

IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c. I.8, s 275
AND IN THE MATTER OF the *Arbitration Act*, 1991, S.O. 1991, c. 17
AND IN THE MATTER OF an arbitration between:

Northbridge Insurance Company

Applicant

And

HDI Global, Intact Insurance, Chubb Insurance,
Pafco Insurance and Royal & Sun Alliance Insurance

Respondents

PRELIMINARY ISSUE AWARD

COUNSEL

Glen Bushi, counsel for the Applicant, Northbridge Insurance Company (hereinafter called "Northbridge").

Tim Crljenica, counsel for the Respondent, Chubb Insurance (hereinafter called "Chubb").

Kadey B.J. Schultz, counsel for the Respondent, HDI Global (hereinafter called "HDI").

Monika S. Korona, counsel for the Respondent, Royal & Sun Alliance Insurance Company of Canada (hereinafter called "RSA").

Karman Dhuga, counsel for the Respondent, Intact Insurance Company (hereinafter called "Intact").

Jessica Bacopoulos, counsel for the Respondent, Pafco Insurance Company (hereinafter called "Pafco").

INTRODUCTION

This matter comes before me pursuant to the *Arbitration Act*, 1991 to arbitrate a dispute between the above-noted insurers with respect to a claim for loss transfer pursuant to s. 275 of the *Insurance Act*, R.S.O. 1990, c. I.8 and its Regulation 664/90. The parties on consent appointed me as an arbitrator pursuant to s. 275(4) of the *Insurance Act* and Regulation 664. The terms of the arbitration are set out in an Arbitration Agreement signed by the parties in December of 2025.

By way of background, on July 4, 2017 the claimant was involved in a motor vehicle accident in Lakeshore, Ontario.

The claimant was riding a Honda motorcycle insured by the Applicant, Northbridge. The motorcycle was involved in a collision with a Dodge Caravan. There is no dispute that s. 275 of the *Insurance Act* applies to allow loss transfer as the incident involved a motorcycle.

The claimant applied to Northbridge for statutory accident benefits. Northbridge has paid statutory accident benefits and put on notice the various Respondents of its intention to claim loss transfer indemnification.

The issue in this case is which of various insurers who may have covered the Dodge Caravan on the date of loss are obliged to respond to the claim for loss transfer by Northbridge. There are a potential five policies (five Respondents) that may be obliged to respond to the claim for loss transfer. At this stage of the arbitration, I have been asked to limit my decision to determine which of the various responding insurers are not obliged to respond to the claim of loss transfer. I have not been asked to determine how any remaining insurers would rank in terms of priority for the loss transfer claim vis-à-vis Northbridge.

ISSUE FOR DETERMINATION

The Arbitration Agreement sets out the following question for my determination at this preliminary stage:

"Which policies of the respondents are subject to the s. 275 loss transfer obligations?"

PROCEEDINGS

There were a number of pre-hearings leading up to this preliminary issue hearing. The hearing itself was in writing in that no witnesses were called. Counsel submitted Factums, Joint Books of Documents as well as case law. The parties were also given an opportunity to make oral submissions in light of the complex nature of the various coverage issues that this loss transfer claim raises. The documents submitted for the hearing included:

- Agreed Statement of Facts
- Motor Vehicle Accident Report

- Corporate Partnership Program Services Agreement between Enterprise Rent-A-Car and the PIC Group
- Rental Agreement
- Chubb (ACE INA) policy
- Copy of the Pafco policy
- Copy of the Royal & Sun Alliance policy
- Copy of the HDI policy
- Copy of the Intact policy
- Ownership (vehicle permit) re 2007 Dodge
- Offer of employment dated June 20, 2006 with respect to the driver of the Dodge Caravan
- Transcripts of the examination for discovery in the tort action of the driver of the Dodge Caravan taken February 18, 2021
- RSA underwriting file

FACTS

The facts are not in dispute. The accident occurred on July 4, 2017 in Lakeshore, Ontario and the two vehicles involved were a Honda motorcycle and a Dodge Caravan.

The Honda motorcycle was owned and driven by the claimant who was injured in this accident. It was insured by Northbridge and the claimant applied to Northbridge for statutory accident benefits.

The Dodge Caravan was being operated by Alicia C.-B. Alicia was employed on the date of loss and working for a company called "The PIC Group". The PIC Group did not own a fleet of vehicles but had a corporate account with Enterprise Rent-A-Car. Through this account it rented vehicles for employees. The Dodge Caravan being operated on the date of loss was from the Enterprise Rent-A-Car fleet. Chubb insured Enterprise Rent-A-Car. Chubb's policy was in full force and effect on the date of loss with a named insured of Enterprise Rent-A-Car.

Alicia was married on the date of loss to James D. The Respondent Pafco insured James D. Its policy was in full force and effect on the date of loss and the policy was an OAP-1 with certain endorsements. (owner's Automobile Policy)

The PIC Group (Alicia's employer) was insured by RSA. Their policy was also in full force and effect on the date of loss. However, the RSA policy was an OAP-4. (Garage Policy)

In 2015 prior to this date of loss a company called Trigo purchased the PIC Group. The PIC Group then changed its name to Trigo Quality Solutions Limited in December of 2019. The Respondent HDI insured Trigo Canada Inc. and the PIC Group by way of a CGL policy that included an SPF-6 endorsement.

The Respondent Intact insured a company called PIC Productivity Improvement Centre under an OAP-1. While this policy was in force on the date of loss, it insured a 2003 Freightliner. The listed driver of the Freightliner on the Intact policy was Andros T. Neither the Freightliner nor Mr. T. were involved in the incident of July 4, 2017. Alicia did not drive the 2003 Freightliner.

I propose to review each policy in turn and summarize the various submissions made by the parties and then set out my analysis and decision. Northbridge did not take any position on this preliminary issue. Not every Respondent took positions vis-à-vis the other insurers. Chubb, however, made submissions with respect to each of the Respondents.

INTACT

The Intact policy insured PIC Productivity Improvement Centre. This is an entity that is distinct from The PIC Group.

Alicia, the driver of the Dodge Caravan, was not employed by the PIC Productivity Improvement Centre.

The vehicle that Intact insured was not the vehicle involved in the accident of July 4, 2017. Intact insured a Freightliner and there is no evidence that Alicia drove the Freightliner.

During the course of oral submissions all parties agreed that the Intact policy would not respond to the claim for loss transfer in these circumstances. Therefore, this arbitration is dismissed against Intact on consent, but subject to any cost arguments.

CHUBB

Chubb accepts that it is subject to the claim for loss transfer. Chubb acknowledges that its policy insured the Dodge Caravan as the Caravan was owned by Enterprise Rent-A-Car and Chubb insured Enterprise Rent-A-Car.

Chubb's position in this hearing was that while it agrees its own policy is subject to loss transfer, it argued that the policies of the other Respondents are also subject to loss transfer. I therefore find that the Chubb policy is subject to s. 275 with respect to loss transfer obligations.

Based on Chubb's admission and on the policy documents there is no dispute that the Chubb policy is subject to loss transfer under section 275 of the *Insurance Act*.

PAFCO

Pafco insured James D., Alicia's spouse, who was the driver of the Dodge Caravan. Alicia is a listed

driver on the Pafco policy. The Pafco policy is an OAP-1 (Ontario Auto Policy – Owner’s Policy). There is no dispute that the Pafco policy was in force on the date of loss. There is also no dispute that Alicia was the spouse of James at the time of the accident.

Chubb submits that the Pafco policy should respond under s. 275(1) of the *Insurance Act* as it qualifies as a "second party insurer" as defined under s. 275(1) of the *Insurance Act* and Regulation 664. The Pafco insured car was not a motorcycle, off-road vehicle or motorized snow vehicle so it qualifies for loss transfer on the basis of the class of automobile.

However, s. 275(1) of the *Insurance Act* limits loss transfer indemnification to "the insurer of such class or classes of automobile as may be named in the regulation involved in the incident from which their responsibility to pay the statutory accident benefits arose."

It is pertinent at this stage to set out the wording of s. 275 of the *Insurance Act*:

"275(1) The insurer responsible under subsection 268(2) for the payment of statutory accident benefits to such classes of persons as may be named in the regulations is entitled, subject to such terms, conditions, provisions, exclusions and limits as may be prescribed, to indemnification in relation to such benefits paid by it from the insurers of such class or classes of automobiles as may be named in the regulations involved in the incident from which their responsibility to pay the statutory accident benefits arose."

In accordance with Regulation 664, where an accident involves a motorcycle the insurer of "any class of automobile other than motorcycles, off-road vehicles and motorized snow vehicles" is potentially responsible for the payment of loss transfer as a "second party insurer." There is no dispute between the parties that the vehicle insured by Pafco was not "involved in the incident". The vehicle involved in the incident was the Dodge Caravan and it was not the described vehicle under the Pafco policy. However, Chubb argues that other provisions of the OAP-1 extend to provide coverage to the Dodge Caravan under the Pafco policy as the policyholder's spouse was driving that vehicle.

Regulation 664, s. 9(1) defines a second party insurer. The definition states:

"'second party insurer' means an insurer required under section 275 of the Act to indemnify the first party insurer."

Vis-à-vis the Pafco policy, Chubb submits that the OAP-1 which insured Alicia's spouse also insured certain other vehicles that were not owned by James or Alicia. Chubb notes that vehicles insured under the OAP-1 include "other automobiles" and "other automobiles that are rented or leased".

Chubb references s. 2.2.3 of the Pafco OAP-1. That section is set out below:

"2.2.3 Other Automobiles

Automobiles, other than a described automobile, are also covered when driven by

you, or driven by your spouse who lives with you."

Chubb submits that the Dodge Caravan being driven by Alicia, the spouse, is therefore an other automobile.

Chubb also relies on s. 2.2.4 of the OAP-1 which covers other automobiles that are rented or leased. The terms of that section are set out below:

"For convenience in this subsection we use the terms rented and renting as equivalent to leased and leasing.

In addition to the coverages referred to in subsection 2.2.3 the following coverage applies to rented automobiles if a premium is shown for the coverage on the certificate of automobile insurance for a described automobile: liability."

Chubb submits that the Dodge Caravan was being rented or leased and therefore falls as an other automobile under the Pafco OAP-1. Chubb submits that the OAP-1 insured vehicles that were not owned by James and Alicia. Chubb notes that vehicles insured under the Pafco OAP-1 can also include "other automobiles" and "other automobiles that are rented or leased".

Pafco submits that there is no coverage under the OAP-1 for loss transfer in the circumstances of this case.

Pafco relies on s. 2.2.3(5) of the policy. This provides some special conditions with respect to the coverage of "other automobiles". The relevant section is set out below:

"Special Conditions

For other automobiles to be covered, the following conditions apply:

5. For all coverages, except Accident Benefits, the other automobile cannot be an automobile that you or anyone living in your dwelling owns or regularly uses. (For the purposes of this paragraph, we do not consider use of an automobile rented for 30 or fewer days to be regular use.) Nor can the other automobile be owned, hired or leased by your employer or the employer of anyone living in your household."

Pafco therefore submits that the Dodge Caravan is excluded as an "other automobile" as it falls within s. 2.2.3(5) of the policy.

Pafco submits that as the Dodge Caravan was rented by Alicia's employer, the PIC Group through Enterprise Rent-A-Car for use by Alicia, that it therefore does not qualify as an other automobile as it is an other automobile leased by Alicia's employer.

Pafco submits that this is consistent with s. 2.2.4 which deals with other automobiles that are rented or leased. Liability coverage will apply but not under s. 2.2.4(5) if the rented automobile

"is owned, hired or leased by your employer or the employer of anyone living in your household".

Pafco submits that this exception results in the Dodge Caravan being excluded from coverage on its policy irrespective of whether the driver of that vehicle was the spouse of the named insured or whether she had regular use of the Dodge Caravan.

In response, Chubb submits that the exclusion noted above and relied on by Pafco does not apply in the circumstances of this case as the Dodge Caravan was rented from Enterprise Rent-A-Car. It was not owned by Alicia's employer. It was not leased by Alicia's employer. It was not hired by Alicia's employer. Chubb submits that there is a distinction between renting a vehicle and hiring or leasing a vehicle.

Chubb specifically points to s. 2.2.4 which is relied on by Pafco which specifically provides that in that subsection the terms rent and renting is equivalent to leased and leasing. Those words are not included in s. 2.2.3(5) and accordingly Chubb submits that the intent of that section was to exclude rented vehicles and only include leased, hired or owned vehicles.

HDI

DECISION AND ANALYSIS

I agree with the submissions of Pafco that their policy did not cover the Dodge Caravan on the date of loss and therefore Pafco would not be a second party insurer as it did not insure an automobile that was involved in the incident of July 4, 2017.

Section 2.2.3 of the OAP-1 seems clear. It excludes coverage for an "other automobile" if "that automobile is owned, hired or leased by the employer of anyone living in the named insured's household."

I do not accept Chubb's submissions that there is some distinction to be made between rented, hired or leased. It would make little sense from an interpretive point of view to have an "other automobile" that is being rented by the employer of someone in the household being covered as an other automobile but one hired or leased by that same employer would not so qualify. It would, in my view, result in an interpretive absurdity. There is no difference between a hired vehicle or a rented vehicle.

I also disagree with Chubb that the wording in s. 2.2.4 of the OAP-1 that makes reference to the terms "rented" and "renting", and "leased" and "leasing" as being equivalent should be interpreted as meaning that a rented vehicle is therefore excluded under s. 2.2.3 (5). I find that it is consistent with my interpretation of s. 2.2.3 (5) that the term "rented" is equivalent to "hired" or "leased." If I were wrong on that point, I note that s. 2.2.4 does not reference the word "hired" as requiring some clarification. I find the word "hired" has the same meaning as the word "rented" in s. 2.2.3(5).

Black's Law Dictionary (revised 4th edition, 1968) provides the following relevant definitions:

Rent: Consideration paid for the use of property, payment received for the use of property.

Hire: Compensation for use of a thing.

Lease: Lease or hire is a contract by which a party agrees to give another the enjoyment of a thing at a fixed price.

While there may be some nuances in terms of modern-day usage of these words with leasing suggesting more long-term than rent, that does not take away from the nature of the contractual agreement. In this case, Enterprise Rent-A-Car provided a vehicle to the PIC Group at a certain price for use by its employees. The nature of that transaction meets the definition of rent or hire.

I therefore conclude that the policy of Pafco did not insure the Dodge Caravan on the date of loss and therefore does not qualify under s. 275(1) as a second-party insurer to which loss transfer would attach.

I therefore conclude that the Pafco policy is not subject to s. 275 loss transfer obligations.

HDI GLOBAL

HDI Global issued a commercial general liability policy bearing policy number 01860679-14000. The named insured is TRIGO Canada Inc. The policy was in full force and effect on the date of loss of July 4, 2017.

The Agreed Statement of Facts outlines that TRIGO owns the PIC Group. Therefore, the PIC Group is also covered under the HDI policy.

According to Chubb, the relevant document for the purposes of their submissions is the SPF-6 that forms part of the HDI policy. Chubb submits that the effect of the SPF-6 is that it provides coverage to both the Dodge Caravan on the date of loss and to the driver, Alicia.

The SPF-6 insuring agreements state as follows:

"We agree to indemnify the insured against the liability imposed by law upon the insured for loss or damage arising from the use or operation of any automobile not owned in whole or part by or licensed in the name of the insured's and resulting from:

'bodily injury' to or the death of any person or damage to the property of others not in the care, custody or control of the insured."

Chubb submits that this portion of the SPF-6 establishes that HDI undertook to insure the use or operation of any automobile not owned or licensed in the name of its insured and that the Dodge Caravan would so qualify. The Dodge Caravan was not owned by PIC Group or TRIGO nor was it licensed in their name.

Chubb also relies on the definition of additional insureds contained in the SEF-94 to establish that that the policy extends to Alicia, the driver of the Dodge Caravan, who was an employee of the PIC Group. The relevant provision is set out below:

"1. Additional Insureds

We agree to indemnify in the same manner and to the same extent as if named herein as the insured, every partner, officer or "employee" of the insured who, with the consent of the owner thereof, personally drives: (a) in the business of the insured, any automobile not owned in whole or in part by or licensed in the name of: (i) the insured or (ii) such additional insured person or (iii) any person or persons residing in the same dwelling premises as the insured or such additional insured person."

Chubb submits that this extends the coverage of the HDI policy to Alicia as she was an employee of PIC Group who was operating an automobile with the consent of the owner and that that automobile was not owned in whole or in part by the insured or any additional insured person.

Chubb submits by virtue of the above arguments that the HDI policy should be considered a "motor vehicle liability policy" even though the policy itself is described as a "commercial general liability insurance policy".

Chubb points to the definition of "motor vehicle liability policy" under s. 1 of the *Insurance Act* which is set out below:

"'motor vehicle liability policy' means a policy or part of a policy evidencing a contract insuring:

(a) the owner or driver of an automobile."

Chubb submits that based on its interpretation of the relevant provisions of the SPF-6, that despite the policy being a commercial policy, as it insured an owner and a driver of an automobile it therefore becomes a motor vehicle liability policy and thus subject to loss transfer under s. 275 of the *Insurance Act*.

Chubb also argues that HDI is prohibited from arguing that it is not a motor vehicle liability policy based on an additional agreement of the insurer set out in the SPF-6. The relevant provision is set out below:

"Where indemnity is provided by this endorsement, we further agree ...

(6) not set up any defence to a claim that might not be set up if this Endorsement was a motor vehicle liability policy issued in the province or territory of Canada in which the accident occurred."

Chubb therefore submits that this language is a bar to HDI from arguing that it is not subject to

Part VI of the *Insurance Act* which includes s. 275 with respect to accidents occurring in Ontario. Chubb submits that the policy wording requires HDI not to set up any defence to a claim that might not be set up if the SPF-6 was a motor vehicle liability policy issued in Ontario. In other words, HDI cannot argue that it is not a motor vehicle liability policy.

Chubb relies on the following cases:

1. *Potts v. Gluckstein*, 1992 CanLII 7623 (Ontario Court of Appeal)
2. *Healy v. Interboro*, 1999 CanLII 1485 (Ontario Court of Appeal).
3. *Unifund v. ICBC*, 2003 SCC 40

I now turn to the responding submissions of HDI Global. HDI Global admits that it insured TRIGO Canada Inc. and the PIC Group at all material times. However, HDI submits that its policy was a commercial general liability policy and not a motor vehicle liability policy. HDI submits that its policy does not insure any motor vehicles. Therefore, Part VI of the *Insurance Act* is not applicable to the HDI policy and accordingly s. 275 of the *Insurance Act* (the loss transfer provisions) would also not be applicable. HDI would not be a second party insurer under those circumstances.

HDI acknowledges that their policy includes a non-owned automobile coverage endorsement known as the SPF-6.

HDI acknowledges that the SPF-6 expressly indemnifies its insureds against liability imposed by law upon the insureds for loss or damage that arises from the use or operation of an automobile not owned in whole or in part or licensed by their insureds. However, HDI's position is that that does not result in its policy being considered a motor vehicle liability policy. HDI submits its policy is not an OAP (Ontario Automobile Policy) of any kind and to interpret the SPF-6 as extending coverage in the circumstances of this case is contrary to the policy provisions and how those provisions have been interpreted by relevant cases over the past few years.

HDI submits that its policy does not insure an automobile. Its sole coverage is for liability that may be imposed on its insured (an employer) with respect to the use or operation of a vehicle which is not owned by the insured. In other words, it does not insure the automobile, it insures the employer for vicarious liability. HDI submits that that does not result in extending coverage with respect to any particular vehicle such as the Dodge Caravan. Coverage is limited to liability of the employer in certain circumstances.

HDI submits that insuring an employer does not result in an automobile being insured. In order for there to be a right to indemnification under s. 275 of the *Insurance Act* the second party insurer must insure an automobile involved in the accident and HDI submits it did not.

In terms of the case law HDI relies on a decision of Arbitrator Samis in *ING Insurance Company v. Temple Insurance Company*, 2008 CarswellOnt 11534.

In that case an accident occurred on July 31, 2003 involving a heavy commercial vehicle and a pickup truck. The accident occurred on a private road. The heavy commercial vehicle was being

operated by Mark, an employee of a company called Kenogami Lake Lumber. The vehicle was a 1979 International Paystar tractor with a flatbed trailer. There was no dispute that it qualified as a heavy commercial vehicle under s. 275 of the *Insurance Act*.

Kenogami Lake Lumber was the named insured under a commercial general liability policy with an SPF-6 issued by Temple Insurance.

HDI points to the fact that the SPF-6 endorsement in the Temple case is the same as the SPF endorsement issued by HDI in this case.

The issue before Arbitrator Samis was whether or not the Temple policy attracted a claim for indemnification in loss transfer even though their policy was a commercial general liability policy. The arguments in that case revolved around, as here, the interpretation of the SPF-6. Arbitrator Samis commented on his interpretation of the SPF-6. He stated at paragraph 33:

"In my view, the purpose of SPF-6, non-owned automobile coverage is to provide indemnity for a business which may have liability arising out of the use or operation of an automobile, not owned by the business. This can quite easily arise when an employee, in the course of employment, operates their own car, a rented car, or someone else's vehicle. The use or operation could create a liability for the employer as a result of the master-servant relationship, but the liability does not arise from a vehicle which is owned or licensed in the name of the employer. Hence, a very valuable coverage is granted by the non-owned automobile coverage, the SPF-6, because it provides the insured, the employer, with protection for that vicarious liability."

HDI also relies on paragraph 53 of Arbitrator Samis's decision which is set out below:

"At this point in the analysis, it is necessary to recall the nature of the SPF-6 coverage that I have found applicable to the Temple policy. The SPF-6 is not insurance on an automobile, it is not insurance in respect of an automobile. It is unlike most forms of automobile insurance that cover the vehicle and cover liability imposed upon the owner and consent operators. The SPF-6 does not cover the vehicle, the owner of the vehicle, or the driver of the vehicle. Its sole coverage is for the liability that might be imposed on an insured (employer) in respect of use or operation of a vehicle which is not owned by the insured. In my view, it cannot be said that the Temple policy insures the automobile involved in this accident at all."

It is to be noted that Arbitrator Samis concluded that there was no coverage under loss transfer based on other issues (the vehicle being operated on a private road and distinguishing between owned and non owned vehicles). However, HDI relies on the extracts noted above and takes the position that these conclusions by Arbitrator Samis have been followed by other arbitrators and judges.

HDI also relies on the appeal decision of Justice Myers in *Her Majesty the Queen (MVACF) v. Royal & Sun Alliance Insurance*, 2021 ONSC 3922.

In that case a pedestrian was struck by an unidentified taxicab that had been dispatched by Beck Taxi. Beck Taxi did not own the cab. Beck Taxi, in fact, did not own the 850 cabs that operated under its banner. It simply dispatched the cabs and provided the service. Beck was insured under a commercial general liability policy with RSA that had an SPF-6 policy endorsement.

RSA took the position, as does HDI here, that a commercial general liability policy, even with the SPF-6, is not a motor vehicle liability policy. It was acknowledged in that case that Beck was not the owner or driver of the taxi in issue but MVACF argued that the proper interpretation of the SPF-6 was that it turned the commercial general liability policy into a motor vehicle liability policy and therefore fell within the relevant provisions of the *Insurance Act*.

The matter before Justice Myers was an appeal from an arbitrator who had concluded that the Beck Taxi SPF-6 was not a motor vehicle liability policy. This particular case was one of priority as opposed to loss transfer and for determination as to who was obliged to pay statutory accident benefits under s. 268(1) of the *Insurance Act*. HDI submits that that does not result in the case being distinguishable as the issue, whether priority or loss transfer, was still whether the SPF-6 caused the CGL policy to become a motor vehicle liability policy.

Justice Myers found that the arbitrator was right in concluding that the Royal & Sun Alliance policy was not a motor vehicle liability policy. HDI relies on paragraph 56 of the original decision which was upheld by Justice Myers which is set out below:

"The result of the above is that the SPF-6 endorsement - while providing excess liability coverage to Beck Taxi for potential vicarious liability claims arising out of the use or operation of its non-owned motor vehicles - is not a motor vehicle liability policy as defined in the Act. It is an endorsement to the CGL policy issued by RSA and does not provide coverage for accident benefits in the Schedule."

HDI also relies on Justice Myers's comments at paragraph 37 where he says:

"This is not a question that turns on the identification of any individual driver. It is simply a recognition that an SPF-6 CGL endorsement insurance is not a species of motor vehicle liability policy that are intended to carry SABS under the statutory scheme."

HDI submits I am bound by Justice Myers's decision.

Lastly, HDI relies on paragraph 36 of Justice Myers's decision where he specifically states that he agrees with Arbitrator Samis in the *ING v. Temple* decision. Justice Myers's comments are set out below:

"36. The arbitrator agreed with Arbitrator Samis in *ING Insurance Company v. Temple Insurance* (May 7, 2008) that SPF-6 coverage does not cover the car,

its owner or its driver. Its purpose is to protect an insured from liability that might be imposed on it for another reason - like taxi dispatching for example. I agree with the analysis provided by Arbitrator Samis in the ING case."

HDI also responded to the submissions of Chubb that the HDI policy contained an SEF-94 endorsement (legal liability for damage to hired automobiles) that resulted in Alicia, the driver of the Dodge Caravan, being an additional insured under the policy and as a result that the SEF-94 therefore provided coverage to the vehicle being operated. HDI takes issue with that analysis.

HDI does not deny that its CGL policy contained an SEF-94 endorsement, but it alleges that it is an extension of the SPF-6 coverage. HDI submits, as it did with respect to the coverage of the automobile, that the mere presence of the SPF-6 and SEF-94 cannot transform the CGL policy into a motor vehicle liability policy as defined under the *Insurance Act*.

HDI references the case law that they argued with respect to the first issue and notes that it is equally applicable to an effort to argue that the SEF-94 somehow or other transforms the CGL policy into a motor vehicle liability policy.

HDI points out that with respect to the decision in *ING Insurance v. Temple* that the policy being considered by Arbitrator Samis also contained an SEF-94 endorsement. HDI acknowledges that it is not clear from the decision whether the parties actually argued that the SEF-94 insured a vehicle but submits that it is clear Arbitrator Samis interpreted the SEF-94 as an extension of the SPF-6 coverage and concluded that neither are "insurance on an automobile or insurance with respect to an automobile" (see paragraph 53). HDI also points out that Arbitrator Samis went on to hold that the endorsement also did not cover the driver of the vehicle but its sole coverage is for the liability that may be imposed upon the insurer/insured.

HDI submits, and I quote: "Chubb's argument that because Alicia was an 'employee' and is therefore an 'additional insured' means that HDI's policy is transformed into a motor vehicle liability policy should be disregarded as it would create an absurd result."

HDI gives an example to support their position that if an individual had a home insurance policy and the named insured was operating a motor vehicle and got in an accident, that just because the home policy provided liability coverage and the person who was insured was operating a motor vehicle does not result in that contract being transformed into a motor vehicle liability policy. It remains a home insurance policy.

HDI submits that Chubb's argument is inconsistent with the legislative intent with respect to the definition of a motor vehicle liability policy as set out in s. 1 of the *Insurance Act* and that the SPF-6 and SEF-94 endorsements simply do not change the fact that the HDI policy is a commercial general liability policy.

HDI also responded to Chubb's submissions with respect to HDI being prevented from arguing that their policy was not a motor vehicle liability policy by virtue of the additional agreement of

the insurer which prohibited it from setting up a defence to any claim that might not be set up if this endorsement were a motor vehicle liability policy issued in a province or territory of Canada.

HDI pointed out that the additional agreement that is relied upon by HDI has the opening words/qualifying clauses: "**where indemnity is provided by this endorsement**". HDI submits that there is no indemnity being provided for loss transfer under the SPF-6 endorsement and as such that language would not apply to loss transfer.

HDI also reviewed the case law relied upon by Chubb and noted that in each of those cases it was with respect to out-of-province insurers arguing that they are not responsible for paying loss transfers based on inter-jurisdictional disputes or out-of-province insurance. HDI submits that none of those cases are relevant here. Further, in all of those cases each one involved two motor vehicle liability policies and not an argument with respect to whether one or other policy was in fact a motor vehicle liability policy.

In response, Chubb submits that the cases relied upon by HDI (*ING v. Temple* and *MVACF v. RSA, supra*) are not applicable to this arbitration. Chubb submits that the findings in each of those cases did not constitute findings that priority or loss transfer was applicable because there was not a motor vehicle liability policy, but for other reasons and therefore they are distinguishable.

For example, in the *ING v. Temple* decision Chubb points out the fact that the truck was being operated on a private road and therefore was not required to be licensed under the *Highway Traffic Act* and as such was exempted from s. 275 of the *Insurance Act*.

With respect to Justice Myers's case, Chubb submits that the reason the SPF-6 was not liable to respond to the claim for accident benefits was because the taxi driver was not an employee of Beck Taxi and in this case Alicia was an employee of the PIC Group/TRIGO.

Chubb therefore submits I am not bound by those decisions and they are distinguishable from the case at hand.

DECISION AND ANALYSIS

Having carefully reviewed the HDI Global policy and its endorsements, s. 275 of the *Insurance Act* and the case law submitted by both Chubb and HDI, it is my conclusion that the HDI Global policy was a commercial general liability policy and not a motor vehicle liability policy and therefore s. 275 of the *Insurance Act* is not applicable. Accordingly, the HDI Global policy is not obliged to respond to the claim for loss transfer in this case.

I agree with the submissions of HDI and I find that I am bound by the decision of Justice Myers in *MVACF v. RSA*. Even if I were not bound by Justice Myers's decision, I would agree with the analysis of Arbitrator Samis in the *Temple* decision (*supra*) and the decision of both the arbitrator and Justice Myers in *MVACF v. Royal & Sun Alliance*. I have carefully looked at the distinguishing factors that Chubb relied upon to suggest that these cases should not be followed. While I agree some features of those cases were not included in this case, I agree with HDI that Arbitrator

Samis's comments and Justice Myers's comments were rulings with respect to the coverage provided by those endorsements. I find that those rulings and analysis apply equally to any CGL policy which bears those same endorsements (the SPF-6 and the SEF-94). I could find no reason that I could or should distinguish Arbitrator Samis's analysis or Justice Myers's.

I appreciate that Justice Myers's decision dealt with priority but in my view whether a policy is a motor vehicle liability policy or commercial general liability policy is the same question with the same analysis whether we are looking at priority coverage under s. 268 of the *Insurance Act* or whether we are looking at the right for indemnification under s. 275 of the *Insurance Act*.

I particularly note Justice Myers's comment that irrespective of the basis for his conclusions in that decision he specifically states, "I agree with the analysis provided by Arbitrator Samis in the ING case." That, in my view, is a clear direction that the SPF-6 and the SEF-94 endorsements cannot be relied upon to create what is otherwise a commercial general liability policy into a motor vehicle liability policy.

The facts in this case are clear. The HDI policy, on the face of it, is a commercial general liability insurance policy. It does not insure any automobiles. The nature of the coverage set out in the SPF-6 and the SEF-94 are, as Arbitrator Samis found, designed to cover liability that may be imposed upon an employer and does not provide coverage for an automobile, the owner of an automobile, or the driver of the automobile.

As in the case before Arbitrator Samis, I find that HDI is not an insurer of the Dodge Caravan/automobile but rather is an insurer in the business of insuring against liability.

As can be gleaned from my comments above I also reject Chubb's argument that in looking at the SEF-94 endorsement on its own and the argument that Alicia being an additional insured under the policy converts the CGL policy into a motor vehicle liability policy simply cannot be supported on a reasonable interpretive analysis nor based on the case law. I agree with HDI that there is no reason to distinguish Arbitrator Samis's decision on the facts of this case.

It therefore follows that as this is not a motor vehicle liability policy, that "indemnity is not provided by this endorsement for the circumstances of this case and therefore the additional agreements of the insurer with respect to setting up any defence not consistent with coverage under a motor vehicle liability policy is not applicable here."

Subject to any argument with respect to costs, I therefore find that the policy of HDI Global is not subject to s. 275 of the loss transfer obligations and the arbitration is dismissed as against HDI Global.

RSA

With respect to the coverage of the RSA policy, the Respondents Chubb and Pafco made submissions taking the position that the RSA policy should respond to the claim for loss transfer by Northbridge. RSA takes a contrary position.

At the time of the accident of July 4, 2017 Alicia, the driver of the Dodge Caravan, was an employee of the PIC Group. Her position with the PIC Group was lead hand. She worked variable hours. On the date of loss she was operating the Dodge Caravan while on her way to work.

The Dodge Caravan had been rented by Charles A. on behalf of the PIC Group (Trigo) at the time of the accident.

There was a Corporate Partnership Program Services Agreement in place at the time of the accident between Enterprise Rent-A-Car and the PIC Group. The substance of this agreement was that Enterprise Rent-A-Car would provide available vehicles for rental to the PIC Group for their employees. Alicia was operating one of these rental vehicles on the date of loss.

The PIC Group was in the business of providing operational quality management solutions for manufacturing industries including the automotive industry.

The PIC Group was insured by RSA by way of an Ontario Garage Policy (OAP-4). The policy in place on the date of loss was a renewal.

The garage Certificate of Insurance that was issued by RSA described the automobiles in respect of which the insurance was being provided as "inspection/minor repair of new pre-sale vehicles being stored".

The only insured under the policy was the PIC Group. RSA did require a driver list and Alicia was not on the list of drivers provided to RSA.

According to various underwriting and emails produced, when RSA issued the garage policy it undertook a risk analysis and required information about the usage of and the radius of travel that the insured vehicles were likely to be involved in. RSA was advised that there was no vehicle use. Rather, the vehicles that were being insured were no longer being test driven and essentially were being stored for inspection or minor repair in the garage location.

The OAP-4 issued by RSA to the PIC Group included an endorsement entitled "Excluding Owned Automobiles Endorsement" (OEF-71 [01/05]). The relevant provisions of the OEF-71 are set out below:

"In consideration of the reduced premium, it is agreed that the insurance under item 5, section 1 (Third Party Liability), section 2 (Accident Benefits), section 3 (Uninsured Automobile Coverage), section 4 (Direct Compensation - Property Damage) and section 5 (Loss or Damage to Owned Automobile) of the Certificate of Insurance shall not apply to loss or damage arising from ownership, use or operation of any automobile owned, hired or leased by or licensed in the name of the insured.

According to the underwriting file the RSA policy was to be issued with the OEF-71 endorsement and the policy was to be rated based on repair garage rates which included an exclusion for owned automobiles.

Chubb submits is that the OAP-4 insures certain vehicles that are not owned by the PIC Group. Chubb references section 1.2 of the OAP-4 which states:

"The insurer agrees to pay on behalf of the insured all sums which the insured is legally obligated to pay in respect of loss or damage arising from the use or operation of any customer's automobile or non-owned automobile or any part of the automobile resulting from bodily injury or death ..."

Chubb submits that the Dodge Caravan is a non-owned automobile vis-à-vis PIC Group.

Chubb also relies on section 2.1 of the OAP-4 which deals with who is covered under the policy. That provision is set out below:

"For the purposes of section 2, insured persons are defined in the Statutory Accident Benefit Schedule and an insured automobile for this purpose includes an owned, a non-owned and a customer's automobile as defined in this policy."

Again, Chubb submits that that points to the Dodge Caravan being insured under the RSA policy as it is a non-owned automobile.

Chubb points to section 7.2.5 of the OAP-4 which provides the definition of the non-owned automobile which is set out below:

"'Non-owned automobile' means an automobile, other than a customer's automobile or an automobile leased by the insured from another under a lease contract for a period exceeding 30 days and which requires the insured to affect and maintain insurance, which is not owned by the insured, and which is used for pleasure by the insured or partners or employees of the insured, or in connection with the business stated in item 3 of the Certificate of Insurance."

Chubb submits that the Dodge Caravan is a non-owned automobile leased by the PIC Group and used in connection with the PIC Group business set out in the Certificate of Insurance and therefore the Dodge Caravan is covered by the RSA policy.

Chubb also points to the OAP-4 as providing coverage specifically to rented or leased vehicles. Under section 1.2 RSA agrees to pay to its insured "all sums which the insured is legally obligated to pay as a result of liability imposed by law arising from the negligence of the drivers of automobiles rented or leased by the insured for periods of no more than 30 days and for the purpose of business conducted by the insured as stated in item 3 of the Certificate of Insurance." Chubb also references section 7.12 of the RSA policy which confirms that coverage is provided to "every other person who, with the consent of the owner, and in connection with the business described in item 3 of the Certificate of Insurance drives or operates any automobile other than an automobile owned or registered in the name of any additional insured person."

Chubb submits that the OEF-71 endorsement to the RSA policy does not remove coverage for the Dodge Caravan. The relevant provision from the OEF-71 is set out below:

"In consideration of the reduced premium it is agreed that the insurance under items 5, section 1 (Third Party Liability) ... shall not apply to loss or damage arising from ownership, use or operation of any automobile owned, hired or leased by or licensed in the name of the insured."

Chubb submits that one must distinguish between the use of the word "rent" and the use of the word "lease". Chubb's position is that the endorsement only removes coverage for vehicles that are "owned, hired or leased by, or licensed in the name of the insured". It does not remove coverage for rental vehicles. Chubb submits that the Dodge Caravan was rented from Enterprise by virtue of its agreement with PIC and therefore the OEF-71 does not operate to remove coverage for the Dodge Caravan.

Chubb's position is (similar to that with respect to the Pafco policy) that there is a difference between rented, leased and hired and that the documents are clear that the Dodge Caravan was rented and therefore remains covered under the RSA garage policy.

Chubb also submits that it is not relevant whether Alicia was on the list of drivers provided by PIC Group to its broker/RSA. Chubb submits that the list of drivers does not change the coverage under the RSA policy with respect to the automobile and will not affect its responsibility to respond to loss transfer. Chubb notes that nowhere in the OAP-4 is coverage limited to listed drivers who are employed by PIC. Rather, the coverage is provided to all full-time employees and all drivers of automobiles rented or leased by the insured for periods for no more than 30 days. Therefore, it is irrelevant whether Alicia's name appeared on the list of drivers.

Chubb notes the Corporate Partner Program Services Agreement between the PIC Group and Enterprise Rent-A-Car in paragraph 3 of that document makes specific reference to there being a "rental program". The agreement notes that Enterprise agrees to make vehicles available to "eligible renters for rental for business use". It references reservations for rentals, rental contracts and rental rates. Nowhere in the document do you see words such as "leased" or "hired".

Further, the agreement requires Enterprise Rent-A-Car to arrange for appropriate motor vehicle liability insurance with an authorized insurer to provide standard automobile insurance policies to the extent required by law.

The document that confirms the rental of the Dodge Caravan is described as a "car rental receipt". There is no reference to leasing or hiring. The document indicates that the Dodge Caravan was rented by "Charles authorized by the PIC Group" for the following time periods:

<u>Start Date</u>	<u>End Date</u>
June 16, 2017 at 7:30 a.m.	June 29, 2017 at 4:03 p.m.
June 29, 2017 at 4:03 p.m.	July 5, 2017 at 4:15 p.m.
July 5, 2017 at 4:15 p.m.	July 16, 2017 at 7:00 p.m.

Chubb cites the following cases in support of their position:

1. *Alliance v. Lombard*, Arbitrator Jones, June 23, 2009, affirmed 2010 CarswellOnt 18805
2. *Certas v. Lombard*, Arbitrator Novick, May 11, 2012, affirmed March 12, 2013, leave to appeal denied September 11, 2013
3. *Dominion v. Lombard*, Arbitrator Bialkowski, September 11, 2013
4. *ACE INA v. Economical*, Arbitrator Bialkowski, April 12, 2017

I will deal with the responding submissions of RSA to the Chubb submissions before turning to Pafco as the positions taken as between Pafco and Chubb are different.

RSA references in their submissions the guiding principles as to how to interpret an insurance policy as set out by the Supreme Court of Canada in *Progressive Homes Ltd. v. Lombard General Insurance Company of Canada*, 2010 SCC 33 (CanLII) [2010] 2 SCR 245, see paragraphs 22 to 24. RSA notes the following principles that they rely upon in terms of their submissions as to how one should interpret the RSA policy:

1. Where the language of a policy is unambiguous the court should give effect to the clear language reading the contract as a whole.
2. If it is ambiguous then the courts can rely on general rules of contract construction.
3. Courts should prefer interpretations that are consistent with the reasonable expectations of the parties as long as that interpretation can be supported by the text of the policy.
4. Interpretation should be avoided that would give rise to unrealistic results that may not have been in contemplation of the parties at the time the policy was entered into.
5. If the insurance policy is clear and unambiguous it is unnecessary to resort to external evidence to interpret its terms.

Keeping that in mind RSA submits that it is clear that the OEF-71 was clearly intended to exclude the Dodge Caravan. This, RSA submits, is consistent with the commercial realities of a garage policy. It is also consistent with the parties' intentions as shown from the underwriting file and the insurance documentation. There was never any intent under the RSA policy to provide accident benefits coverage for the Dodge Caravan or for vehicles in that category.

RSA submits that the Dodge Caravan falls within the exclusion as it was a hired vehicle. RSA submits there is no difference between a hired vehicle and a rental vehicle and that it is widely recognized that a hired vehicle includes a rental vehicle.

RSA points to the Law Dictionary: Black's 2nd edition which defines "hired automobile" as:

"a car that is not the insured party's or a member of their household. It is rented

by the insured party."

RSA also points to the HDI policy in dispute in this arbitration which defines "hired auto" as:

- "(a) any automobile hired or leased by the named insured from others with a driver or
- (b) hired or leased by the named insured from others without a driver for periods not exceeding 30 days."

RSA submits that the Dodge Caravan was a hired vehicle at the time of the accident and that the use of the word "rented vehicle" is synonymous with a hired vehicle. Therefore, the Dodge Caravan falls within the exclusion in the OEF-71 and as such RSA is not responsible to respond to the loss transfer indemnification requests under s. 275 from Northbridge. With respect to the interpretation of the endorsement itself, RSA submits that the endorsement is not a standalone insurance policy and that it is linked to the garage policy with which it was purchased. An endorsement will change or vary or amend that underlying policy.

During oral argument RSA submitted that in today's modern terminology "hired" and "rented" are interchangeable. RSA submitted that if you go to Google or other websites you see the words used interchangeably. RSA submits that overall the purpose of this endorsement is to reduce coverage for vehicles that are being driven as opposed to cars that are in storage which the RSA policy was designed to cover. It was the intention of the policy to exclude coverage for vehicles not owned by its insured which would include vehicles being rented on a long-term basis. It would make little sense if the endorsement were interpreted to read that it provided coverage to a long-term rental vehicle but would exclude coverage for a hired vehicles. Essentially it is the same business transaction.

RSA submits that accident benefits are not payable under an OAP-4 garage policy if the use of the vehicle is excluded by either an exclusion or an endorsement. RSA relies on the decision of Arbitrator Novick in *Certas Direct Insurance Company v. The Sovereign General Insurance Company* (June 17, 2025). While that decision dealt with a priority dispute RSA submits that the conclusions of Arbitrator Novick are equally applicable to a loss transfer case.

In that case the claimant was involved in an accident when a vehicle driven by his girlfriend collided with another vehicle. He had no insurance coverage but his girlfriend had arranged for the purchase of a car from a numbered company operating as New Start Canada. New Start was involved in repairing and selling used cars. However, the car that the girlfriend had purchased was not initially available and she was given a loaner car from New Start in the interim and it was the loaner car that she was operating when the accident occurred.

New Start was insured under an OAP-4 garage policy issued by Sovereign. For reasons related to a different endorsement (OEF-76) Arbitrator Novick concluded that the garage policy did provide accident benefits in the specific circumstances of that case. However, RSA relies on the decision based on Arbitrator Novick's comments that accident benefits are not payable under the garage

policy if the use of the vehicle is excluded by an exclusion or endorsement and RSA submits that that is the fact in this case based on the OEF-71.

PAFCO'S POSITION

Before turning to the submissions of Pafco there is some additional evidence that Pafco relied upon that is needed to be set out for a background to their submissions.

Alicia, the driver of the Dodge Caravan gave evidence under oath on February 18, 2021. During her EUO, Alicia confirmed that the van that she was driving on the date of loss was "leased by her employer". She also confirmed that at the time the accident occurred with the claimant that she was in the course of her employment. She had been working with Trigo/PIC for about five years. She was a site leader which required her to manage various work locations. The employees who were working at those various locations and running projects were under her supervision. Therefore, her job required her to drive to and from various sites.

The vehicle she had been driving had been rented by Charles A. who was also employed by PIC/Trigo. He was the project manager at the time of the accident. Alicia says it was typical that Charles or someone else would arrange for the rental.

Alicia's evidence was that typically if she was working and driving from site to site she would use a rental. This was preferred by the company as if the employees used their personal vehicle they would charge mileage. Her evidence was also that she was not the only person that used that particular vehicle and it could have been used by multiple vehicles.

Generally, Alicia would drive to work in her personal vehicle and then pick up the rental and use that for work during the day and then switch back to her personal vehicle at the end of the day. There is no dispute that Alicia had regular use of the Dodge Caravan at the time of the accident through her employer. I now turn to the submissions of Pafco.

Pafco approached the involvement of RSA on a different basis than Chubb. Pafco's submissions assume that the RSA policy would respond to loss transfer on the grounds that it was a second party insurer under s. 275 of the *Insurance Act*.

Assuming that to be the case, Pafco's submissions revolved around which amongst multiple insurers would be obliged to respond to Northbridge's loss transfer claim as against the Dodge Caravan. Pafco offered two approaches.

The first was that the insurer that should respond to the loss transfer claim would be the insurer that would respond to the tort claim. Pafco relied on the decision of Arbitrator Novick, *Jevco Insurance v. Economical, Kent and Essex* (2009) where she concluded when considering whether the insurer of the owner of the vehicle or the insurer of the driver of the vehicle should be responsible to indemnify under loss transfer that it would be the insurer of the driver who would stand first as loss transfer deals with fault.

The second proposal of Pafco is that the insurer who would stand in priority under s. 268 of the

Insurance Act to respond to a claim for Alicia's statutory accident benefits would be the insurer that should respond to the loss transfer claim.

With respect to this, Pafco relied on s. 268 of the *Insurance Act*, the definition of insured under the Statutory Accident Benefits Schedule and s. 3(7)(f) of the SABS. The latter is the key provision which establishes that a person who has regular use at the time of an accident of a company vehicle will be a deemed named insured under that policy. As Alicia had regular use of the Dodge Caravan through her employer PIC, she therefore becomes a deemed named insured under the RSA policy and that policy would rank highest in terms of priority under s. 268 of the *Insurance Act*.

Pafco did not in its submissions address the question as to whether the RSA policy qualifies as a second party insurer under s. 275 of the *Insurance Act* with respect to the Dodge Caravan and thus attract potential indemnification from Northbridge.

RSA's primary response to Pafco is that its policy does not respond at all under s. 275 of the *Insurance Act* as the vehicle involved in the accident (the Dodge Caravan) was specifically excluded under the OEF-71 as the vehicle was "hired" or "leased" by the PIC Group. Therefore, the vehicle involved in the accident would not be considered an insured automobile under the RSA policy and s. 275 of the *Insurance Act* does not apply. Therefore, there is no need to look at Pafco's submissions with respect to how to choose between multiple insurers when there are a number of policies that would qualify under s. 275 as second party insurers.

However, for the sake of completeness I do note that RSA, in addition to the OEF-71 issue, did make some additional submissions with respect to Pafco's second approach. RSA took the position that their garage policy did not provide statutory accident benefits in circumstances where a hired or leased automobile (which would include a rented automobile) was being used. As the vehicle being driven by Alicia at the time of the accident was not an insured automobile under the garage policy by virtue of the exclusion, then accident benefits would not be payable and Alicia would not be a deemed named insured under their policy. RSA also pointed out that there is no evidence that any vehicles actually insured under the PIC policy were made available for Alicia during the course of her employment. It was a non-insured rental automobile that was being made available.

DECISION AND ANALYSIS

I agree with the submissions of RSA with respect to the effect of the OEF-71 endorsement to the Ontario Garage Policy (OAP-4) issued by RSA to the PIC Group.

I have carefully reviewed both the OAP-4 and the relevant provisions of the OEF-71 and it is my decision that it specifically excludes coverage for an automobile owned, hired, leased or licensed in the name of the insured. It is my decision that that wording includes a rented vehicle and as submitted by RSA the word "hired" is synonymous with the word "rented". This is consistent with my analysis of this issue in relation to the Pafco policy where I reach the same conclusion and I do rely upon the analysis set out there.

However, RSA did provide some additional support for this argument and specifically extracts from *Black's Law Dictionary*, 2nd edition which is more up-to-date than the one I had referenced earlier. I also took the liberty of reviewing the definition of "hire" and "rent" in the *New Shorter Oxford English Dictionary*, Oxford University Press, 1973.

"Hire" is defined as "The temporary use of a thing for a stipulated payment." "Rent" includes the following definition: "The sum paid for the hire of machinery for a certain time." It notes as synonymous words "rent a car/a hire car."

Lastly, I reviewed the *Merriam-Webster Thesaurus* with respect to synonyms for the words "rent" and/or "hire". The Thesaurus indicates that synonyms for "rent" include lease, hire and let. The Thesaurus indicates: "Some common synonyms of rent are charter, hire, lease and let. While all these words mean to 'engage or grant for use at a price' rent stresses the payment of money for the full use of the property and may imply either hiring or letting."

Based on my review of the *Oxford English Dictionary*, *Black's Law Dictionary* and the *Merriam-Webster Thesaurus*, I conclude that the words "rent" and "hire" are interchangeable and in the context of this case the OEF-71, which excluded use or operation of any automobiles owned, hired or leased by or licensed in the name of the insured, would include a vehicle rented in the name of the insured.

This in my view is consistent with the guiding principles to interpret insurance policies as set out by the Supreme Court of Canada in *Progressive Homes v. Lombard (supra)*. In my view the wording is unambiguous. If I were to interpret the OEF-71 as excluding rental vehicles that would give rise to an interpretation that would be unreasonable and inconsistent with the endorsement. It would make little or no sense to exclude coverage for the use or operation of automobiles that are owned, hired or leased in the name of the insured but not to exclude coverage for the use or operation of an automobile that is rented by the named insured. There was no explanation provided that would suggest that that interpretation would be consistent with what was the contemplation of the parties at the time this contract was entered into.

Therefore, as the RSA policy was not a policy that insured an automobile that was involved in the incident from which the responsibility to pay statutory accident benefits arose, it is therefore not a second party insurer as defined under s. 9(2) of Regulation 664. Accordingly, the RSA policy does not respond to the s. 275 loss transfer obligations.

In light of my findings above there is no need to deal with the submissions of Pafco with respect to multiple policies responding to loss transfer claimed and how they may be prioritized.

ISSUE FOR DETERMINATION

With respect to the question as to which policies of the respondents are subject to section 275 loss transfer obligations it is my decision that only the respondent Chubb insurance policy should respond to Northbridge's claim for loss transfer under section 275 of the *Insurance Act*.

COSTS

I do not propose to make any ruling without costs with respect to an opportunity for the parties to make submissions. Each party sought their costs. Some sought costs against Northbridge others against other respondents.

I will give the parties 90 days to resolve the issue of costs and if it cannot be resolved then the parties are to contact me and we will schedule a further pre-hearing for the purposes of setting up a cost hearing.

DATED THIS 27th day of March, 2026 at Toronto.



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