COURT OF APPEAL FOR ONTARIO

CITATION: The Dominion of Canada General Insurance Company v. State Farm Mutual Automobile Insurance Company, 2018 ONCA 101
DATE: 20180202
DOCKET: C62714 & C63539

Hoy, A.C.J.O., van Rensburg and Roberts JJ.A.

In the Matter of the Insurance Act, R.S.O. 1990, c.18, s. 268 (2) and Ontario Regulations 34/10 and 283/95 thereunder;

And in the Matter of the Arbitration Act, 1991, S.O. 1991, c.17;

And in the Matter of an Arbitration:

BETWEEN

The Dominion of Canada General Insurance Company

Applicant
(Respondent in Appeal)

and

State Farm Mutual Automobile Insurance Company

Respondent
(Appellant in Appeal)

AND BETWEEN

Belairdirect Insurance

Applicant
(Respondent in Appeal)

and

Dominion of Canada General Insurance Company (Travelers)

Respondent
(Appellant in Appeal)

Mark K. Donaldson, for the appellant, State Farm Mutual Automobile Insurance Company

Daniel Strigberger and Timothy W. Gillibrand, for the respondent, The Dominion of Canada General Insurance Company

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Heard: June 22, 2017

On appeal from the order of Justice K. Wright of the Superior Court of Justice, dated October 26, 2015 and from the order of Justice J. Akbarali of the Superior Court of Justice, dated March 6, 2017, with reasons reported at 2017 ONSC 367.

Roberts J.A.:

Overview

[1] These two appeals were heard together because they give rise to the same main issues: the standard of review applicable to insurance arbitral decisions resolving priority disputes arising from the statutory accident benefits regime under the *Insurance Act*, R.S.O. 1990, c. I.8, and statutory and contractual interpretation issues affecting the priority question.

[2] Both appeals involve arbitral decisions concerning the interpretation of "insured person" under s. 3(1) of the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10 ("SABS"), as applied to the particular provisions of the claimants' respective insurance policies. The question is whether the claimants, who were both listed as excluded drivers on their parents'

automobile policies, were covered for SABS when not driving the vehicles to which their driving exclusions applied. This will determine which insurer has first priority to respond to the claimants' SABS claims.

[3] The appeal judgments diverge on the standard of review that ought to apply to an arbitrator's decision on the issue of priority, as well as the interpretation of an "insured person" under s. 3(1) of the SABS, in the context of the excluded driver provisions under the claimants' insurance policies. Under s. 3(1) of the SABS, an "insured person" is defined as "any person specified in the policy as a driver of the insured automobile".

[4] In the arbitration that was the subject of the State Farm appeal ("State Farm arbitration"), the arbitrator found that an excluded driver can be an "insured person" under the SABS. The appeal judge applied a standard of correctness and overturned the arbitrator's decision. In the arbitration leading to the Dominion appeal ("the Dominion arbitration"), the arbitrator was also of the view that an excluded driver can be an "insured person" under the SABS. However, he concluded that he was bound by the appeal decision in the State Farm appeal. The appeal judge, who was not similarly bound, applied a reasonableness standard to the arbitrator's underlying reasoning and found that his original interpretation was reasonable.

[5] For the reasons that follow, I would allow the appeal from the order of the appeal judge dated October 26, 2015 ("the State Farm appeal"), and dismiss the appeal from the order of the appeal judge dated March 6, 2017 ("the Dominion appeal").

Factual background and summary of decisions below

(a) State Farm appeal

[6] The SABS claimant, Umberto Rupolo ("Umberto"), was injured in February 2012 while riding as a passenger in his girlfriend's car. His girlfriend's car was insured by State Farm Mutual Automobile Insurance Company ("State Farm"). Umberto applied for accident benefits from his parents' insurer, The Dominion of Canada General Insurance Company ("Dominion").

[7] In 2008, Umberto's parents applied for insurance for their two vehicles. In their application, they listed the names of all the drivers of the vehicles in the household. The risk was bound on June 23, 2008. Dominion issued a Certificate of Insurance listing the entire Rupolo family, including Umberto, as "Drivers Insured" (later changed to "Listed Drivers") on the front page of the Certificate.

[8] After the risk was bound, however, Dominion informed the Rupolos that they required an "Excluded Driver Endorsement" with respect to Umberto due to his poor driving record. Umberto and his parents signed the Endorsement, which is also known as an OPCF 28A form. It provides that if Umberto drives either of

the two vehicles insured under the policy, "[e]xcept for certain Accident Benefits", there would be "no coverage under the policy for property damage and bodily injury, damage to the automobile(s) and most Accident Benefits". As of the effective date of September 24, 2008, Umberto was a "Listed Driver", but under the "Rating Information" section, the Certificate indicated that Umberto was excluded from driving either of the two vehicles specified in the Endorsement.

[9] Dominion took the position that Umberto did not meet the statutory definition of an "insured person" for the purposes of the SABS. Dominion argued that Umberto was not "specified in the policy as a driver of the insured automobile" because he was listed as an "excluded driver" and therefore precluded from driving the automobiles insured under the policy.

[10] State Farm took the opposite view. Dominion agreed to provide benefits pending the outcome of the arbitration to which the parties referred their priority dispute.

[11] The arbitrator agreed with State Farm's position, holding that the SABS legislation was to be given a broad and liberal interpretation, and that any ambiguity was to be resolved in favour of Umberto. In that regard, he determined that "there is sufficient ambiguity to an individual reading the OPCF 28A to think there would still be full accident benefits if not driving the excluded vehicle and even limited accident benefits if driving the excluded vehicle."

[12] The arbitrator concluded that because the Certificate of Insurance specifically listed Umberto as a "listed driver", he was entitled to accident benefits from Dominion so long as he was not injured while driving one of the vehicles in respect of which he was an "excluded driver". The arbitrator succinctly stated the reasons for his conclusions in the following paragraphs:

> It appears to me that the reason why Dominion required the OPCF 28A was to address the risk of Umberto Rupolo driving the insured automobiles. That risk was addressed by the execution of the Endorsement by Umberto Rupolo and his parents. In my view, no other rights or entitlements were taken away by the OPCF 28A. Umberto was a passenger in his girlfriend's vehicle. He was not violating the terms of the Excluded Driver Endorsement.
>
> The clear language of the Endorsement states that Umberto would only be excluded from claiming certain accident benefits if he was *driving* either of the vehicles identified in the policy. There is no bar to his right to claim SABS if he is a *passenger* in his girlfriend's vehicle. Equally, there would be no bar if he were a passenger in someone else's vehicle or simply a pedestrian on the street. He is only barred if he is *driving* the automobile identified in the Endorsement, and then, he is only barred from receiving *most* accident benefits. In fact, in cross examination, Mr. Wilson [from Dominion's underwriting department] seemed to admit that the OPCF 28A only applied if driving his parents['] vehicles but as a passenger accident benefits coverage would not be reduced. [Emphasis in original.]

[13] Dominion appealed. The appeal judge allowed the appeal, concluding that Umberto was not an "insured person" and therefore State Farm had first priority to respond to Umberto's SABS claim.

[14] With respect to the standard of review applicable to the arbitrator's decision, the appeal judge wrote at para. 2 of her reasons: "The standard of review on this appeal is one of correctness and the parties take no issue with that."

[15] The entirety of the appeal judge's analysis concerning the arbitrator's error is contained in para. 10 of her reasons:

> After a thorough review of the materials, the case law, the applicable legislation and the submission of counsel, I can find the arbitrator fell into error when he found Rupolo to be an insured person in accordance with the SABS. The arbitrator concluded that because Rupolo was listed in the Certificate of Insurance as a driver, he fell with [sic] the definition of an insured driver, despite being an excluded driver and was entitled to some insurance coverage. The legislation clearly states that an insured driver is one who is specified in the policy as a driver of the insured automobile. Despite being listed as a driver, Rupolo was clearly not a driver of an insured automobile and thereby not entitled to coverage.

[16] State Farm appealed to this court.

(b) Dominion appeal

[17] Matthew Bortolus ("Matthew") was driving an uninsured motorcycle when he was involved in an accident with a vehicle insured by Belairdirect Insurance ("Belair"). Matthew applied to Belair for accident benefits.

[18] Matthew's parents are the named insured persons under a policy of insurance issued by Dominion for one vehicle, a 2009 Toyota Corolla. The "listed

drivers" under the policy are Matthew's parents and Matthew. Like the claimant in the companion appeal, Matthew and his parents signed an Excluded Driver Endorsement. It provides that if Matthew drives the Corolla, "[e]xcept for certain Accident Benefits", there would be "no coverage under the policy for property damage and bodily injury, damage to the automobile and most Accident Benefits".

[19] The question of whether Dominion or Belair has the higher priority to respond to Matthew's claim for accident benefits was arbitrated. The arbitrator concluded that Matthew was an insured person under the Dominion policy such that Dominion had the higher priority to respond to his SABS claim. However, notwithstanding this conclusion, the arbitrator held that he was bound by the earlier noted October 26, 2015 State Farm decision, which is subject to this appeal:

> But for the amended endorsement of Justice K.P. Wright in *Dominion of Canada v. State Farm*, I would find in favour of Belair and rule that Matthew was an insured person under the Dominion policy such that Dominion has the higher priority to respond to Matthew's claim for statutory accident benefits. However, I am unable to do so as I am obliged to follow the decision of a Superior Court judge despite the fact that I may disagree with the analysis and the result. I am unable to circumvent what I believe is a binding precedent directly relevant and applicable to the matter before me. As a result, I find that Matthew was not an insured person under the Dominion policy such that Belair has the higher priority to respond to Matthew's claim for statutory accident benefits. (P. 10)

[20] The appeal judge overturned the arbitrator's decision. She determined that the appropriate standard of review was reasonableness, for the reasons set out at para. 16 of her decision:

> The question of the appropriate standard of review is answered definitively in *Intact Insurance Company* at para. 53. Even an extricable question of law is reviewed on a reasonableness standard. This standard of review recognizes the expertise of insurance arbitrators: see paras. 49-50. Where a decision maker is interpreting its home statute, or statutes closely connected to its function, there is a presumption that a reasonableness standard will apply: see para. 47.

[21] The appeal judge explained that none of the exceptions to the reasonableness standard applied here and that the arbitrator's decision was within his specialized expertise:

> The exceptions to the reasonableness standard do not apply here. The question of which insurer has priority is not a question over which the arbitrator and the court share jurisdiction at first instance. It is not an "exceptional" question, those being questions of jurisdiction, constitutional questions, or general questions of law that are both of central importance to the legal system as a whole and outside the arbitrator's specialized area of expertise: see *Intact Insurance Company* at para. 51. To the contrary, the question of the priority of the insurers involves the interpretation of the policy, the *Insurance Act*, and the SABS – all squarely within the expertise of the insurance arbitrator. (Para. 17)

[22] The appeal judge held that she was not bound by the appeal judge's decision in State Farm, and concluded that it was superseded on the question of

the standard of review by this court's decision in *Intact Insurance Company v. Allstate Insurance Company of Canada,* 2016 ONCA 609, 131 O.R. (3d) 625, leave to appeal refused, [2016] S.C.C.A. No. 392. She went on to find that the arbitrator's initial determination that Matthew meets the definition of an insured person under s. 3(1) of the SABS was reasonable, and agreed that he is a "person specified in the [Dominion] policy as a driver of the insured automobile". As a result, she concluded that Dominion is the insurer with the higher priority to respond to Matthew's accident benefits claim.

[23] Dominion appealed to this court.

Analysis

(i) Statutory Framework

[24] It is helpful to set out the statutory provisions that frame the issues under appeal.

[25] The determination of the payor of statutory accident benefits in priority disputes is resolved in accordance with the rules set out in s. 268(2) of the *Insurance Act*. The relevant portion of that provision reads as follows:

> 268(2). The following rules apply for determining who is liable to pay statutory accident benefits:
>
> 1. In respect of an occupant of an automobile,
>
> i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,

> ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant ...

[26] Section 275(4) of the *Insurance Act* requires insurers to refer any unresolved priority dispute to arbitration under the *Arbitration Act, 1991*, S.O. 1991, c. 17.

[27] In both the State Farm and Dominion arbitrations, the arbitrators had to determine which insurer had priority to respond to the occupants' respective claims for statutory accident benefits pursuant to ss. 268(2)1(i) and (ii):

(i) If Umberto Rupolo was an insured under the Dominion policy, Dominion would have priority over his claim, pursuant to s. 268(2)1(i). If he was not an insured under the Dominion policy, State Farm would have priority over his claim, pursuant to s. 268(2)1(ii).

(ii) If Matthew Bortolus was an insured under the Dominion policy, Dominion would have priority over his claim, pursuant to s. 268(2)1(i). If he was not an insured under the Dominion policy, Belair would have priority over his claim, pursuant to s. 268(2)1(ii).

[28] The full definition of "insured person" appears in s. 3(1) of the SABS, as follows:

> "insured person" means, in respect of a particular motor vehicle liability policy,

> (a) the named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and a dependant of the named insured or of his or her spouse,
>
> > (i) if the named insured, specified driver, spouse or dependant is involved in an accident in or outside Ontario that involves the insured automobile or another automobile, or
> >
> > (ii) if the named insured, specified driver, spouse or dependant is not involved in an accident but suffers psychological or mental injury as a result of an accident in or outside Ontario that results in a physical injury to his or her spouse, child, grandchild, parent, grandparent, brother, sister, dependant or spouse's dependant,
>
> (b) a person who is involved in an accident involving the insured automobile, if the accident occurs in Ontario, or
>
> (c) a person who is an occupant of the insured automobile and who is a resident of Ontario or was a resident of Ontario at any time during the 60 days before the accident, if the accident occurs outside Ontario [Emphasis added.]

[29] The interpretation of the highlighted passage was in issue in both arbitrations. It is common ground that neither claimant was a dependant or a spouse for the purposes of this definition. The question before the arbitrators was whether Umberto and Matthew were, respectively, "any person specified in the policy as a driver of the insured automobile".

(ii) Standard of review applicable to insurance arbitral decisions

[30] These appeals effectively turn on the question of whether the appeal judges below erred in their determination of the appropriate standard of review to be applied to the arbitrators' decisions.

[31] It is not disputed that on this appeal, the standard of review applicable to the appeal judges' determination of the standard of review is a correctness standard: *Intact*, at para. 33; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226, at para. 43. As a result, no deference need be shown by this court to the appeal judges' selection of the standard of review.

[32] State Farm submits that this court's decision in *Intact* has settled this question and that the applicable standard of review from an insurance arbitral decision is one of reasonableness. To the contrary, Dominion submits that *Intact* has been overtaken by the Supreme Court's judgment in *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23, and that correctness is the appropriate standard of review.

[33] For the reasons that follow, I am of the view that the result reached in *Intact* is not inconsistent with the judgment of the majority in *Ledcor* and that the standard of review applicable to appeals from insurance arbitral decisions resolving priority disputes under the SABS is reasonableness. This requires me

to set out in some detail the reasons for the conclusions reached by the court in *Intact*, and then to compare them with the decision in *Ledcor*.

This court's decision in Intact

[34] Similar to the present appeals, *Intact* involved an insurance arbitrator's determination of a priority dispute between two insurers concerning the payment of statutory accident benefits. To resolve this issue in *Intact*, the arbitrator had to determine whether the claimants were principally dependent for financial support on the insured, their mother's new partner. This required the arbitrator to make factual findings concerning the relationship between the claimants and the insured, in accordance with the arbitrator's interpretation of the relevant insurance policy and statutory provisions.

[35] Dominion argues that *Intact* is clearly distinguishable on the basis that it was a dependency case where the factual matrix dominated. A reasonableness standard of review was appropriate in *Intact* because of the importance of the factual matrix which grounded the case between the parties to the particular litigation, pursuant to the Supreme Court's reasoning in *Ledcor* and in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633. Dominion emphasizes that in the present case, however, the arbitrator was faced with a pure question of law, that is, the interpretation of a standard form contract in the absence of any meaningful factual matrix. As the arbitrator noted at p. 2 of

his decision in the Dominion arbitration, the arbitration proceeded before him on a written record of facts that were not in dispute. As a result, there was no need for the arbitrator to make findings of fact or to apply the law to findings of fact, so there were no factual or mixed questions to which a standard of reasonableness would apply.

[36] I do not accept these submissions. In my view, Dominion's characterization of *Intact* as a fact-driven dependency case is too narrow. Indeed, this depiction of the standard of review dispute as simply one of choosing between "a mixed fact and law exercise" or "an extricable legal error", without regard for the nature of the decision-maker, was explicitly rejected by this court in *Intact*.

[37] The Supreme Court also recently confirmed in *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32, 411 D.L.R. (4th) 385, at paras. 74-76, that while the nature of the question (whether legal, factual, or mixed) is dispositive of the standard of review applicable to appeals from civil litigation judgments by courts, it is not dispositive in the context of commercial arbitral awards by specialized arbitrators: "[T]he mere presence of a legal question does not, on its own, preclude the application of a reasonableness review in a commercial arbitration context".

[38] The decision in *Intact* focussed on the nature of the decision-maker and, next, on the question of whether the decision in issue required the application of

the specialized expertise of the decision-maker. Writing for the court, LaForme J.A. commenced his analysis by applying the methodology endorsed by the Supreme Court in *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3, at para. 31. Specifically, LaForme J.A. considered whether he should apply appellate standards as if the decision were that of a trial court or rely on administrative law principles related to judicial review of a specialized tribunal's decision, to determine the appropriate standard of review.

[39] LaForme J.A. concluded that the administrative law framework, associated with *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, was applicable to determine the standard of review on an appeal from an insurance arbitration decision. As he noted, SABS arbitrations occur within "a distinct regime that efficiently resolves priority disputes between insurers while ensuring that beneficiaries receive their benefits promptly," and he likened the decision of a SABS arbitrator to that of a specialized administrative tribunal, where, as the court explained in *Saguenay*, "whether on a judicial review or a statutory appeal, the standard of review must be determined on the basis of administrative law principles": *Intact*, at paras. 24-30.

[40] LaForme J.A. noted, at para. 35, that, generally, determining whether a person is "principally dependent" on another is a question of mixed fact and law, which is presumptively reviewed for reasonableness. Responding to Intact's argument that the arbitrator had committed an "extricable" legal error by

importing a permanence requirement into the definition of dependency, LaForme J.A. went on to consider the standard of review for an insurance arbitrator's interpretation of SABS, and in particular the meaning of dependency for purposes of that regulation (at para. 37).

[41] LaForme J.A. applied the two-step process for determining the standard of review under the administrative law principles set out in *Dunsmuir*, at para. 62:

> First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[42] First, LaForme J.A. determined that the existing jurisprudence had already settled that the reasonableness standard of review is applicable to questions of law that are within the specialized experience and expertise of insurance arbitrators in interpreting insurance law. He referred specifically to the Supreme Court's statement in *Sattva*, that "[i]n the context of commercial arbitration, where appeals are restricted to questions of law", the presumptive standard of review is reasonableness: para. 106. The court in *Sattva* made clear that this will almost always be the case, except in the "rare circumstances" where an arbitrator is faced with a question that goes beyond the dispute between the parties and the interpretation of the home statute, and therefore warrants a correctness standard, "such as a constitutional question or a question of law of central

importance to the legal system as a whole and outside the adjudicator's expertise": para. 75. LaForme J.A. explained his reasoning as follows, at para. 45:

> The question at issue here – determining dependency for purposes of *SABS* and insurance priority disputes – does not rebut the presumption of reasonableness review established in *Sattva*. It is not a question of jurisdiction, a constitutional question, or a general question of law that is of central importance to the legal system as a whole and outside the adjudicator's expertise.

[43] Although this obviated the need to proceed to the second analytical step from *Dunsmuir*, LaForme J.A. concluded that a contextual analysis also confirmed that the reasonableness standard of review was appropriate. Notably, he came to this conclusion not because of the fact-specific nature of the question of dependency, as suggested by Dominion, but primarily because the question required the arbitrator to engage his specialized expertise in interpreting his home statute: *Intact*, at paras. 46-52.

[44] LaForme J.A. observed that, while an appeal to the Superior Court from an insurance arbitration regarding a priority dispute will generally engage questions of mixed fact and law that must be reviewed for reasonableness, even a question of law regarding SABS will generally involve a reasonableness standard of review because it requires the application of the specialized insurance arbitrator's expertise for determination: *Intact*, at para. 53. He left open the possibility that a

correctness standard of review may be applicable to the rare "exceptional" questions of law listed in *Sattva*: para. 53.

The Supreme Court's decision in Ledcor

[45] Nothing in the court's reasoning in *Intact* clashes with the Supreme Court's discussion of the standard of review applicable to standard form contracts in *Ledcor*. *Intact* and *Ledcor* involved fundamentally different contexts for determining the appropriate standard of review. Most importantly, the decision in *Ledcor* must be understood in its particular context. Unlike *Intact*, in *Ledcor*, there was no expert arbitral decision-maker involved. Rather, the court in *Ledcor* was dealing with an appeal from a trial judge's interpretation of a standard form contract.

[46] In *Ledcor*, the Supreme Court articulated the interpretation of a standard form contract as an exception to the court's holding in *Sattva* that contractual interpretation by a specialized arbitrator is a question of mixed fact and law subject to deferential review on appeal. The court held that an appeal from a trial judge's interpretation of a standard form contract, that has precedential value and does not require engagement with any meaningful factual matrix, is a question of law that should be reviewed for correctness: *Ledcor*, at para. 46. The court reasoned that this standard of review is more consistent with the respective roles of trial and appellate courts:

> These particular functions of appellate courts — ensuring consistency in the law and reforming the law — justify reviewing pure questions of law on the standard of correctness. By contrast, appellate courts defer to findings of fact in part because they can discharge their mandate without second-guessing trial courts' factual determinations. [Citations omitted.]

[47] In *Ledcor,* the court was not assessing a specialized arbitrator's interpretation of the home statute and the exercise of specialized expertise, which would have given rise to a deferential standard of review. Rather, as already noted, the court was focussing on a question of law relative to the interpretation of a standard form contract, in the context of appeals from trial and appellate courts, and on the specific and respective roles of trial and appellate courts in resolving such questions.

[48] This distinction was recently illustrated in the following two cases.

[49] *Intact Insurance Company v. Federated Insurance Company of Canada*, 2017 ONCA 73, 134 O.R. (3d) 241, leave to appeal refused, [2017] S.C.C.A. No. 98, involved an appeal from an insurance arbitrator's decision. This court concluded, at para. 14, that correctness was the appropriate standard of review in relation to the arbitrator's determination of general issues of law arising from the interpretation and application of s. 22.1 of the Ontario *Evidence Act*, R.S.O. 1990, c. E.23 and its interplay with the common law doctrine of abuse of process, which did not require the application of the arbitrator's specialized expertise or interpretation of the home statute.

[50] In *Sabean v. Portage La Prairie Mutual Insurance Co.*, 2017 SCC 7, [2017] 1 S.C.R. 121, the Supreme Court considered the correct interpretation of a standard form excess insurance policy in relation to the question of whether CPP disability benefits were deductible from the amount recoverable under the policy. While not explicitly stating the applicable standard of review, in expressly following the analytical approach set out in *Ledcor*, the court reviewed the lower courts' interpretation of the standard form contract through a correctness lens.

[51] For these reasons, the reasoning of this court in *Intact*, in my view, has not been overtaken by *Ledcor*. As a result, the principles articulated in *Intact* are relevant to the decisions under appeal in the present case.

(iii) Should the underlying arbitral decisions have been reviewed for reasonableness or correctness?

[52] With these principles in mind, I turn finally to the appeal judges' respective decisions.

[53] The decision-making process that the arbitrators were required to undertake in the State Farm and Dominion arbitrations is clearly distinguishable from the task facing the trial judge in *Ledcor*. The arbitrators were not simply analyzing a standard form contract in isolation. Rather, they were required to apply their specialized expertise to evaluate each SABS claim in the context of the home statute. Specifically, they had to determine whether Umberto and

Matthew, respectively, qualified as "insured drivers" under the SABS, in order to ultimately resolve the priority dispute under s. 268(2) of the *Insurance Act*.

[54] This distinction was succinctly articulated by the appeal judge in the Dominion appeal as follows, at para. 21:

> [T]his appeal involves more than the interpretation of a standard form contract; it involves the interpretation of provisions of the SABS and the *Insurance Act*. This appeal asks how the policy of insurance interacts with the legislative framework. Intact Insurance Company clearly finds that even extricable questions of law relating to the legislative framework are reviewed for reasonableness.

[55] Neither appellant has identified an "exceptional" question that would serve to rebut the reasonableness standard. As such, the appeal judges were required to review the arbitral decisions in both cases from a deferential posture, to consider whether each decision fell within a range of reasonable outcomes.

[56] The reasonableness standard of review that the appeal judges were required to apply in the present case was comprehensively described by D.M. Brown J. (as he then was) in *Zurich Insurance Company v. The Personal Insurance Company*, 2009 CanLII 26362 (Ont. S. C.), at para. 20, in the context of an insurance arbitral decision concerning a priority dispute:

> Reasonableness is the deferential standard and flows from the recognition that "certain questions that come before administrative tribunals do not lend themselves to one specific, particular result", but "to a number of possible, reasonable conclusions": *Dunsmuir*, para. 47.

> Reasonableness is concerned mostly "with the existence of justification, transparency and intelligibility within the decision-making process", as well as "with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir*, para. 47. As re-iterated by the [Supreme] Court in *Khosa*, when applying a reasonableness standard:
>
> > [A]s long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

[57] In the State Farm arbitration, the arbitrator was required to determine the question of whether Umberto Rupolo was an insured person under s. 3 of the SABS, the arbitrator's home statute.

[58] In my view, the appeal judge in the State Farm appeal erred in reviewing the arbitrator's decision for correctness. There was no reason to displace the deference owed to the arbitrator, who was applying his home statute and his specialized expertise to the policy language[1]. The arbitrator's decision was reasonable because it fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir*, para. 47.

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[1] I also note that the Certificate of Insurance at issue was not a standard form contract: its format was not prescribed under the *Insurance Act* nor followed by other insurance companies.

[59] In these circumstances, the appeal judge in the State Farm appeal erred in substituting her interpretation for that of the arbitrator. Her decision must be set aside and the arbitrator's decision restored.

[60] The same legal issues were before the arbitrator in the Dominion arbitration. Specifically, the arbitrator was required to interpret and apply the meaning of "insured person" in accordance with his home statute and drawing on his specialized expertise.

[61] As noted earlier, the arbitrator in the Dominion arbitration would have concluded that Matthew was an "insured person", except for the fact that he was bound by the decision of the appeal judge in the State Farm appeal.

[62] The appeal judge in the Dominion appeal, who was not similarly bound, appropriately applied the reasonableness standard of review. I see no error in her thorough review of the arbitrator's decision. For the reasons that she expressed, I agree with her conclusion that the arbitrator's underlying conclusion was reasonable.

Disposition

[63] Accordingly, I would allow the State Farm appeal and dismiss the Dominion appeal.

[64] The parties have agreed on the disposition of the costs of the appeals: State Farm is entitled to $15,000 and Belair is entitled to $15,000. Both amounts

are inclusive of disbursements and applicable taxes. The parties also agreed that State Farm is entitled to the costs of the appeal below.

Released: FR FEB 0 2 2018

L.B. Roberts J.A.

I agree Alexandra Hy ACJO.

I agree. K.M. Weiler J.A.