

**IN THE MATTER OF THE INSURANCE ACT,  
R.S.O. 1990, C. I.8, s.275, AS AMENDED**

**AND IN THE MATTER OF THE ARBITRATION ACT,  
S.O. 1991, CHAPTER 17, AS AMENDED**

**AND IN THE MATTER OF AN ARBITRATION**

**B E T W E E N:**

**THE GERMANIA FARMERS' MUTUAL  
FIRE INSURANCE CO.**

**Applicant**

**-and-**

**FEDERATED INSURANCE COMPANY OF CANADA**

**Respondent**

**A W A R D**

**COUNSEL**

Harry P. Brown, Esq.  
Counsel for the Applicant

Mark K. Donaldson, Esq.  
Counsel for the Respondent

This Arbitration arises out of a motor vehicle accident which occurred on March 31, 2003 on Grey County Road #10 (also referred to by the parties as Wellington County Road #1) at or near the intersection of Minto-Normandy Townline.

The subject accident occurred in whiteout or, at least, bad weather conditions.

The witnesses who gave evidence could not agree as to the direction that Grey County Road ran. The investigating police officer described how Highway #9 ran

through Clifford, Ontario. He stated that if one followed Highway 9 west of Clifford, one would come to the intersection of Grey County Road. He felt that at that intersection, Highway 9 ran in a north-south direction. He said that when one turned from Highway 9 onto Grey County Road, one would then be heading in an easterly direction. According to the officer, Allan Carter was operating a dump truck in an easterly direction on Grey County Road prior to the subject accident. The dump truck operated by Allan Carter was insured by Federated Insurance Company of Canada.

The second vehicle involved in the accident was operated by Connie Murray. Her vehicle was insured by The Germania Farmers' Mutual Fire Insurance Co. The Murray vehicle was also proceeding in an easterly direction on Grey County Road prior to the subject accident.

The evidence was that Allan Carter had proceeded in an easterly direction on Grey County Road and intended to turn right at the intersection of Minto-Normandy Townline. As he proceeded in an easterly direction, by reason of weather and road conditions, he missed the intersection. He then stopped his vehicle and reversed the same. There was some argument that he had stopped reversing his vehicle and was stopped momentarily before his vehicle was struck from the rear. There is an issue as to whether he was still reversing or whether he was stopped when his vehicle was struck from the rear by the Murray vehicle.

This Arbitration is a Loss Transfer matter. Germania paid benefits to or for the benefit of Connie Murray under the *Statutory Accident Benefits Schedule*. Germania seeks to recover the amount paid out in benefits from Federated pursuant to the provisions of s.275 of the *Insurance Act*.

Pursuant to s. 275 of the *Insurance Act*, Germania, the insurer responsible for the payment of No-Fault benefits, is entitled to indemnification in relation to those benefits paid by Germania, from Federated, since Federated insured a dump truck which was a "heavy commercial vehicle".

There is no issue between the parties that the aforesaid dump truck was a "heavy commercial vehicle".

The indemnification referred to above, according to s. 275(2) of the *Insurance Act*, "shall be made according to the respective degree of fault of each insurer's insured as determined under the Fault Determination Rules". The *Fault Determination Rules* are set out in Ontario Regulation 668, made under the *Insurance Act*. Section 5(1) of the *Fault Determination Rules* sets out as follows:

"If an incident is not described in any of these rules, the degree of fault of the insured shall be determined in accordance with the ordinary rules of law."

I, the Arbitrator, must determine whether the subject accident is described in any of the *Fault Determination Rules*. If so, a rule may determine the degree of fault of each insurer's insured in this case. If I find that the incident is not described in any of the Rules, I must determine fault in accordance with the ordinary rules of law.

I heard evidence from P.C. Andrew Clements, from Allan Carter, the operator of the dump truck, from Connie Murray, the operator of a van which struck the dump truck from the rear and from Janice Grubb, an independent witness.

**EVIDENCE OF THE WITNESSES**

**CONSTABLE CLEMENTS**

Constable Clements is an OPP officer with 17 years of experience in dealing with motor vehicle accidents.

Officer Clements attended at the scene and made notes which were produced at the Hearing. He interviewed Allan Carter and noted his statement, although it was not prepared in statement form and was not signed by Mr. Carter.

Constable Clements interviewed Janice Grubb and made notes as to her statement, although no formal statement was prepared and no statement was signed by Janice Grubb.

Connie Murray was injured in the accident and was ultimately transported to hospital. When giving evidence, Constable Clements did not recall interviewing Connie Murray.

Constable Clements investigated the subject accident. He turned from Highway 9 onto Grey County Road #10. Between Highway 9 and Minto-Normandy Townline, Grey County Road had a bend in it and dipped. It was a two lane asphalt highway with a speed limit of 80 kpm.

At the intersection of Minto-Normandy Townline, there was no stop sign for traffic on Grey County Road. There was a stop sign governing Minto-Normandy Townline at the intersection of Grey County Road. There were stop signs for vehicles heading in a northerly or southerly direction on Minto-Normandy Townline.

Constable Clements stated that the distance between Highway 9 and Minto-Normandy Townline approximates three to four kilometres.

Constable Clements stated that when he travelled down the roadway, the weather conditions were extremely bad with blowing snow and whiteouts. He had difficulty seeing ahead. There were times when he was unable to see and times when he would see only four feet or ten feet ahead. The road conditions were snow-covered.

As he approached the subject intersection, he observed the dump truck ahead facing east. It was stopped in the intersection. In its stopped position, the rear of the truck was past the centre of Minto-Normandy Townline. Constable Clements concluded that the point of impact with the rear of the truck was past the centre of that intersection, i.e. East of the centre of that intersection.

Constable Clements stated that he spoke with Allan Carter.

Carter advised him that he had been proceeding in a northerly direction on Grey County Road #10 (an easterly direction, according to Clements). Carter advised him that it was "snowing like crazy". He reached the intersection of Minto-Normandy Townline, was not sure if this was his turn, slowed down and started to slide past the intersection. He then stopped and put on his four-way flashers, checked both mirrors and started to reverse. He observed the van approaching from his rear and saw it slide into the back of his truck.

Carter allegedly stated that the bad weather conditions had let up as he started to back up.

When asked as to how fast he was proceeding, Carter stated that he had "just started to back up".

When asked as to why he would back up into oncoming traffic if it was snowing so bad, he replied that "it had let up when I started to back up".

Constable Clements was asked as to his opinion and he concluded that at the time of the impact, Carter was backing up in a snow storm. He concluded that Carter was still backing up at the time of the impact.

The officer inspected the back of the truck and observed that it was covered in snow. He could not recall if the lights on the back of the vehicle were visible. He stated that the back of the truck looked like a "wall of snow".

Constable Clements charged Allan Carter with Careless Driving, but Carter was ultimately acquitted at Provincial Court.

Mr. Donaldson questioned Officer Clements as to the diagram in the police report which showed that the dump truck had almost cleared the intersection at the time of impact.

Constable Clements stated that the actual stopped position of the dump truck when he attended at the scene was not as far east as the version in the police report.

Constable Clements stated that he did not determine an accurate point of impact. He took no measurements at the scene and made no assessment of the debris to determine a point of impact.

The officer could not recall the distance between the front of the van and the dump truck when he attended at the scene.

The officer confirmed that the statements which he took in his notebook were not read over by the witnesses.

On questioning by Mr. Brown in re-examination, the officer stated that the dump truck may have been moved from the point of impact prior to his arrival on the scene.

The Arbitrator asked the officer as to the position of the dump truck when he attended at the scene. The officer stated that the truck was not back far enough into the intersection to make a turn to the right at the intersection in question.

**ALLAN CARTER**

Allan Carter was the operator of the dump truck, as set out above.

Under direct examination, Allan Carter stated that on the date of the accident, it had been snowing off and on. When he was at the company yard having his truck loaded, there was another driver ahead of him. He ultimately spoke with the other driver by radio once he was in motion and was told that it was snowing badly and that the roads were slippery.

Carter travelled approximately 12 kilometres from the company pit to the point of impact.

Carter stated that he had travelled in the area of the point at where the accident happened a few times previously. As he approached where the accident happened, wet heavy snow was falling. The roads were wet and slippery. He stated that he was proceeding at a speed of 20 – 30 kph on Grey County Road #10. He started to slow down and put his foot on the brake as he approached the Minto-Normandy Townline. His truck slid on the wet snow. He pumped his brakes on and off until he stopped. He did not attempt the right turn that he intended to make. He slid one-half a truck length past the corner of the intersection. He checked his mirror and saw nothing approaching from the rear. He observed a vehicle on Minto-Normandy Townline to his left. That vehicle was barely moving towards the intersection.

Carter stated that he reversed his vehicle and ultimately stopped it in order to change gears. He checked his rear view mirrors and saw a van coming around the curve behind him. He saw it veering to the ditch to the right. He did not attempt his right turn in case the van was attempting to move to his right. He was concerned that she might strike the fuel tank on the passenger side of his vehicle.

When he saw the van approaching from his rear at the curve in the road, the curve was roughly 100 to 150 yards behind him.

He said that he had reversed until a point that the back of his cab was in line with the shoulder of Minto-Normandy Townline.

Carter stated that there were lights on the back of his dump truck. There were clear small back-up lights. Further, on the box of the vehicle, there was reflector tape on the tailgate. There were also the tail lights on the back of the vehicle which were red and were activated when he activated his 4-way flashers.

Carter stated that if he reversed, the back-up lights would automatically come on.

He said there was a switch which he would pull out inside the vehicle to activate the 4-way flashers.

He stated that he activated the 4-way flashers before he started to reverse.

After his vehicle was struck from the rear, he stated that he pulled his parking brake on. He got out of the cab to check on the condition of the other driver. He noted that the 4-way flashers were flashing on the back of his truck.

He and Janice Grubb assisted Connie Murray out of her vehicle. Connie Murray was helped to the van of Janice Grubb.

Carter then went back to where the vehicles were in order to flag traffic so there would not be further impacts. At that point, the dump truck was on the pavement on the side of the eastbound lanes.

Carter stated that the police attended at the scene and that the first thing the officer said to him was that he was going to be charged.

Carter stated that he moved his vehicle onto the shoulder of the roadway after the impact.

Under cross-examination, Mr. Carter repeated that the roads were slippery and that it was snowing pretty badly as he proceeded eastbound on Grey County Road prior to the impact. He said it was "snowing like crazy" when he came to the intersection. He knew roughly where the intersection was. Notwithstanding that, he slid past the intersection by reason of visibility and the condition of the roads. Because of all of the snow covering, it was hard to determine where the corner of the intersection was. He found visibility to be bad as he proceeded eastbound on Grey County Road approaching the intersection.

He stated that he slid half a truck length past the intersection. He had intended to turn right on Minto-Normandy Townline. He had to drop the load that he was carrying some distance down that roadway. Once he passed the intersection, he had to determine how to get back to the road.

Carter stated that the snow had let up. He checked his mirrors. He decided to reverse as he was not familiar with other roads leading off this highway. He did not drive the area regularly.

Carter stated that there were no whiteout conditions when he started to reverse.

Carter stated that the lights on the rear of the truck were visible, i.e. the 4-way flashers. He claimed that the back of his vehicle was not completely covered in snow.

When his vehicle was struck from the rear, the impact did not move his vehicle.

Carter stated that he moved his vehicle from the point of impact before the police came. He moved the vehicle past the intersection to the shoulder of the road in a position such that approximately more than half of the vehicle was on the shoulder.

Carter stated that once he had reversed, he was in a position to make his right turn.

Carter was shown the notes of Constable Clements as to what Carter allegedly told Constable Clements. Carter stated that what was written down was not exactly what he said.

Officer Clements had noted that Carter "came up to this corner, not sure if this was my turn...". Carter stated that he told the officer that he had to make the turn but was not sure where the corner was.

Carter stated that he told the officer that the van was going to the ditch on the right.

Carter stated that a lot of what he told the officer was not noted in the statement. He stated that the "way he has it is not right".

Carter stated that there was no traffic coming from behind him when he started to back up.

Carter stated that when he checked his mirrors, he could see 100 to 150 yards behind him.

Carter denied that he was still backing up at the moment of impact.

He stated that he did not tell the officer that he was still backing up when the impact occurred.

Under cross-examination, Carter stated that when he went back to the shop, he gave a statement. In the statement, he stated that he backed up and had his 4-way flashers on. He stated that he stopped and was putting the truck in gear to make the turn and looked in his mirror and saw the van, approaching from the rear, starting to fishtail.

He stated that he had been stopped for approximately five or ten seconds before the impact. At that point, his vehicle was no longer in reverse.

### **CONNIE MURRAY**

Connie Murray was the operator of the van which struck the rear of the dump truck.

Ms. Murray was driving to work in Hanover when the accident occurred.

She travelled along Highway #9 to Clifford. She exited Clifford and turned right to proceed along Grey County Road #10. The first intersection she would reach would be Minto-Normandy Townline. The road was a two lane highway with a speed limit of 80 kph.

Ms. Murray stated that when she turned onto Grey County #10, it was snowing very heavily and visibility was so bad that she could see almost nothing. She was operating her vehicle with the headlights on. When she approached the intersection of Minto-Normandy Townline, the road conditions were not good. It was snowing heavily. The roads were covered with snow and the road was slippery underneath that snow covering.

Ms. Murray was proceeding at a speed of 30 to 35 kph after making her turn onto Grey County Road #10.

As she approached the intersection of Minto-Normandy Townline, she stated that she saw a "white wall". That turned out to be the dump truck in question. She put her van into neutral and steered to the right but struck the rear of the dump truck.

She stated that she was knocked out by reason of the impact. She recalled coming to and having difficulty breathing. She banged her left arm while trying to get out of the vehicle and then noticed a person standing beside her window. A man pulled her out of her vehicle and her next recollection is being seated in the van of Janice Grubb until the ambulance came.

She stated that when she came up to the intersection of Minto-Normandy Townline and saw the white wall, her speed was the same, i.e. 30 to 35 kph. She said she had her foot on the brake. Between the time that she saw the white wall and the impact, just a few seconds passed. When she saw the white wall, it was no more than two car lengths ahead of her. She stated that what she saw was a white wall with no lights visible. The white wall turned out to be the back of the dump truck.

When Ms. Murray was asked as to whether the dump truck was stopped or moving, her answer was that she did not know.

Ms. Murray was cross-examined as to the evidence that she gave in Provincial Court. Her evidence then was similar to her evidence at the Arbitration. She stated that when she “came up to the corner where the accident happened, I saw this truck that was stopped and the back of the truck was covered with snow so I couldn’t tell if he was stopped or backing up”. Later in her evidence at Provincial Court, she repeated that she thought that the truck had stopped on the highway.

She was asked as to the time that elapsed between the time that she saw the truck and when she struck it. She had originally estimated the time at five to ten seconds but now thinks that it was two to three seconds.

### **JANICE GRUBB**

Janice Grubb witnessed the accident in question.

Again, all of these witnesses had different ideas as to the directions that the various roads ran. I have accepted the evidence of Constable Clements as to the direction which the roads ran.

Ms. Grubb was operating her van on Minto-Normandy Townline Road. Assuming that the Carter dump truck and the Murray van were proceeding in an easterly direction on Grey County Road #10, that would mean that Ms. Grubb was approaching the intersection of Grey County Road #10 from the left, if one was in the position of Allan Carter, operating his dump truck.

Ms. Grubb stated that there was a stop sign for her at the intersection. She had entered Minto-Normandy Townline at the intersection of Highway #9. She was on her way to work at the time and was alone in her vehicle.

Ms. Grubb stated that the weather conditions were blizzard-like conditions with poor visibility and large snow flakes.

It was her intention to turn left to proceed in an easterly direction on Grey County Road #10.

As she proceeded down Minto-Normandy Townline to the intersection of Grey County Road #10, there was a small hill before she reached the intersection. As she came over the rise, she saw something red ahead of her which turned out to be the dump truck. She said that it looked like the vehicle was reversing and she assumed that the driver had missed the intersection and had decided to back up. She stated that she was unsure as to why the driver would do that in these weather conditions.

Ms. Grubb stated that there was a line of trees on her right.

She stated that the dump truck slowed down until it was almost stopped. It was then that the van slid into the back of the truck. She said it was like slow motion as the van hit the back of the dump truck. The van appeared to be moving slowly.

Ms. Grubb pulled her vehicle over to the side of the road and assisted Mr. Carter in bringing Ms. Murray to the Grubb van. She then remained at the scene until the ambulance arrived.

Ms. Grubb stated that she gave a statement to Constable Clements.

She observed the back of the dump truck to be covered with packed snow.

The notes of Constable Clements set out that Ms. Grubb stated “the dump truck was backing up, it must have missed the turn. I was just coming up to the stop sign. The dump truck was just about to go forward again.”

An adjuster for Federated also interviewed Ms. Grubb. Those notes stated “saw truck backing up on the highway – as he stopped and tried to go forward, van hit his back corner.” In a statement given to a representative of Germania, Ms. Grubb stated “just as the truck stopped, I then saw a van northbound on County Road 10 hit the rear of the dump truck.” Ms. Grubb was examined and cross-examined as to whether the truck was stopped or moving when hit. The preponderance of her evidence was that the vehicle had just stopped momentarily after finishing reversing.

When Ms. Grubb gave evidence in Provincial Court, she stated that she observed the dump truck backing up and “it’s about to stop and I see another vehicle...”

#### **SUBMISSIONS MADE ON BEHALF OF GERMANIA**

It was submitted on behalf of Germania that the accident occurred when Allan Carter, the operator of the vehicle insured by Federated, was reversing his vehicle on the highway. It was argued that that was done in white-out conditions when, by reason of visibility difficulties, Allan Carter, the operator of the dump truck missed the intersection where he intended to turn right. He then reversed his vehicle and was still doing so when his vehicle was struck from the rear by the Murray van, insured by Germania.

Counsel for Germania argued that the police officer took a statement from Mr. Carter and that in that statement, Mr. Carter stated that he was backing up when he

saw the van approaching from his rear. In that statement, Mr. Carter did not say that he was stopped prior to being hit.

Counsel for Germania argued that the independent witness, Janice Grubb, gave a statement to the police officer, to an adjuster for Germania and to counsel for Connie Murray and also gave evidence at Provincial Court. It was argued on behalf of Germania that in the statements, Ms. Grubb indicated that the truck may have been reversing or was barely stopped at the moment of impact.

Counsel for Germania argued that Rule 19 of the *Fault Determination Rules* applies. That Rule sets out as follows:

“The driver of automobile “A” is 100 per cent at fault and the driver of automobile “B” is not at fault for an incident that occurs,  
(a) when automobile “A” is backing up;”

It is argued on behalf of Germania that should I find that the dump truck was backing up at the time of the incident, that Rule 19 results in a finding of 100 per cent of fault on the part of Allan Carter, the operator of the dump truck.

In an alternative argument, it is argued on behalf of Germania that if Carter was not reversing at the time of the impact, but was stopped, then Carter was illegally parked or stopped contrary to a By-Law of the Corporation of the Country of Grey.

It is argued on behalf of Germania that Rule 17(2) of the *Fault Determination Rules* would apply. That Rule sets out as follows:

“If automobile “A” is illegally parked, stopped or standing when it is struck by automobile “B” and if the incident occurs outside a City, Town or Village, the driver of automobile “A” is 100 per cent at fault

and the driver of automobile "B" is not at fault for the incident."

It is submitted on behalf of Germania that the accident occurred outside a City, Town or Village and that the dump truck, if stopped, was illegally stopped, contrary to the said By-Law.

Counsel for Germania anticipated the argument of counsel for Federated that this was in effect a rear end collision. Federated would argue that Rule 6(2) of the *Fault Determination Rules* applies. Rule 6 sets out:

**"Rules for Automobiles Travelling in the Same Direction and Lane**

6(1) This section applies when automobile "A" is struck from the rear by automobile "B", and both automobiles are travelling in the same direction and in the same lane.

(2) If automobile "A" is stopped or is in forward motion, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the accident."

It is argued on behalf of Germania that Rule 6(2) would not apply since the dump truck was illegally stopped at the time of the accident.

It is also argued on behalf of Germania that should more than one rule apply, one would have resort to Rule 4 of the *Fault Determination Rules*. Subsection (2) of Rule 4 sets out:

"...if two rules apply with respect to an incident involving two automobiles and if under one rule the insured is 100 per cent at fault and under the other the insured is not at fault for the incident, the insured shall be deemed to be 50 per cent at fault for the incident."

Finally, Germania argues that if the incident is not described in any of the Rules, pursuant to Rule 5(1) "if an incident is not described in any of these Rules, the degree of fault of the insured shall be determined in accordance with the ordinarily rules of law."

It is ultimately argued on behalf of Germania that this accident was really caused by reason of the fault of the operator of the dump truck insured by Federated. It was argued that this was an experienced truck driver who knew that the roads were in terrible condition. It was argued that he should not have attempted to reverse and should have simply kept going to the next intersection. Carter claimed that he could not do that as he was not familiar with the area. It was argued on behalf of Germania that the manoeuvre made by Carter was exceptionally dangerous.

#### **SUBMISSIONS ON BEHALF OF FEDERATED**

It was argued on behalf of Federated that in this situation, the Arbitrator must have regard to the *Fault Determination Rules*, under Ontario Regulation 668.

Counsel for Federated made reference to Rule 3 which sets out as follows:

"The degree of fault of an insured is determined without reference to,  
(a) the circumstances in which the incident occurs, including weather conditions, road conditions, visibility or the actions of pedestrians;"

It was argued on behalf of Federated that this was a simple case. Allan Carter, operator of the dump truck, was taking the position that he had stopped reversing and was stopped when his vehicle was struck. Counsel for Federated stated that Rule 6 clearly applies and that Rule 6(2) sets out as follows:

"If automobile "A" is stopped or is in forward motion, the driver of automobile "A" is not at fault

and the driver of automobile "B" is 100 per cent at fault for the incident."

Counsel for Federated said that clearly the Carter dump truck was stopped and was then struck from the rear and that Rule 6(2) should apply to place 100 per cent of fault on Ms. Murray, the operator of the van insured by Germania. It is argued that applying Rule 3 as set out above, the Arbitrator should disregard the circumstances in which the incident occurred, including the weather conditions, road conditions and visibility.

It is argued on behalf of Federated that this is a simple rear end collision and that Ms. Murray should be 100 percent at fault.

Insofar as the argument that the Carter dump truck was illegally parked or stopped, it is submitted that there was no proof that the incident occurred outside a City, Town or Village.

Further, the truth was that Carter was not "parked" or "standing". He had reversed and had stopped and was about to move forward. Any stop was a momentary stop.

It was argued that Rule 19 would not apply since on the evidence, an Arbitrator should not conclude that Carter was reversing at the time that the incident occurred.

It was argued that ordinarily, one should apply the *Fault Determination Rules* except in an extraordinary case.

It was also argued on behalf of Federated that if the Arbitrator resorts to Rule 5 and concludes that the incident is not described in any of the Rules, that when looking at the degree of fault of each insured, in accordance with the ordinary rules of

law, that the provisions of Rule 3 should still apply and that no reference should be made to the circumstances in which the incident occurred, including weather conditions, road conditions or visibility.

Counsel for Germania took exception to that argument and argued that one would only have resort to Rule 3 when attempting to apply one of the *Fault Determination Rules*. One would not have regard to Rule 3 if one was looking at the ordinary rules of law.

I accept the submissions of counsel for Germania in that regard. In the view of this Arbitrator, one only applies Rule 3 if the incident is described in one of the *Fault Determination Rules*. Rule 3 is not employed if one is going to determine the degree of fault in accordance with the ordinary rules of law.

#### **REPLY OF COUNSEL FOR GERMANIA**

Counsel for Germania again took issue with the application of Rule 6(2). He argued that this was not simply a rear end collision. The truck had reversed and was not back to travelling in the same direction in the same lane as the Murray van.

#### **REASONS FOR AWARD**

In a Loss Transfer matter, the insurer, which has paid out Statutory Accident Benefits to an insured person, is entitled to indemnification in relation to such benefits paid by it from the insurer of a heavy commercial vehicle. Such indemnification, however, shall be made according to the respective degree of fault of each insurer's insured as determined under the *Fault Determination Rules*.

If the *Fault Determination Rules* do not describe a type of accident in a given case, the degree of fault of the insured of each insurer, shall be determined in accordance with the ordinary rules of law.

In the subject case, I must consider whether Rules 19, 17(2) or 6 apply.

Based on the evidence that I heard, I conclude that Rule 19 does not apply to this case. Rule 19 would place 100 per cent of fault on Allan Carter, the driver of the vehicle insured by Federated if I conclude that the dump truck was backing up at the time that the incident occurred.

On the evidence, I conclude that the dump truck was not backing up or reversing at the time of the impact.

I appreciate that Constable Clements reached the conclusion that the Carter vehicle was reversing at the time of the impact. However, his notes as to the statement given by Allan Carter were not in statement form and were not reviewed or signed by Allan Carter at the time. Carter, in his evidence, clearly stated that he had backed up his vehicle but had stopped prior to the impact.

Connie Murray did not know if the Carter vehicle was stopped or moving when she first saw it. She thought that it was stopped. She could not tell if it was moving.

Janice Grubb saw the Carter vehicle reversing. At one point, she stated that it had slowed down and was almost stopped. She went on to state that the dump truck was just about to go forward again. On another occasion, she stated that just as the truck stopped, the van hit it. My conclusion from her evidence is that the dump truck was not reversing at the point of impact.

Accordingly, I find that the dump truck was not backing up when the incident occurred and, accordingly, Rule 19 does not apply to this case.

I understand the argument made by counsel for Germania that the dump truck was illegally parked or stopped or standing when it was struck by the Murray van.

I accept the submissions of counsel for Federated that I did not have adequate proof that the incident occurred outside a City, Town or Village. However, even if that was the case, on the evidence, I am unable to find that the dump truck was illegally parked, stopped or standing when struck.

The dump truck would have been stopped momentarily and that type of stop cannot result in a finding that the dump truck was illegally parked, stopped or standing.

Accordingly, on the evidence, I find that Rule 17(2) does not apply to this case.

I must next consider Rule 6. The heading for Rule 6 is "**Rules for Automobiles Travelling in the Same Direction and Lane**".

Rule 6(1) applies to a rear end situation when "both automobiles are travelling in the same direction and in the same lane".

In this case, both vehicles were not travelling in the same direction and in the same lane. The dump truck had been travelling in the same direction and in the same lane but had stopped and had then reversed and was momentarily stopped again before moving forward again.

I find that Rule 6 does not apply. The incident in question does not involve "Automobiles Travelling in the Same Direction and Lane".

The wording in Rule 6(1) is clear that for Rule 6 to apply, "both automobiles (must be) travelling in the same direction and in the same lane." The two vehicles in this case were not travelling in the same direction when the incident occurred. The truck had stopped and had reversed and was briefly stopped when the incident occurred.

It is argued by counsel for Federated that Rule 6(2) should apply since the dump truck was stopped. However, one cannot have resort to Rule 6(2) unless one finds that Rule 6(1) is applicable. When one reads Rule 6(2), it obviously applies to a situation in which two automobiles are travelling in the same direction and in the same lane and the lead vehicle stops or is in forward motion. As set out above, I have determined that Rule 6 does not apply to the subject incident.

I am aware of the argument that I must look at the rules without considering other circumstances. In reaching the conclusions set out above, I have not considered other circumstances but have simply looked at the rules to determine if they are applicable.

Since the incident was not described in any of the Rules, I must determine the degree of fault of each insured in accordance with the ordinary rules of law.

I conclude that the majority of the fault for the incident lies with Allan Carter, the operator of the dump truck. Mr. Carter stated that it was "snowing like crazy" when he came to the intersection. I do not fault him for applying his brakes and skidding past the intersection. However, to then reverse his vehicle on slippery roads which were snow covered and with at least the majority of the rear of his vehicle covered in snow, was terribly dangerous to say the least.

If he activated his four-way flashers as he stated, those should have been visible to Ms. Murray. She stated that she saw only a "wall of snow".

On the other hand, there is also some fault on the part of Connie Murray. She stated that as she proceeded in an easterly direction, visibility was almost nothing. The roads were slippery. Yet, it appears that she continued to proceed at a speed of 30 to 35 kph. When operating her vehicle that day on that road at that time, she was obliged to operate it at a safe speed and at a speed that would have enabled her to stop the vehicle for any reason, if necessary. She was unable to stop when she saw the wall of snow.

I find that Allan Carter was  $2/3$  at fault for the incident and that Connie Murray was  $1/3$  at fault for the incident.

In the result, I order that Germania recover from Federated  $2/3$  of the amount paid out in benefits. Should the parties be unable to determine the amount payable, I will remain seized of the issue.

I award the costs of the Arbitration to Germania. Counsel agreed that the quantum of costs to be awarded to the successful party would be the sum of \$5,000.00 plus disbursements.

I also order that Federated pay the fees and disbursements of the Arbitrator.

DATED this 15<sup>th</sup> day of November, 2006.

  
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Stephen M. Malach, Arbitrator