disagreement as to the relevant law.

Federated does point out *Kingsway General Insurance Co. v. West Wawanese Insurance Co.*, (2002) 58 O.R. (3d) 251 (C.A.) where the court held that the purpose of s. 3 of Regulation 283/95 is to avoid confusion and prejudice in disputes between insurers. The case holds that the section sets out a straightforward procedural scheme through which insurers can resolve disputes in a prompt and efficient manner. Clarity and certainty of application are of primary concern to ensure a predictable and efficient scheme of dispute resolution.

Federated also points to the *Ontario v. Pilot* decision noting that the court there did not hold that an application has to be filled out completely accurately in order for it to be complete. Minor mistakes or errors will not necessarily invalidate an otherwise complete OCF-1.

In addition, Federated notes that the court held in that case that the 90-day clock will begin to run when an insurer fails to fulfill its obligation to take steps to ascertain missing information from the OCF-1 and to exercise reasonable diligence in pursuing that information. Further, Federated notes (para. 65) of that decision that the court confirmed the principle that "the first insurer should be treated as receiving a completed application when it does not act diligently in attempting to obtain missing information".

Federated submits that Gore did not act diligently in attempting to obtain missing information.

With respect to the saving provisions under s. 3(2), Federated submits that Gore has not made out a case that it is entitled to the benefit of the saving provisions. It notes that Gore had an opportunity to conduct investigations which would uncover the information necessary to identify other insurers but it either chose or failed to pursue that information and therefore the relief under s. 3(2) cannot be granted to Gore as it did not conduct "reasonable investigations". Federated submits that 90 days was a sufficient period for Gore to determine that Federated was a potential priority insurer.

DECISION AND ANALYSIS

In reaching my decision in this matter, I have reviewed some key cases and various principles that have been established over the years with respect to s. 3 of Regulation 283/95.

In the *Ontario v. Lombard* case (*supra*), the court noted that the following propositions have been established with respect to matters to consider when dealing with the 90-day issue:

1. A completed application need not be compliant with a particular form;
2. In determining whether an application is completed it is appropriate to look beyond the form itself to determine if the required information has been provided to the insurer;

3. A completed application may contain incorrect information provided that the insured provides the essential information with sufficient particulars to allow the insurer to process and access the claim;
4. A completed application may be missing administrative details or have minor technical deficiencies but nevertheless still be a completed application;
5. Section 3(2) 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;
6. An insurer is required to make a reasonable investigation but perfection is not required and there should be some recognition that adjusters are extremely busy handling more than one complex matter at the same time;
7. The onus is on the party relying on the late notice provisions of s. 3(2) to show that 90 days was not a sufficient time for the determination;
8. The circumstances of each case must be examined to determine whether 90 days was or was not a sufficient time for the determination.

These criteria were also nicely summarized by Arbitrator Bialkowski in the decision *Jevco Insurance Company v. Wawanesa Mutual Insurance Company*, 2019 CarswellOnt 18682.

I also carefully reviewed Justice LaForme's comments in *Ontario v. Pilot (C.A.) (supra)*. In that case, Justice LaForme noted that an application should contain sufficient information to allow the first insurer to give notice of dispute to another insurer in order to be considered functionally adequate, but that that is not the end of analysis. He points out that the 90-day clock "will start to run when an insurer fails to fulfill its obligation to take steps to ascertain the missing information".

Justice LaForme noted that evidence would need to be presented that an insurer exercise reasonable diligence in pursuing that missing information and I have considered that carefully in the context of reaching my decision with respect to Belair.

1. GORE AND BELAIR

With respect to Belair, I find that Gore had a "completed application" on October 18, 2023. Accordingly, Notice of Dispute to Belair on February 20, 2024 falls outside the 90-day period. It is also my decision that Gore cannot access the saving provisions of s. 3(2) of Regulation 283/95 as it did not make reasonable investigations within the 90-day period to determine if another insurer was liable with respect to the potential claim against a striking vehicle.

In terms of the law, ss. 3.1 and 3(2) are the key regulatory provisions that direct this decision.

I accept the parties' submissions that for there to be a completed application with respect to a priority dispute (as distinct from a completed application for an insured's entitlement to benefits), that the application must be one that is:

1. Genuinely complete;
2. Functionally adequate; or
3. Treated as complete.

I find that the OCF-1 dated October 17, 2023 was not functionally complete at that time.

It did not have information with respect to the fact that the claimant was a pedestrian. It does have information that he was struck by a third party vehicle. The description given of the accident only establishes that the claimant was parked on the side of a highway as his truck ran out of gas and that he does not recall the remainder of the accident.

There is nothing in the OCF-1 that would lead Gore to believe or have any information with respect to the potential involvement of a third party, let alone that the claimant had been struck as a pedestrian. This document, in my view, would not have suggested to Gore that they should immediately commence investigations with respect to a potential striking vehicle and whether that vehicle had any insurance.

While the police report was not attached to the OCF-1, it did identify that this collision had occurred at the Ontario-Manitoba border on Highway 11 which at least is a starting point for some additional enquiries.

However, on October 18, 2023 Gore received the information by way of medical records that confirmed that this accident involved a pedestrian. While the records suggest it might have been "pedestrian versus semi", it still raised the fact that the claimant was struck by a car and that should have motivated Gore to start enquiries with respect to this vehicle. However, the adjuster, having received that information, did not ask about a striking vehicle but rather asked for "details on the truck the claimant was driving at the time of loss". There was no request for information about what vehicle struck the pedestrian and information related to that vehicle.

Also on October 18 there was a critical conversation between Gore and counsel for the claimant. Here, Gore learned that the claimant was outside of his vehicle and had been struck as a pedestrian by a third party who was in a high speed chase with the RCMP and that the accident occurred in Manitoba.

This, in my view, should have immediately generated enquiries from Gore with respect to where the accident occurred in Manitoba, what RCMP detachment was involved, and what information was available about this third party. The log note does not indicate that any of these questions were asked of the claimant's counsel.

Even in the days after that (October 20), the emails from Gore to counsel for the claimant

repeatedly ask for information about the vehicle that the claimant was driving and do not ask at all whether there is any information about the RCMP detachment or the vehicle of the third party involved. There is little doubt in my mind that at that point in time the RCMP had the information with respect to the make and model of the striking vehicle, the owner, and its licence plate. The RCMP were at the scene as they were involved in a high-speed chase with that vehicle.

On October 30, 2023, when a s. 33 request was sent out by Gore to the claimant and his counsel, again there was no information requested about the striking vehicle. The focus was on the vehicle he was operating. Despite the fact that the adjuster had been told on October 18 that the accident had occurred in Manitoba, she again asked for confirmation as to where the loss occurred.

From October 18 until January 17, 2024 there does not appear to be any effort made by the Gore adjuster to follow up with counsel for the claimant or the RCMP to secure any information about the striking vehicle.

We know that by January 17, 2024 the Gore adjuster had a phone number for the RCMP in Steinbach. I find on the facts that had Gore made reasonable enquiries, they could have determined long before January 17 that the detachment to contact for the RCMP was in Steinbach and to track down that number. Notably, once she had that number, the operator gave her an email address to send her request. While the adjuster emailed the RCMP she only asked and received the plate number of the semi.

While it was not until January 28, 2024 that Gore received the police file with the information about the striking vehicle I find that with appropriate inquiries Gore could have secured that information within 90 days of October 18, 2023.

I agree with Arbitrator Novick that adjusters in circumstances involving priority disputes such as these must act quickly to pursue all potential avenues that may lead to information revealing another insurer in priority. In this case, I do not find that the lack of the police report stops the 90-day clock running. Other than in cases involving MVACF where no police report exists, the 90-day clock will still begin to run if the insurer fails to take steps to ascertain potentially helpful information from other sources.

In this case, in my view the evidence is clear that had Gore continued to make enquiries within the 90-day of counsel for the claimant or through tracking information for the RCMP, that this information would have been disclosed at a much earlier stage.

Lastly, I note that Gore made no efforts to seek a statutory declaration, a statement, or to attempt to conduct an EUO. Again, that would have generated the information that they were seeking.

Therefore, I find that Gore has not met the 90-day requirement and therefore does not have a right to proceed with its priority dispute with Belair. I further find that it cannot access the saving provisions under s. 3(2) as it did not conduct reasonable investigations within the 90-day period

and has not established that 90 days was not a sufficient time to identify Belair as a priority insurer.

2. GORE AND FEDERATED

As between Gore and Federated, I conclude that Gore has not provided the required notice within the 90 days contrary to s. 3(1) and further that it does not qualify for the saving provisions under s. 3(2) as it did not make reasonable investigations within the 90-day period.

With respect to Federated, I also conclude that the initial OCF-1 dated October 17 was not complete at the time it was received. It had the incorrect accident date. The claimant was identified as a driver. There was no information with respect to the particulars of the police investigation. The accident itself was described as occurring when the claimant was parked on the side of the highway, that his truck ran out of gas, and he was waiting for the company mechanics to show up. He did not recall the remainder of the accident. He did, however, identify that he was self-employed with Value Truck Sales.

The actual date of the accident I find a relatively minor issue and one that would not result in the application being incomplete. However, there is no information given to Gore to assist in identifying what vehicle the claimant was driving, whether it was licensed in Ontario or Manitoba, who the owner was or what the relationship was between the driver and the owner. The claimant had also noted that he was not covered under any other policy including an employer's policy.

While this would certainly alert Gore to know they had to make further enquiries, the direction of those enquiries would be unknown or difficult to ascertain.

However, in my view that changes on October 18, 2023 as at that time extraneous information provided by counsel to the claimant that results in there being a "completed application" for the purposes of priority.

The relevant additional information provided from extraneous sources included the following:

1. That the claimant was a pedestrian when this accident occurred;
2. That a semi truck was involved;
3. That the claimant was outside his vehicle and had been struck as a pedestrian by a third party who was in a high-speed chase with the RCMP;
4. The accident occurred in Manitoba;
5. The claimant was working at the time of the loss; and
6. WSIB was being investigated.

With this information, and combining it with what was available in the OCF-1, Gore would have been aware that the claimant worked for Value Truck Sales as a truck driver and that he was in the course of his employment when this accident occurred. They knew that a "company mechanic" was supposed to show up at the scene of the accident. They knew the RCMP was involved and they knew the accident occurred in Manitoba. They knew a semi truck was involved.

This, in my view, was sufficient information to launch Gore off on an investigation to seek information from relevant sources to identify the semi truck that the claimant had been driving when this accident occurred.

The clear source of that information would be the identified employer on the OCF-1, Value Truck Sales.

There is no evidence of any effort on the part of Gore in or around October 18 to try to find an address for Value Truck Sales, to locate a phone number or to communicate with them in any way. There is no evidence that the adjuster from Gore asked claimant's counsel when they were speaking to him on October 18 to provide more details with respect to Value Truck Sales and their relationship with the vehicle the claimant was driving.

There is evidence that the Gore adjuster sent out an email requesting relevant information on October 20, asked for an AutoPlus report on October 23, and did a driver's record search for the claimant as well as sending out the s. 33 notice on October 30, 2023.

While certainly these are the start of reasonable investigations, the focus of the Gore adjuster seems to have been on the claimant's counsel for providing the information.

On October 24 Gore's adjuster received the executed Assignment of Workplace and Insurance Benefits. This provided some additional information about Value Truck Sales and its relationship with the claimant. The document indicated that the claimant was employed by Value Truck Sales. It provided an address of 6749 Columbus Road in Mississauga. It confirmed they were in the trucking business and a phone number was provided of 1-877-351-3049.

In fact, the Gore adjuster recognized that this was some important information as on October 31 at 7:30 a.m. she tried calling the number given for Value Truck Sales. I agree with counsel for Federated that calling at 7:30 a.m. the adjuster should have not being surprised when no one answered. She did leave a message and requested a call back.

There were no further efforts by the Gore adjuster to phone or contact Value Truck Sales until January 17, 2024 after Gore had received the WSIB re-election agreement.

While I acknowledge that Gore continued to request information from the claimant's counsel and sent another s. 33 request and also requested their counsel to follow up, in the circumstances of this case, in my view, that is not enough.

When signing the OCF-1, a claimant under Part 12 provides the insurer with authority to collect personal information about him that is related to his claim and that that information can be collected directly from him or from any other person, and that he provides his consent to do so.

Therefore, Gore had the consent of the insured through the OCF-1 to contact the employer directly and to continue to seek information from the employer directly.

In my view, this was clearly the obvious source for information about insurance coverage on the vehicle that the claimant was driving. There cannot have been any doubt in Gore's mind that the claimant was in a vehicle that was associated with Value Truck Sales.

Gore argues that the issue is more complicated because the truck itself had dealer plates and was in fact a garage policy. However, I note that from the time Gore started to focus on getting information directly from Value on January 17, 2024, that it took until February 26, 2024 to receive an actual copy of the pink slip showing Federated as the insurer.

In my view, had the same type of enquiries be made that the insurer started on January 17 back in October of 2023, then the identity of Federated could easily have been determined within the 90-day period. In that regard, I note that on January 17, 2024, when the adjuster tried calling the same number it had back in October of 2023, that someone answered the phone and suggested they should call Manny and provided another phone number. Manny was clearly the person who would have the relevant information. The adjuster spoke to him that same day and was told that he would have to make some further enquiries and he gave an email for further enquiries to be made directly to him.

When the police file was received on January 28, I agree with Federated that this did not contain any additional information that would assist in identifying the Federated coverage.

While Manpreet took some time to provide the necessary documents to Gore, it must be noted again that Gore did not start actively pursuing Value Truck Sales for information until January 17 other than one call made in October.

While I agree that more traditional sources of investigation such as VINs or licence numbers did not help Gore in this case, I find that that should have made it even more obvious that the key source for this information was Value Truck Sales.

I do note that as a secondary position, that Gore argued that the 90 days did not begin to run until the claimant re-elected into the statutory accident benefit scheme on January 17, 2024.

To that end, I agree with Arbitrator Novick with her conclusions in *RBC v. ACE INA (supra)*. There is nothing in s. 3 that suggests that the duty to investigate priority is put on hold when an assignment and election with respect to WSIB is received. While it may mean that no benefits are immediately payable, it does not mean that the insurer who received the first OCF-1 is still

not deemed to be responsible for paying the benefits and is therefore given the duty and responsibility under s. 3 to conduct reasonable investigations into priority and put the appropriate insurer on notice.

In my decision *The Dominion of Canada General Insurance v. Motor Vehicle Accident Claims Fund* (Arbitrator Samworth, May 23, 2025) I reached a similar conclusion. In that case, Dominion had received the first OCF-1 but took the position that SABS were not payable on the grounds that the incident was not an accident and that the policy provided comprehensive coverage only.

After years of litigation, when it was ultimately determined that the Dominion policy was to respond, Dominion then put MVACF on notice and took the position that the 90 days did not begin to run until it had been determined by the Divisional Court that the incident was an accident, thus triggering the payment of the SABS.

I held that the 90-day period was triggered when the complete application (OCF-1) was received on August 31, 2017, and that it was not stayed while Dominion pursued other bases in which to deny the claim.

I reviewed the decision of Justice Chalmers in *Economical v. Intact Insurance Company*, 2021 ONSC 3249. In that case, Justice Chalmers determined that an insurer could not pursue a priority dispute unless a payment for statutory accident benefits had been made. With no payment having been made, there was nothing to reimburse in a priority dispute.

Dominion argued that Justice Chalmers's reasoning applied to their case as no benefits had been paid until the Divisional Court determined that the incident was an accident.

I disagreed with that interpretation of Justice Chalmers's reasons and stated there was a difference between the notice provisions under Regulation 283/95 and the right to proceed to an actual priority arbitration under that regulation. I pointed out that Justice Chalmers identifies that difference where he states that in some circumstances notice may be provided before the first insurer may make payment. He noted that though a payment may not be a prerequisite to providing notice of a priority dispute, it was a prerequisite to proceeding to an actual arbitration hearing.

I apply that reasoning in this case. While Gore may not have been obliged to pay any accident benefits due to the assignment and election with respect to WSIB, payment at that point was not a prerequisite to the requirement to meet the 90-day obligation. It would only be a prerequisite to proceeding with an actual arbitration hearing.

Therefore, I do not accept Gore's argument that the 90 days was stayed until the Applicant provided his re-election in January of 2024.

It is therefore my conclusion, based on the facts, that a completed application was received when the extraneous information came to Gore on October 18, 2023. The 90-day time period began to

run at that time as Gore had sufficient information to start directing their appropriate investigations into the insurer of the vehicle that the claimant was driving or had been driving on the date of loss.

In reaching this conclusion, I have relied on the principles that I outlined when I was reviewing the Belair conclusion.

I also find that Gore failed to fulfill its obligation to take reasonable steps to ascertain the missing information relating to the semi truck. I conclude they did not exercise reasonable diligence in pursuing that information. This reinforces my view that the OCF-1 should be treated as complete effective October 18, 2023 due to the failure of Gore to exercise reasonable investigations.

For the same reasons I have outlined above, I also find that 90 days was a sufficient period of time for Gore to make a determination that another insurer was liable under s. 268 of the *Insurance Act* and I also find that Gore did not make the necessary investigations to make that determination within the 90-day period.

Therefore, Gore has lost its right to pursue its priority dispute against Federated due to the late notice.

ORDER

As Gore failed to provide notice to Federated or to Belair within 90 days of the receipt of the completed application (October 20, 2023), Gore is barred from proceeding with this priority dispute arbitration against Federated and Belair and the arbitration is therefore dismissed.

COSTS

The Arbitration Agreement provides that the costs of the arbitration, including the arbitrator's fees, expenses and disbursements, will be borne by the unsuccessful party. This is subject to the discretion of the arbitrator. However, in the circumstances of this case, I find that Gore has not been successful either against Belair or Federated, and accordingly Gore should bear the cost of the arbitration fees and expenses.

With respect to the parties' claim for legal costs and disbursements, the Arbitration Agreement provides that that is to be awarded at my discretion. Taking into consideration the parties' success, I conclude that Gore is also responsible for paying Belair and Federated's legal fees and disbursements on a partial indemnity scale.

I have not set any amount for costs. If the parties cannot agree on costs, they should notify me and we can schedule a further pre-hearing.

DATED THIS 14th day of August, 2026 at Toronto.

Philippa G Samworth

Arbitrator Philippa G. Samworth

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