

IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c. I.8 as amended
AND IN THE MATTER OF the *Arbitration Act*, S.O. 1991, c. 17 as amended
AND IN THE MATTER OF an Arbitration

BETWEEN

BELAIR DIRECT INSURANCE COMPANY

APPLICANT

AND

ECONOMICAL INSURANCE

RESPONDENT

AWARD

COUNSEL

Kevin Mitchell, counsel for the Applicant, Belairdirect Insurance Company (hereinafter called "Belair").

Angelo G. Sciacca, counsel for the Respondent, Economical Insurance (hereinafter called "Economical").

INTRODUCTION

This matter comes before me pursuant to s. 268 of the *Insurance Act* and Regulation 283/95 and the *Arbitration Act* 1991, to arbitrate a dispute between two insurers with respect to a priority issue that has arisen as a result of a motor vehicle accident that occurred on January 16, 2023. The parties appointed me as their arbitrator on consent and filed an Arbitration Agreement dated March 26, 2025.

BACKGROUND

On January 16, 2023 the claimant was on an e-bike making a delivery for Uber Eats. He had been at KFC and had food in his bag and was on his way to make a delivery.

Unfortunately, the claimant was involved in a motor vehicle accident when his e-bike was struck by an automobile: a Silverado insured by Nordic, resulting in various injuries to the claimant.

Belair insures the claimant's personal vehicle, a 2004 Dodge Ram. There is no issue with respect to Belair coverage. The claimant applied to Belair for statutory accident benefits and various benefits have been paid to date.

Economical insures Uber holdings Canada Inc. and related companies.

Belair takes the position that as the claimant was involved in an "Uber" enterprise in the process of delivering food for Uber Eats, that the Economical policy should provide coverage to the claimant for statutory accident benefits despite the fact that he was operating an e-bike at the time of the accident.

Belair does not argue that the e-bike was an automobile but rather relies on consideration of public policy and equity to argue that the Economical policy should be extended to provide coverage to Uber Eats delivery personnel when operating an e-bike.

PROCEEDINGS

This matter proceeded by way of a written hearing. Both parties submitted extensive written submissions. In addition, the following documents were submitted:

- Various medical reports relating to the claimant.
- A copy of the Police Report of January 3, 2023.
- Handwritten OCF-1, undated, six pages.
- Typed OCF-1 dated February 2, 2023.
- Typed OCF-1 dated February 8, 2023.
- OCF-2 from Uber Eats dated February 8, 2023.
- Statutory Declaration of the claimant dated March 24, 2023.
- Various letters between Belair, the claimant and Economical with respect to notification of the priority dispute.
- Uber tax summary for the years 2022 and 2023.
- Platform Access Agreement Uber Connect - Canada dated July 1, 2021.
- Copy of the Uber Ontario policy.
- Copy of Chubb AD&D insurance policy.
- EUO transcript of the claimant dated March 1, 2024.
- Email from Chubb dated December 14, 2024.
- In addition, both parties submitted various Books of Authority.

No oral evidence was called and no affidavits were filed.

FACTS

As noted, this priority dispute arises from a motor vehicle accident that took place in January 16, 2023. At that time, the claimant was operating a Volt Promax e-bike that was owned by him. The bike had pedals as well as an engine assist. The claimant reported that he believed the maximum speed was 32 kilometers and that the stock electric motor was 500 watts. The bicycle weighed 80 to 100 lbs.

There appears to be no dispute between the parties that the e-bike was not required to be registered with the MTO. The claimant's evidence was that he understood the bike did not require automobile insurance.

At the time of the accident, the claimant was making deliveries for Uber Eats. He describes his title as that of "food courier" and his job was to pick up food and deliver it to someone's house. He describes this as a full-time job.

With respect to the operation of the e-bike, the claimant described that he would "pedal it with my pedals". The claimant also noted that he did not require a special licence to operate the e-bike.

The claimant also gave evidence that at no time did he try to insure his e-bike.

The claimant was not charged after this accident for not having any insurance.

The claimant has been associated with Uber for a number of years.

His evidence was that he had two accounts. The first account with Uber was for his car for ridesharing and the second account was for "bicycle and walking".

You had to apply separately to Uber to qualify for the car account versus the bicycle account.

The claimant's evidence was that he only used the car account in 2020. He believes he stopped being registered with that account in approximately April of 2021. The car account was no longer valid on the date of loss.

In order to sign up with Uber Eats with respect to his bicycle/e-bike, there was a separate Uber application. You applied to the Uber "bike account", identified yourself as a bicycle courier and completed any other relevant information that the app required.

The claimant reports that he read through the contract that related to the bicycle account a few times. His evidence was that there was nothing in the contract that he read or believed would provide any coverage to him through Uber when he was in the course of delivering and he sustained an injury.

His evidence was also that when he applied for the "car account", that there were a few different processes that he had to follow. He was required to identify the make and model of his automobile and also identify who it was insured with and provide proof of insurance. This was not required on the "bicycle account".

The claimant gave evidence that for the years 2022 and 2023 he had not paid any fees to Uber.

This was supported by the Uber tax statements.

A copy of the Economical policy was produced. It showed the named insured as "per Schedule 1." Schedule 1 indicated that the named insureds were:

- Uber Holdings Canada Inc.
- Uber Raiser Canada Inc.
- Uber Portier Canada Inc.
- Uber Castor Canada Inc.
- Uber Canada Inc.
- Uber Technologies Inc.
- Any rideshare driver and any rideshare vehicle owner.

The policy effective date was January 12, 2022.

As to policy it provides coverage for described automobiles, also as defined under Schedule 1, when these automobiles are providing transportation services. The described automobile is defined as:

"The automobile(s) operated by rideshare drivers."

The Certificate of Automobile Insurance states:

"This certificate is proof of a contract of insurance between the named insured and the insurer, subject in all respects to the Ontario Automobile Policy (OAP1). In return for the premium charged and the statements contained in the Application the contract provides for coverage outlined in the certificate. You only have a particular coverage for a specific automobile if this certificate shows a premium for it or shows the coverage is provided at no cost."

The policy also provides for a definition of "rideshare driver", rideshare vehicle owner, ridesharing and transportation services which will be outlined later in this decision.

Attached to the policy is an EPCF-6TN coverage for rideshare endorsement which states under paragraph 2:

"What We Will Cover – We will provide primary coverage for the Described Automobiles as outlined in the certificate of automobile insurance, only while the Described Automobile is used in the pre-acceptance period and the post-acceptance period subject to section 3 limitation on coverage and section 4 what we will not cover."

Also produced by the parties was a copy of an insurance policy issued by Chubb Life Insurance Company of Canada. This is a group accidental death and dismemberment insurance.

Someone is eligible under this policy if they are "a delivery partner of the policy holder under age 70". The policyholder is Uber Portier BV. The scope of the coverage under this policy is to provide for accidental death and injury when a delivery partner is:

1. En route to pick up location of the goods and then continuing while travelling to the final destination of the requested goods, or
2. Travelling to a location designated by the policyholder for the purpose of returning items used in connection with the request to transport or deliver goods.

This policy describes accident as a sudden unforeseen and fortuitous event. It also provides a definition of bicycle, electrical bicycle and electrical scooter. Electrical bicycle is defined as:

"A bicycle equipped with an electronic motor that ceases to provide assistance when the device reaches a maximum speed of 32 kilometres per hour."

The definition of bike is also set out below:

"Bicycle means a vehicle composed of two wheels held in a frame one behind the other, propelled by pedals and steered with handlebars attached to the front wheel."

Notably, there is nothing with respect to an automobile in the Chubb policy.

When this accident occurred, there is no dispute that the claimant was in the course of making a delivery for Uber Eats on an e-bike.

At the time of the accident, Belair provided insurance to the claimant's personal vehicle, a 2004 Dodge Ram. The claimant was the named insured under the policy. Belair acknowledges that as the claimant was hit by a car when this accident occurred that Belair was obliged to respond to the Application for Accident Benefits submitted to Belair.

Turning to the accident benefit claim. The Police Report indicates that the claimant was on a Volt-Promax and that there was no insurance on the bike.

The claimant submitted his first OCF-1 to Belair, undated. He indicated under income replacement benefit that he worked as an Uber delivery person 40 hours a week.

The OCF-2 submitted was from Uber Eats with an address in Mississauga and it noted that the

claimant worked as a bike courier. His job description was "food delivery". His essential tasks included "ride bike/walk".

By letter dated March 21, 2023 Belair wrote to Economical providing a Notice to Applicant of Dispute Between Insurers which was dated March 17, 2023. The letter advised that they would be pursuing a priority dispute as against Economical taking the position that as the claimant was operating as a delivery person for Uber Eats, that he was covered under the Economical policy no. 6962301.

The Notice to Applicant of Dispute Between Insurers with respect to the reasons given for the priority dispute stated the following:

"The claimant was involved in a motor vehicle accident on January 16, 2023 when he was struck as a cyclist by a third party vehicle. At the time of his accident he was in the course of his employment as an Uber Eats delivery person and is insured with Economical Insurance as an employee of Uber under policy 6962301."

Economical responded by letter dated March 22, 2023 advising:

"We are unable to accept priority for this claim. We can confirm there is no coverage under our policy for anyone who is on a bicycle or e-bike making deliveries as this is a commercial automobile policy."

Based on the denial, Belair served a Notice Demanding Arbitration on June 13, 2023, ultimately leading to my appointment as the arbitrator to hear this dispute.

I now turn to the review of the Uber Platform Access Agreement and the Economical policy of insurance.

The Platform Access Agreement that was produced makes reference to it being for "Uber Connect – Canada".

Under key principles, it is noted that the agreement applies to the use of the Uber platform in the business of providing "P2P item delivery".

P2P item delivery suggests that the individual who is working under this Platform Access Agreement does so with a view to making deliveries either in a car or some other mode of transportation.

Under s. 4.2(d) item (iii) the individual is told that they must "obtain, operate and maintain your transportation method". They are also obliged to identify their transportation method.

Under s. 5.2 there are various provisions in the agreement with respect to the "transportation method". Firstly, the individual is required to ensure they are properly registered and licensed to operate an "item delivery vehicle" to the extent required by the applicable law. If you are operating a car, you are required to be properly and adequately insured. You must also match the transportation method that is registered on your driver's account. You are also obliged to provide Uber with proof of vehicle insurance and a vehicle inspection if "your transportation method is a motor vehicle". Uber reserves the right to restrict or remove their access to the Uber platform if proof of vehicle insurance and the information is not provided on request.

There is also a detailed section in this agreement under s. 7 entitled **Insurance**. This requires an individual to take out at their own cost insurance if "you are using a motor vehicle as your transportation method".

If you are using a motor vehicle, you must take out insurance that provides protection against bodily injury and property damage to third parties for each vehicle that is being used for a P2P item delivery. This individual is also required to notify Uber immediately of any change in the status of the motor vehicle insurance and the insurance must provide that the individual is the policyholder.

The document also set out that Uber may, in its sole discretion, choose to maintain "automobile insurance related to your P2P item delivery, but Uber is not required to provide you with any specific coverage for loss to your vehicle ...".

Also critical is paragraph 7(h) which is set out below:

"If you tell Uber or its affiliate that you will use a bicycle or other non-motor transportation method for P2P item delivery, but then use an automobile or other motorized device that is considered a motor vehicle, Uber will not provide any form of insurance for you and you will be responsible for reimbursing Uber for any amounts that Uber is found liable for (e.g. defence costs or indemnity payments) in respect of use of such automobiles or motorized devices."

Turning now to the Economical policy. I have already set out some of the relevant provisions. However, important to this case are the definitions set out within this policy, specifically the definitions of rideshare driver, rideshare vehicle owner, and ridesharing.

These are relevant as the name of the insured appearing on the Certificate of Automobile Insurance is noted to be "any rideshare driver and any rideshare vehicle owner."

A rideshare vehicle owner is defined as "the owner of a described automobile(s) operated by a rideshare driver or, if the described automobile is leased, the lessee of the described automobile(s) operated by the rideshare driver."

The rideshare driver is defined as "shall only mean an individual that is operating a described automobile in connection with the use of the Digital Network affiliated with Uber Holdings Inc., Uber Rasier Canada, Inc. ... while the driver is logged into such Digital Network and is available to receive requests for Transportation Services; or (2) while the described automobile is en route to pick up a ridesharing passenger or goods following the acceptance through the Digital Network associated with Uber Holdings Canada Inc. ..."

Transportation services are defined as "the transportation of passengers or goods for compensation by a rideshare driver that is pre-arranged with the Digital Network associated with Uber Holdings".

The transport network company is defined as:

"A business entity that uses a Digital Network to connect Transportation Service requesters to ridesharing services provided by rideshare drivers."

Lastly is the EPCF-21A: Monthly Reporting Basis Fleet Coverage for Ontario Ridesharing Endorsement. This endorsement provides that the policy "shall provide insurance with respect to all automobiles licensed or required to be licensed in Ontario which are owned by and licensed in the name of the insured."

SUBMISSIONS OF THE PARTIES

Belair

Belair submits that the claimant was engaged in a business/commercial activity which was directly linked to Uber's platform/business model. He was engaged in delivering food for Uber Eats, which was a service pre-arranged through Uber's digital network.

Belair submits there is direct operational context between the claimant's activities and Uber's business operations. Belair states that the claimant was "within Uber's operational framework".

Belair states that the Uber Economical policy is designed to provide coverage for individuals who operate under the Uber network. Belair submits that the essence of the coverage is to protect those engaging in Uber operations. Belair submits that the intent of the policy should be interpreted to support coverage for Uber activities not only undertaken while in an automobile, but also while on an e-bike.

Belair submits that such an interpretation would ensure comprehensive protection for all platform-related activities and failure to do so would leave claimants vulnerable when using alternative modes of transportation that are integral to their delivery services.

Belair submits that the policy coverage sections under the Economical policy use very broad language and can be interpreted to include the claimant's activities. Belair submits that the policies do not explicitly exclude e-bikes. Further, the policy specifically provides coverage for transportation for food delivery. Belair submits that any ambiguity in the policy coverage should be interpreted broadly and in favour of the claimant to promote the policy's intents of covering delivery partners who are engaged in Uber's service network.

Belair submits that the focus of the interpretive analysis should be on the service being rendered and not the mode of transport. Protection should be consistent across all modes of transportation utilized to carry out Uber services while on the Uber app. To deny coverage based on the use of an e-bike would be inequitable, especially when the core activity is fundamentally the same as an individual using a car.

Belair submits that from a public policy perspective with the advent of s. 268(2) of the *Insurance Act* that the government intended that claims for statutory accident benefits should be directed to the insurer with the greatest nexus to the individual and the incident that occurred. Belair submits that in this case that would be Economical.

Belair submits that had insurance been required on the e-bike, then the Uber policy would stand in priority and submits "without it, it is unconscionable that the entire basis for the priority system would be stood on its ear and direct the claim back to Belair".

Belair acknowledges that the e-bike does not require a licence, does not require insurance and is not required to be registered with the Ministry of Transportation.

Belair relied on the FSCO Bulletin No. A-12/16 which was issued by the Superintendent of Insurance, Brian Mills. This bulletin was issued on July 7, 2016 when ridesharing and Uber started to become popular. Mainly, the bulletin was to confirm that the FSCO had approved a fleet automobile and policy proposed by Intact Insurance Company to provide blanket fleet coverage for private passenger automobiles being used for the transportation of paying passengers when utilizing the online system known as Uber. However, Belair points to the following comment from the Superintendent of Insurance:

"Going forward, I want to emphasize that the sharing economy in general, and the automobile insurance implications in particular, will continue to evolve and require innovative solutions and responses by all stakeholders, including FSCO, that respond to technological advances."

Belair urges that when interpreting the Economical policy, that I should look at the fact that ridesharing and delivery services have evolved and suggest that I should take judicial notice of the proliferation of e-bikes that are now engaged on Ontario roads in operations such as DoorDash, and Skip the Dishes. Belair also referenced a series of cases dealing with the Uber

policy coverage including:

1. *Faltas v. Intact and Commonwell*, January 25, 2023, award of Marshall Schnapp
2. *Northbridge v. Intact*, May 15, 2018, award of Arbitrator Vance Cooper
3. *Personal v. Economical*, February 16, 2023, award of Arbitrator Philippa Samworth

The case of *Faltas v. Intact and Commonwell (supra)* was an early Uber case when Intact provided coverage to Uber. The issue before Arbitrator Schnapp was whether the Uber app was on or off at the time of the motor vehicle accident.

While the factual situation is quite different from the one here, Belair submits that Arbitrator Schnapp made some comments with respect to the intent of the policy that are relevant.

At paragraph 26 Arbitrator Schnapp notes that the Intact policy is to provide coverage to rideshare drivers in the specific and discrete circumstances of being connected to Uber's digital network.

At paragraph 55, Arbitrator Schnapp states:

"The very nature of this policy is clearly set out that is meant to cover someone connected to Uber's digital network, or a driver who is carrying, dropping off, or able to receive passengers at the time of the accident."

Belair submits that suggests a broad interpretation that could extend to an Uber Eats e-bike driver.

In Arbitrator Cooper's decision in *Northbridge* and *Intact*, the issue before him was whether a passenger in a car, while it was being operated by as an Uber, was covered under the Uber policy. He concluded that he did.

Finally, in Arbitrator Samworth's decision in *Personal* and *Economical*, the issue was whether the app was on or off at the time of the accident. Neither of these cases dealt with an e-bike or an Uber Eats situation.

Finally, while Belair acknowledges Justice Sharp's comments in *Kingsway General Insurance Company v. West Wawanosh Insurance Company*, 53 O.R. (3d) where Justice Sharp commented that priority disputes are not an area for creative interpretation except in rare circumstances, Belair submits that this is one of those circumstances.

Economical

Economical has five main points with respect to their position that their policy does not respond to the incident involving the e-bike.

1. Economical submits that as the claim was originally submitted to Belair, that Belair bears the burden of proving that priority rests with another insurer. Belair relies on the decision in *Aviva Insurance v. Security National*, 2017 ONSC 2924 at paragraphs 29-31 with respect to this point.
2. At the time of the accident the claimant was operating an e-bike which did not require insurance, did not require to be registered with the MTO, did not require a licence, and the claimant did not pay a premium for any insurance.
3. The e-bike is not considered an "automobile" and therefore the claimant cannot be an insured under the Economical policy which only insures automobiles.
4. There is no evidence provided by Belair of any intent under the Economical policy to cover anything other than an "automobile".
5. Economical submits that there is no basis to extend coverage or to apply an equitable outcome to this dispute. Priority rules require clarity and this is not a case for creative interpretation.

With respect to the first point and the onus of proof, Economical relies on the court's comments in *Aviva v. Security (supra)* wherein the court stated that the insurer who receives the accident benefit claim should have the burden of proof. They are the only insurer with a statutory right to seek an EUO, which is a critical tool to develop evidence in a priority dispute. The court found that there must be a burden of proof on one or other of the insurers in a priority dispute or otherwise it might encourage insurers to simply initiate these disputes irrespective of whether they have adequately investigated its case in fact and law. Therefore, Economical submits that Belair must prove, on a balance of probabilities, that the claim should not remain with them and should be transferred to Economical. Economical submits that this burden of proof has not been met.

With respect to the second point, Economical points to the fact that Belair agrees that the e-bike was not required to be registered, plated, insured or licensed. All the parties agree that the e-bike was not required to be insured in Ontario. It was not a motor vehicle nor an automobile for the purposes of the *Highway Traffic Act*, R.S.O. 1990 c. H8, s. 224 of the *Insurance Act*, R.S.O. 1980 or s. 2(1) of the *Compulsory Automobile Insurance Act*, R.S.O. 1990. An e-bike is a "power-assisted bicycle" and not a motor vehicle.

Economical also points to the Uber Platform Access Agreement which governs the relationship between Uber and the claimant. Insurance is only required under the Uber Platform Access Agreement if the transportation method is a car. This was confirmed by the claimant under his EUO where he gave evidence that he was only using his bicycle account and not his now invalid car account which he had originally registered with Uber when he was using a motor vehicle. He

confirmed he did not have insurance with Uber at the time of the accident and that he had not paid any fees to Uber.

Economical therefore submits that even if one were to extend the wording of the Economical policy to include an e-bike, that the claimant would not be entitled to claim benefits under the policy as he did not pay a premium to either Uber or Economical prior to the subject accident.

Economical submits that a review of the Certificate of Insurance with respect to the Economical policy clearly establishes that the only mode of transportation insured under that policy are the "described vehicles". The described vehicles are those owned by the rideshare driver. The claimant was not a rideshare driver. He was not a rideshare owner.

Therefore, on the face of the Certificate of Insurance the claimant is not a listed driver nor is he a named insured. Specifically, he is not a "rideshare driver or rideshare vehicle owner" as defined under the policy, nor was he operating a "described automobile" at the time of the loss.

Economical also submits that the actual Certificate of Insurance issued by Economical to Uber is named "the certificate of automobile insurance". By definition, the intent of the Economical policy was to insure automobiles and not e-bikes. Economical also notes that this is consistent with the endorsement EPCF-6TN which notes that the policy is primary only when the described automobile set out in the Certificate of Insurance is being operated in the pre- or post-acceptance period. This is also consistent with the reference in the Economical policy to an OAP-1.

Therefore, Economical submits it is not sufficient that the claimant was simply connected to the Uber network at the time of the accident by virtue of the fact he was delivering for Uber Eats on his e-bike. In order to be covered under the Economical policy, he must have been operating an automobile and specifically the described automobile reported to Uber. The claimant did not have a vehicle registered to operate with Uber and he was not operating an automobile at the time of the accident.

With respect to the last two points (4 and 5) of Economical outlined above, Economical relies on case law with respect to the principles of interpretation of automobile insurance in Ontario.

Economical submits that if the language of the policy is unambiguous, then the court will give effect to that clear language and read the contract as a whole. Only if it is ambiguous will the court then apply the general rules of a contract construction (*Kahlon v. ACE INA Insurance*, 2019 ONCA 774).

Further, Economical submits an interpretation of the policy language must be consistent with the reasonable expectations of the parties as long as that interpretation can be supported by the text of the policy. Economical submits that a court will avoid an interpretation that would give rise to an unrealistic result or one that would not have been in contemplation of the parties when they

entered into the insurance contract (*Kahlon v. ACE INA (supra)*).

While Economical agrees that one of the main objectives the Ontario automobile insurance system and particularly the Statutory Accident Benefits Schedule is consumer protection, that does not mean that an arbitrator and/or court can rewrite clear policy wording to fix a perceived or actual unfairness. (*Kahlon v. ACE INA (supra)* paragraphs 75 and 76).

Economical points to arbitrator Schnapp's decision in *Faltas v. Intact, Commonwell and Desjardins (supra)* in support of their position that the Economical policy does not have any ambiguities. Arbitrator Schnapp states, "I also find that the rideshare driver definition is clearly set out and that there are no ambiguities that should be resolved in the claimant's favour".

Economical submits that it is clear that the Economical policy was intended to cover someone while operating an automobile in connection with the Uber network. Economical points to an online post by an insurance broker which stated:

"For drivers who only deliver food under the Uber Eats platform and do not participate concurrently in ridesharing there is no coverage under the Uber commercial policy. These customers should contact their broker or agent to purchase insurance for this as would any customer making deliveries for other companies."

Economical also points to the Chubb policy which was issued separately and Economical submits was designed to cover injuries sustained by Uber Eats members who do not participate in ridesharing.

An email from Chubb dated December 18, 2024 confirmed that the policy (which is not an auto policy) provides coverage for "Uber delivery partner that is walking or operating bicycle, electrical bicycle or electrical scooter in connection with the use of the Uber partner application".

Economical submits that this is evidence that the Economical auto policy was not intended to cover claims by Uber Eats partners who were not participating in the rideshare program.

With respect to Belair's submission that this is a case where creative interpretation should apply as proposed by Belair, Economical again relying on *Kahlon v. ACE INA (supra)* notes that courts and arbitrators are not to rewrite clear policy language even if it results in a harsh outcome. The Court of Appeal stated:

"However, courts have no authority to simply override contractual language in order to force the provision of coverage where none is contemplated by the existing language of the insurance policy and the endorsement, just because they consider it good public policy to do so. This is the business of the provincial

governments and not the courts."

The court also stated at paragraph 76:

"I note, finally, that Canadian courts have not adopted the American approach to reasonable expectations under which judges are able to override contractual language in order to reach what they consider to be a just result."

Accordingly, Economical submits that Belair is the priority insurer and that the Economical policy does not apply in these circumstances and seeks that the arbitration be dismissed with costs.

ANALYSIS AND DECISION

Having carefully reviewed the innovative and creative submissions of Belair and the thoughtful responding submissions of Economical, I find that Belair is the priority insurer in this matter.

I agree with Economical that their policy of insurance only provides coverage to automobiles that are operating as a rideshare vehicle as defined in the Certificate of Insurance. A rideshare vehicle is a car that is being operated by someone who has applied to Uber on the basis that they will be operating an automobile for either delivering goods or passengers. These individuals must prove they have insurance on their automobile and provide copies of the policy and provide a description of their vehicle so that they can become described automobiles under the Economical policy.

There is nothing in the Economical policy that I can see that would extend what is clear coverage for automobiles to e-bikes, even if they are being operated within the digital network of Uber Eats.

The evidence is clear that Uber treats automobile modes of transportation for delivery of goods and passengers as completely different from bicycles or e-bikes as a mode of transportation for delivery of goods. There are two separate applications for this purpose. The one involving a bicycle mode of transportation does not require proof of insurance.

This is supported not only by a review of the Economical policy itself but also the Uber Platform Access Agreement which governs the relationship between Uber and in this particular case the claimant. This document makes clear that an applicant to Uber must choose and identify their transportation method if they are intending to deliver goods through the Uber Eats platform.

The agreement sets out certain requirements if you identify that transportation method as a car. You must provide proof of motor vehicle insurance that you are obliged to take out at your own cost and maintain that insurance up to the minimum limits required by any applicable law.

If you advise Uber that you are using a bicycle or a non-motor method of transportation and then change to use an automobile, Uber specifically sets out that it will not provide any form of insurance in those circumstances unless you have identified the automobile and provided confirmation of insurance.

I also find that this interpretation is supported as submitted by Economical by the Chubb policy. The Chubb policy clearly is not a policy covering motor vehicles. However, it covers accidents (as defined under the policy) that occur to Uber Eats members who are not participating in ridesharing. Chubb confirmed in their email of December 18, 2024 that that policy provided coverage for an Uber delivery partner that is walking, operating a bicycle or an electric bicycle when they are using the digital platform.

Clearly, in my view, all the documents in this case show a careful separation by Uber in its operations from individuals who are operating cars in the rideshare or goods delivery program versus individuals who are not.

The claimant was on an e-bike when this accident occurred. Everyone agrees an e-bike is not an automobile. I find that an e-bike is not covered under the Economical policy and I agree with Economical's submissions that that means the claimant cannot be a named insured under the Economical policy, nor can the policy be interpreted as extending to persons operating e-bikes in the Uber network.

With respect to Belair's argument that the proliferation of e-bikes on the roads of Toronto together with the multiple services that use e-bikes to deliver goods, I could not agree more that this is an area that cries out for attention. However, as the Court of Appeal pointed out in *Kahlon v. ACE INA (supra)*, judges and arbitrators are not to override clear contractual language in order to reach what they consider to be a just result. In this particular case, we do not have a claimant who will not have access to any statutory accident benefits. Belair acknowledges that it is responsible for providing statutory accident benefits to the claimant as the incident was one that involved the use or operation of an automobile (the Silverado). This is a case about priority. I do not see it to be a harsh result to find that Belair stands in priority to Economical when the claimant was the named insured under their policy. The policy was intended to provide coverage to their named insured whether he is involved in an accident with a car as a pedestrian, on a scooter, on an e-bike or in his car. In my view, Belair is the insurer with the closest nexus to the claimant whether or not Belair was aware that he was operating an e-bike in an employment scenario with Uber Eats.

I also agree with Economical that the burden of proof in this case is on Belair and that Belair has not met that burden of proof. Belair has not provided me with an argument that, in my view, is supportable on the documentation, the interpretation of that documentation and the law. Perhaps most telling in this case when one looks at reasonable expectations is that the claimant on his EUO gave evidence that he did not buy insurance through Uber Eats and did not expect to

have insurance through Uber Eats.

If the issue of e-bikes is to be addressed in terms of insurance (automobile or otherwise) as the Court of the Appeal stated in *Kahlon v. ACE INA (supra)*, that is the business of the provincial government and not an arbitrator.

AWARD

I find that as between Belair and Economical, Belair is the insurer responsible to pay statutory accident benefits to the claimant arising out of the motor vehicle accident of January 16, 2023.

COSTS

The Arbitration Agreement provides that the costs of the arbitrator's account and the legal costs are in my discretion. As Economical was entirely successful in this matter, I therefore find that Belair is responsible for paying the arbitrator's account and any related disbursements and as well the costs of Economical.

The Arbitration Agreement also provides that I am not to quantify costs in the original award (see paragraph 6). This can be determined in a subsequent award in the event the parties are unable to reach any agreement.

Therefore, if the parties cannot reach an agreement on the quantum of costs, we will schedule a further pre-hearing with a view to setting up a costs hearing.

DATED THIS 8th day of September, 2025 at Toronto.



Arbitrator Philippa G. Samworth
DUTTON BROCK LLP
Barristers and Solicitors
800 – 150 York Street
TORONTO ON M5H 3S5