IN THE MATTER OF THE INSURANCE ACT, R.S.O. 1990 c. I.8

AND REGULATION 283/95 MADE THEREUNDER

AND IN THE MATTER OF THE ARBITRATION ACT, S.O. 1991, c. 17

BETWEEN:

DEFINITY INSURANCE COMPANY

Applicant

- and –

CHUBB INSURANCE COMPANY OF CANADA and ECHELON INSURANCE

Respondents

DECISION

COUNSEL APPEARING

Tim Crijenica, counsel for the Respondent, Chubb Insurance Company of Canada (hereinafter called "Chubb").

Monika Korona, counsel for the Respondent, Echelon Insurance (hereinafter called "Echelon").

BACKGROUND INFORMATION

This matter comes before me pursuant to s. 268 of the *Insurance Act* and Regulation 283/95 as well as the *Arbitration Act*. This is a priority dispute among three insurers with respect to an accident that occurred on December 29, 2023.

On that day, the claimant was driving a rental vehicle. Chubb insures the rental vehicle. The vehicle had been rented by his brother. His brother is insured by the Applicant, Definity. Echelon insured the claimant.

All parties agree that Definity, who is the Applicant, would not be the priority insurer as the claimant was not principally dependent for financial support on his brother. Accordingly, Definity did not take part in this arbitration.

As between Echelon and Chubb, the issue is whether or not the Echelon policy of the claimant was properly cancelled in September of 2023.

ISSUE

The issue that has been identified for determination is set out below:

Was the Echelon policy not validly cancelled in accordance with the *Insurance Act* and the statutory conditions thus remaining in full force and effect on the date of loss?

PROCEEDINGS

This matter proceeded by way of a written hearing. In addition, the parties were given an opportunity to make oral submissions.

A joint priority arbitration brief was submitted, which included the following:

- Echelon renewal package, July 28, 2022;
- Letter Echelon to claimant re NSF, August 26, 2022;
- Letter Echelon to claimant re NSF, March 28, 2023;
- Letter Echelon to claimant re non-payment, April 5, 2023;
- Letter Echelon to claimant re non-payment, May 8, 2023;
- Letter Echelon to claimant re renewal, July 9, 2023;
- Letter Echelon to claimant re policy change, July 25, 2023;
- Letter Echelon to claimant re NSF, July 27, 2023;
- Letter Echelon to claimant re cancellation, August 8, 2023;
- Letter Echelon to claimant re cancellation confirmation, September 7, 2023;
- Various emails between Echelon and the claimant, March 2023 to June 2025;
- Collision Report, December 19, 2023;
- OCF-1 of the claimant, January 10, 2024;
- Transcript of the examination under oath of the claimant, March 12, 2025.

The parties each filed written submissions and relied on their respective books of authority.

FACTS

The claimant was 39 years old on the date of loss. He lives in London. He is single and has no dependants.

The claimant owned a 2010 Dodge Charger. This vehicle had been insured with Echelon for some time prior to the date of loss. The policy number was X320205779. The claimant appears to have utilized a broker, NFP Canada Corp.

There was a history of prior NSF payments by the claimant that had resulted in cancellation. For example in August 2022 the claimant and broker were advised by Echelon that they had attempted to withdraw a monthly payment from the claimant's account and it had been returned NSF. The claimant's broker emailed him to advise him of the unsuccessful withdrawal and that a second attempt would be made. However, on April 7, 2023 a termination notice was sent to the claimant with a termination date of May 9, 2023. A copy of the registered letter sent to the claimant with respect to the cancellation was emailed to him at his email address:

reezyfromnotin@gmail.com together with an email advising him of the cancellation and what he could do to rectify that.

Sometime in May the claimant made the missing payment and his policy remained in force.

A copy of the claimant's policy covering the time period of August 23, 2022 to August 23, 2023 was produced. In the covering letter providing the claimant with a copy of his policy a payment schedule is noted. The total premium at that time was $5,872.36. It was payable over 12 months at a rate of $489.37 per month. Somewhat unusually, the first two payments were to be made August 7 and August 23. This was before the policy commenced. The last monthly payment was to take place June 23, 2023.

By letter dated May 19, 2023 Echelon wrote to the broker, NFP Canada, to advise that their effort to withdraw the monthly amount for May 15, 2023 in the amount of $489.36 had been unsuccessful and returned by the bank as Not Sufficient Funds.

On May 26, 2023 the claimant called the broker to enquire about his payments noting he had been charged twice in May because of the CNP notice and he was not happy about that. He was told his next payment would be coming out in June. Based on the note from the broker, it would appear that the claimant had successfully paid the May premium.

By letter dated July 9, 2023 Echelon wrote to the claimant and provided him with a copy of his renewal package. The total premium for this renewal was $6,075. Once again, it was a 12-month payment schedule. The monthly amount was $512.84. As with the prior policy, the first payment predated the policy inception date and was due July 23, 2023 in the amount of $512.84. The payments then continued on a monthly basis for 12 months with the last payment June 23, 2024. The policy continues to indicate that the vehicle insured is a 2010 Dodge Ram Charger. On July 23, 2023 Echelon attempted to collect the premium due on that day of $512.84. It was returned by the bank as non-sufficient funds.

However, in the interim the claimant had contacted his broker to complain about the amount of his premium. As a result of that discussion, revisions were made to his policy which included the following:

1. Coverage for all perils was removed reducing the premium by $715;

2. The OPCF-20 was removed (transportation replacement) reducing the premium by $60; and

3. The OPCF-27 was removed reducing the premium by a further $50.

The elimination of all perils meant the vehicle would no longer be covered for things such as theft.

As a result of these changes, Echelon issued a revised policy package. This was sent to the claimant by letter dated July 25, 2023. The premium is reduced to $5,250.

According to the payment schedule, the revised policy only required 11 months of payments. The Echelon letter incorrectly assumed that the first payment of $512.84 had been made. The letter showed a policy cost of $5,318.25 and deducted from it $512.84 that was to have been paid on July 23 leaving the balance of $4,805.41.

The new payment schedule started August 23, 2023 running to July 23, 2024 with the reduced monthly amount now becoming $436.86.

Echelon then catches up on the necessary letters with respect to the non-payment from July 23, 2023 and a letter dated July 27, 2023 is sent from Echelon to NFP advising that the withdrawal had been unsuccessful and that a second withdrawal attempt would take place within three to five days.

That second withdrawal was unsuccessful.

Echelon then sends the claimant a termination letter dated August 4, 2023. It is sent to 1285 Huron Street in London. It references a policy period of August 23, 2023 to August 23, 2024. The letter indicates it is a registered letter and it is a termination notice with a termination date of September 7, 2023.

The letter is copied to the broker.

The key provisions are set out below:

1. Non-payment of premium

   Coverage will remain in effect until 12:01 a.m. on September 7, 2023.

   To avoid termination of your policy and remain eligible for your current payment plan, please pay $562.84 which includes an administrative fee of $50.

   Payment must be received by noon the day before September 7, 2023.

The broker sends an e-mail to the claimant's address on August 17, 2023 attaching a copy of the registered letter. The e-mail also outlines that his policy will be cancelled. It sets out how to correct the non-payment and the relevant dates.

The broker sends out a final reminder to the claimant to his e-mail address on August 30, 2023 and again attaches a copy of the registered letter and sets out the nature of the cancellation and how he can correct it.

By letter dated September 7, 2023 Echelon writes to the claimant and confirms that the policy will be cancelled effective 12:01 a.m. on September 7, 2023. In a further letter dated

September 7, 2023 they confirm that they are going to withdraw the amount of $267.79 which represents the remaining premium, the NSF fee and finance fees of $2.79.

In addition to sending letters, the broker also contacted the insured by phone. According to their log notes, on August 30, 2023 they called the insured and launched a voicemail recording but as the voicemail was not initialized, they sent an e-mail.

There was a further phone call on September 9, 2023 with the broker. The broker called the claimant. The log note states the following:

> "Called and spoke with Ramal. He thought after the change in coverage, his next withdrawal would be less. I advised it is adjusted starting on August 23rd withdrawal. He asked me to call him tomorrow to make the payment and I advised I will e-mail with our billing team number to call and they will assist with the payment. Sent e-mail."

On October 3, 2023 at 3:42 p.m. the claimant emailed his broker. The subject line was re "Your insurance cancellation confirmation." The e-mail from the claimant indicated, "I never wanted to cancel."

The broker replied at 4:18 as follows: "Thank you for your e-mail. I see we tried to call you in August to make the payment to reinstate your policy but we did not hear from you. Your auto policy was cancelled effective September 7th due to non-payment."

He was also invited to give the broker a call if he wanted to set up a new policy.

As part of the productions some information was provided from Canada Post with respect to the registration and delivery of the cancellation letter. Canada Post's records show that on August 10, 2023 at 4:19 the letter was received and machine sorted at Gateway. It was then manually sorted August 11, 2023 at 3:40. At 6:50 on August 11 it was processed in London at the local delivery. At 9:41 on August 11 it was sent out for delivery. However, the agent reported that the item was not in fact delivered as it was missorted. As a result, the letter was never sent back to the sender. Canada Post also noted that "Nobody contacted us about it." Echelon appears to have first learned of the non-delivery of its cancellation notice in or around April 15, 2025.

The claimant was then involved in a motor vehicle accident on December 29, 2023 operating the Chubb rental vehicle which had been rented by his brother. He submitted an OCF-1 dated January 10, 2024 to Definity noting under part 4 that the reason for submitting it to Definity as "It was a policy ensuring long-term rental cars for rentals exceeding 30 days." It is also to be noted that the OCF-1 shows the claimant's address at 1285 Huron Street and his email as reezyfromnotin@gmail.com. I now turn to a summary of the relevant facts from the claimant's EUO.

The EUO shows that the claimant appears to be confused with respect to who he was insured with or how and why his policy was cancelled. He suggests that his car had been broken into and

taken apart and probably sold for scraps. The car was not then drivable and the claimant states, "But I thought I cancelled ... I thought I cancelled that before I was not driving anymore."

He then goes on to say, "Yeah, I just can't remember because I wasn't driving because there was no need for me to have insurance anymore." When asked when his car was broken into he suggests that it was sometime early in 2023, probably in the summertime when the weather was good.

As the car was unusable he decided to get rid of it and he says he sold it for $500. He confirms that all this occurred before the accident in December of 2023. He did not purchase a new car.

Rather, he had his brother assist him by renting a car for him so he could get around to pick up his daughter, drop her off, etc. As the claimant did not have a credit card, he had to rely on his brother to rent the vehicle.

However, to complicate matters, earlier in the transcript the claimant reports "I don't know why it was cancelled but - I don't I can't remember." Shortly thereafter he states, "Right so they - they would have cancelled."

The claimant also said the following in his EUO with respect to the cancellation:

> "I think ... I think I was with Easy Way ... Easy Way or Easy Web Insurance. Before that, something ended up happening to my car, so I end up ... I had to cancel that ... that service, I think. I can't remember ... I can't remember exactly if I cancelled it or if they cancelled it. I just can't remember that part of it."

RELEVANT LEGISLATION

Section 235 of the *Insurance Act* directs the insurer as to how it is to give written notice to its insured with respect to terminating an existing insurance policy. The section states:

> "An insurer may, by registered mail, personal delivery, prepaid courier or electronic means, give to an insured a notice of termination of a contract in accordance with the statutory conditions referred to in subsection 234(1)."

Section 237(1) of the *Insurance Act* prohibits an insurer from cancelling an automobile insurance policy unless it has complied with the mandatory notice requirements. Those notice requirements are set out under s. 11 of the Statutory Conditions. The relevant sections of section 11 are set out below:

> "11(1) Subject to s. 12 of the *Compulsory Automobile Insurance Act* and ss. 237 and 238 of the *Insurance Act*, the insurer may give to the insured a notice of termination of the contract by:
>
> (a) registered mail;

(b) personal delivery;

(c) prepaid courier if there is a record by the person who has delivered it that the notice has been delivered; or

(d) electronic means if the insured consents to delivery by electronic means."

"1.2 Subject to subcondition (1.7), if the insurer gives a notice of termination under subcondition (1) for the reason of non-payment of the whole or any part of the premium due under the contract or of any charge under any agreement ancillary to the contract, the notice of termination shall comply with subcondition (1.3) and shall specify a date for the termination of the contract that is no earlier than:

(a) the 30th day after the insurer gives the notice, if the insurer gives the notice by registered mail"

"1.3 A notice of termination mentioned in subcondition (1.2) shall:

(a) state the amount due under the contract as of the date of notice; and

(b) state that the contract will terminate at 12:01 a.m. of the day specified for the termination unless the full amount mentioned in clause (a), together with an administration fee not exceeding the amount approved under Part XV of the Act, payable in cash or by money order or certified cheque payable to the order of the insurer or as the notice otherwise directs, is delivered to the address in Ontario that the notice specifies, not later than 12:00 noon on the business day before the day specified for the termination.

(1.4) For the purposes of clause (a) of subcondition (1.3), if the insured and the insurer have previously agreed, in accordance with the regulations, that the insured is permitted to pay the premium under the contract in installments, the amount due under the contract as at the date of the notice shall not exceed the amount of the installments due but unpaid as at the date of notice."

"(3) Where this contract is terminated by the insurer,

(a) the insurer shall refund the excess of premium actually paid by the insured over the proportionate premium for the expired time, but in no event shall the proportionate premium for the expired time be deemed to be less than any minimum retained premium specified."

These provisions are set out in the statutory conditions set out under Ontario Regulation 777/93.

SUBMISSIONS OF THE PARTIES

Position of Chubb

Chubb's position is that Echelon's cancellation was invalid and not in accordance with s. 11 of the regulation and accordingly the policy remained in full force and effect on the date of loss.

Chubb raises four reasons for its basis that the cancellation is not valid:

1. The cancellation notice was not delivered to the claimant. It was sent by registered mail but the evidence confirms it was not delivered to the claimant.

2. The cancellation notice was mailed too late as the cancellation notice purported to cancel the policy 28 days after mailing the notice rather than the required 30.

3. The cancellation notice did not separate out the premium owing separately from any NSF fees or administrative fees.

4. Echelon had already received payment from the claimant for the first month's premium and it failed to credit the claimant with that premium. Therefore, the amount shown on the cancellation letter was incorrect.

1. Failure to deliver by registered mail

Chubb submits that there is no dispute on the facts that while the cancellation letter of August 4, 2023 was sent to Canada Post to deliver by registered mail that in fact it never was delivered and was somehow or other missorted within Canada Post.

Chubb submits that there is no evidence that Echelon took any steps to verify whether the letter was actually delivered to the claimant. Chubb submits that the evidence suggests that the claimant was not aware of the cancellation until October 3, 2023 when he received an email from his insurance broker to which he replied, "I never wanted to cancel."

Chubb notes that there had been a previous history of the claimant of rectifying non-payment of premiums when he was notified and made aware of the payment. Therefore, Echelon's failure to ensure that the claimant was aware of the pending cancellation on September 7, 2023 must fall on Echelon despite the error apparently being due to Canada Post.

Chubb submits this is consistent with the acknowledged principle that the *Insurance Act* is consumer protection legislation and that the purpose of the statutory conditions is to protect policyholders.

2. The cancellation notice was sent too late

Statutory condition 11(1.2) specifies that the cancellation for the non-payment of premium must state not only the date the policy terminates, but such date shall be "no earlier than the 30th day after the insurer gives notice".

Chubb points to the Canada Post records that clearly show that the cancellation letter was first processed on August 10. As Echelon's cancellation notice said the policy would terminate on September 7, 2023, it is non-compliant with the regulation as that is 28 days after the notice was received by Canada Post and not 30 days.

Chubb submits that any purported cancellation that does not meet the requirements of the *Insurance Act* and the statutory condition is invalid and that strict compliance is necessary.

Chubb submits that there are a number of cases where arbitrators and judges have repeatedly held that a "rigorous standard must be imposed on an insurer wishing to cancel an insurance policy for the non-payment of premium". (See *Definity Insurance Company v. Allstate Insurance Company* CV-22-00690425-0000 Ontario SCJ, Justice Chalmers, February 22, 2024.)

3. The cancellation notice did not indicate the premium owing

Chubb takes the position that Echelon's cancellation notice, where it states that the claimant is required to pay $562.84 which "includes an administrative fee of $50," is non-compliant with s.11 (1.3). Chubb's position is that the notice must set out separately the amount of the premium, the amount of any NSF fees and any administrative fees. Chubb submits that requiring the policyholder to subtract the administrative fee from the total amount paying in order to determine the amount of premium he has to pay is not what was intended under the regulation and that to so interpret it would be contrary to its consumer protection policy.

Chubb submits that the whole purpose of requiring this breakdown is to allow the policyholder to decide whether the NSF fees and administrative fees are reasonable and to have a choice as to whether he wishes to only pay the outstanding premium and challenge the remaining fees. (See *Co-operators General Insurance Company v. Jevco Insurance Company*, Arbitrator Bialkowski, May 3, 2025.)

4. Echelon was not in a position to cancel the policy for non-payment

On this point Chubb notes that the initial policy term of the claimant's Echelon policy set a premium of $512.84. Shortly before the start of the policy on August 23, 2023 that amount was decreased to $436.86.

Echelon's own correspondence of July 25, 2023, wherein it provides the revised policy and premium with certain items removed from the coverage, notes that Echelon had received a payment of $512.84. However, Chubb submits that Echelon did not credit the claimant with that

payment and instead applied the payment over 12 months of the policy and advised the claimant he would now owe $436.86 for the first month of the policy.

In these circumstances Chubb submits that Echelon could not then deliver a cancellation notice purporting to cancel the policy for failure to pay $512.84 when in fact the premium was now $436.86. If the policy were to be cancelled then the letter would have to indicate that the amount of the premium was for the revised amount of the policy of 436.86.

Chubb submits that even if the claimant had not actually paid that amount and Echelon was not aware of it when they sent the cancellation letter that they still could not require the claimant to pay $512.84 as according to their own records on the revised policy premium the claimant had paid that amount prior to the commencement of the policy. Therefore, the amount demanded was in excess of the actual premium owing which would result in the cancellation being invalid.

Submissions of Echelon

Echelon's position is that it properly cancelled its policy in accordance with statutory condition 11 of the regulation and disputes that the four issues raised by Chubb would result in their policy remaining in full force and effect.

I will set out Echelon's submissions on each of the four issues raised by Chubb. In addition, Echelon raises further arguments and submits:

1. There was a mutual understanding of termination between Echelon and the claimant and accordingly, even if there had been any defects in the termination notice, an arbitrator can look to other circumstances to show that there was a mutual understanding that the policy was at an end; and

2. As the claimant had sold the vehicle for scrap either prior to the notice of cancellation or at the very least prior to the motor vehicle accident, there was no insurable interest and therefore the policy could not be deemed to be in place on the date of loss.

1. Failure of the registered letter to be delivered

Echelon does not dispute the fact that the evidence points to the registered letter never being delivered to the claimant. However, Echelon's position is that it is not fatal to an effective termination if the insurer is unable to prove that the letter was actually received by the insured. Echelon submits that as long as the termination notice sets out the insured's most recent post office address and is delivered to Canada Post to be sent out by registered mail, that that effects delivery. It is irrelevant whether or not the claimant actually received it. All that is required is depositing the registered letter at the appropriate post office. Echelon further submits that contrary to what is alleged by Chubb, that there is no duty on an insurer to follow up to see whether or not a letter has actually been delivered or to go looking for an insured to confirm that it has been delivered after it is complied with the registered mail provision.

Echelon makes reference to the following cases.

Clapp v. Travelers Indemnity Company 1931 CanLII 150 (Ontario Court of Appeal). In that case it was noted that when a registered letter is deposited with the post office, that is all that is required to establish delivery even if the letter never comes to the insured's attention. Once the insurer has satisfied the requirement that the registered termination letter with the proper post office has been deposited to the post office with the proper address to the insured, then the risk of whether the insured receives the letter lies entirely with the insured.

In *Allstate Insurance Company v. Ontario (Minister of Finance)* 2020 ONSC 830, Justice Davies noted that the insured's knowledge of the termination of its policy is not dispositive of whether or not the insurer has properly terminated the policy.

Similarly, in *RSA v. Echelon* (Arbitrator Scott Densem, March 27, 2025), the arbitrator doubted whether it was relevant to consider whether the cancellation letter had come to the attention of the insured before the accident took place. In those circumstances the termination letter had been sent out by registered mail and deposited with Canada Post but was returned by Canada Post marked as unclaimed.

Therefore, Echelon submits in this case that there is confirmation from Canada Post that the letter was received and was to be sent out by registered mail to the same mailing address that the claimant reported living at, both during his EUO and as indicated on his OCF-1. Accordingly, Echelon submits it has complied with the necessary requirements with respect to delivery.

2. Echelon's cancellation notice was mailed too late

Echelon does not argue that the timing of its delivery notice may be less than 30 days. It notes that under statutory condition 11(5) that the insurer is deemed to have given notice of termination to the insured the day after its registered termination letter was deposited with Canada Post. In this case, Canada Post supports that the termination letter was deposited at the latest on August 10, 2023 and Echelon would have been deemed to have given notice of termination the day after at the very latest.

While this does result in notice being provided less than the required 30 days, Echelon relies on the theory of "ripening". This principle was set out by the Court of Appeal in *Clapp v. Travelers* (*supra*).

In that case the court held that even where a termination letter provides a date for cancellation less than the statutory minimum notice period, that such a notice can become valid and can ripen and thus result in a termination of the policy if the statutory condition and minimum notice period expires before the loss occurs. As has been noted earlier the Court of Appeal in *Clapp* also held that ripening is not dependent on the insured having actual notice of the termination letter.

If one were to apply the *Clapp* ripening theory to this case, then assuming Echelon is deemed to have given the notice of termination on August 11, 2023 with the accident occurring on December 29, 2023, then the statutory minimum notice period passed well before the motor vehicle accident occurred and accordingly it had ripened into effect prior to the accident.

Echelon also relies on my decision in *Co-operators v. Aviva* (Arbitrator Samworth, December 14, 2021). In that case I found that the Co-operators termination notice was deficient as it had not provided the required 30-day notice. However, in that case I found that I was bound by the *Clapp* decision and concluded that the termination had ripened prior to the motor vehicle accident occurring and therefore the termination was effective. Aviva's argument in that case that the ripening principle should not apply because the claimant did not actually receive the termination notice was rejected.

Echelon also relies upon the decision of Arbitrator Scott Densem in *RSA v. Echelon* (March 27, 2025). In that case a letter was deposited with Canada Post on March 9, 2022 and the termination letter specified April 4, 2022 as the policy termination date. However, the accident occurred subsequent to the 30-day period. Arbitrator Densem held that despite the deficiency that the date for termination was given not less than 30 days after the date of notice, he agreed that the statutory minimum can "ripen into effectiveness" per the decision in *Clapp*.

Echelon also points to the fact that Arbitrator Densem's decision was made post *Merino v. ING Insurance Company of Canada*, 2019 CanLII 326 Ontario Court of Appeal. In that case the Court of Appeal held that where an insurer's cancellation notice did not indicate that the policy would terminate within 15 days after the date of notice and rather purported to terminate the policy immediately, that the termination letter was void. The Court of Appeal did not allow the termination of the policy to ripen 15 days after the notice of termination was delivered to the insured.

Arbitrator Densem considered the *Merino* decision and held that in his view *Clapp* was still good law on the issue of whether a termination notice that is defective on its face regarding the date of termination can ripen into a valid notice provided the required time period passes before the accident occurs. Echelon submits that Arbitrator Densem noted that the *Merino* case involved an effort by an insurer to terminate a policy "void ab initio" and therefore was distinguishable on its facts.

Therefore, Echelon submits as the motor vehicle accident occurred well after 30 days after August 10, 2023, its notice of termination had ripened and accordingly the policy was properly terminated.

3. The cancellation notice not separate the premium owing under the policy from the NSF fees and administrative fees

Echelon submits that the separation of these three different monetary items as suggested by

Chubb is simply not required by the statutory condition nor by any case law that has interpreted it.

The statutory condition requires that the amount of the administrative fee be identified and that it does not require that a completely separate amount be shown in terms of the premium.

Echelon references the seminal decision of Arbitrator Bialkowski in *Gore Mutual v. Lombard* (June 21, 2010) where the arbitrator set out what he believed to be the essential elements of the legislative requirements under statutory condition 11. One of them was "the amount due, together with any administrative fee being sought".

The case law establishes that when one lump sum amount is set out, which includes the premium and the administrative fee, that does not meet the requirements of the statutory condition. In the *Gore* case the notice of termination did not set out the administrative fee in the amount demanded but that was because no administrative fee was being sought over and above the amount of the premium.

In *The Co-operators Insurance Company v. Wawanesa Insurance Company* (Arbitrator Bialkowski, February 10, 2026) the termination notice specified that the amount due was $620.82 and that that amount included the outstanding premium and NSF fees of $25. Arbitrator Bialkowski concluded that an insured reviewing it would understand that there was an NSF fee of $25 being charged in addition to the premium arrears and this satisfied the requirements of Ontario Regulation 777/93.

Echelon points out that in this case That amount due was noted to be $562.84 which included an administrative fee of $50. If one simply deducted the $50 for the administrative fee, it clearly indicated the missed premium payment of $512.84. Therefore, Echelon submits it has complied with the essential elements relating to the amount due set out in statutory condition 11.

4. Echelon was not in a position to cancel the payment for non-premium.

Echelon submits that the factual circumstances of this case clearly establish that Echelon was legally in a position to terminate the policy in August of 2023 for non-payment of premium in the amount of $512.84.

Echelon acknowledges that the letter of July 25, 2023 suggests that the insured had paid $512.84 towards the revised policy premium. However, Echelon submits that it was clear that this letter was generated before it came to Echelon's attention that the scheduled withdrawal on July 23, 2023 had been NSF. Therefore, no funds were received by Echelon and no funds had to be refunded.

Echelon submits that as the first withdrawal in accordance with the contract was to be effected in July in the amount of $512.84 and that that amount was NSF, that that put Echelon in a position to send out their notice of termination letter relating to that policy and that non-payment. It is

irrelevant that a revised policy was sent out subsequently with a different payments schedule. The non-payment had already occurred and Echelon was in a position to terminate.

5. Mutual understanding of termination and lack of insurable interest

Echelon recognizes that case law establishes that strict compliance with statutory condition 11 of the regulation is required. However, Echelon also submits that recent jurisprudence has established that an arbitrator can also look at circumstances that would support a finding that irrespective of the strict compliance issue, that there was a mutual understanding between the insured and the insurer that the insurance contract would be at an end irrespective of an invalid cancellation.

Echelon relies on the decision of the Court of Appeal in *Ontario (Finance) v. AXA/Elite Insurance Company* 2018 ONCA 809.

In that case the termination letter was found to be invalid. However, subsequent to the invalid termination the claimant had gone on to obtain insurance for the vehicle with another insurance company. That new policy had also been cancelled.

The Applicant, the Fund, argued that the Initial cancellation had been invalid and therefore the policy remained in full force and effect irrespective of the fact that the claimant had gone and sought new insurance on the same vehicle. The court held that there was a mutual understanding between the parties that the policy was at an end irrespective of the invalid notice. The court stated:

> "This conclusion is consistent with the modern approach to statutory interpretation including the presumption against absurd results. A literal interpretation of section 236(5) applying it to all cases where 236(1), (2) or (3) are not complied with without consideration of the factual context would lead to absurd results. It would keep a policy alive indefinitely even where an insured subsequently receives a valid notice of cancellation ... or the insured has chosen to terminate and replace the policy."

The court therefore concluded that the parties can bring a policy to an end by their conduct even in circumstances where strict compliance with the statutory condition has not been shown.

This decision has been followed by a number of arbitrators including Arbitrator Novick (*Pafco v. Gore Mutual, Intact and Jevco*, July 12, 2023 and in *Gore Mutual Insurance Company and Dominion of Canada General Insurance Company* January 31, 2025). In the latter case Arbitrator Novick commented:

> "In my view, the Court of Appeal ruling in *Elite v. AXA* is broad enough to apply in circumstances where the insured does not retain a replacement policy but takes some other step that clearly signals that she or he is aware that the policy is no

longer in effect."

In terms of this case Echelon submits that the claimant was clearly aware that his policy had been cancelled as indicated in his communications with his broker. He made no efforts to reinstate the policy. In fact, in his EUO evidence he said he did not have a need to renew the policy as the subject vehicle had been sold earlier. His evidence was that he was now relying on his brother to rent cars for him and indeed on the date of loss he was in a rented vehicle that had been rented through his brother.

This was not a situation where the claimant was new to potential policy cancellation due to NSF payments. He had run into these situations previously and had been provided with termination notice in the past where he had chosen to make the payments and have his policy reinstated.

Echelon submits that the claimant's behaviour was different following the second termination notice despite having spoken to his broker about what was needed in order to pay up and maintain coverage. Despite this, no steps were taken and Echelon argues that is because his vehicle had been broken into, stripped of parts and he had sold it and no longer owned the vehicle.

Therefore, contributing to the concept of mutual understanding was the fact that the claimant recognized he did not have an insurable interest and he had no need for any insurance as of the date of loss.

Echelon notes the decision of Arbitrator Bialkowski in the case of *HMK v. Travelers* (June 21, 2025) where he held that irrespective of whether the cancellation letter was appropriate, that because the following facts spoke to a mutual understanding that the policy had been cancelled:

1. The insured knew his policy was cancelled because he told the insurer he had sold his car and he did not need the policy;

2. At no point did he challenge or dispute the termination;

3. There had been at least two previous cancellation notices and in those cases the insured had brought his account into good standing demonstrating his understanding of the process.

It is to be noted in that case that Arbitrator Bialkowski was satisfied on the evidence that the vehicle had been sold and when the vehicle had been sold in relation to the motor vehicle accident.

Echelon therefore submits that on all points raised by Chubb that there is no merit, the policy was properly terminated and Chubb is the priority insurer.

Reply Submissions of Chubb

With respect to the argument concerning insurable interest/mutual intention to cancel, Chubb submits that there are contradictions between the claimant's examination under oath and other contemporaneous evidence.

Chubb points to the claimant's communication to his broker on October 3, 2023 where he states "never wanted to cancel". Chubb submits that this is a clear indication on October 3 that the claimant did not want to cancel his insurance policy.

Therefore, Chubb argues that that is not consistent with his evidence under oath that his car had been broken into in the summer of 2023 and that he had sold the vehicle and no longer owned it as of the date of loss. If that had been the case, then he would not have said on October 3, 2023 that he never wanted to cancel his auto insurance.

Chubb urges me to accept that the claimant continued to own the Dodge Charger, at least as of October 3, 2023, and that contrary to there being a mutual intention to cancel that in fact the claimant clearly indicated that he "never wanted to cancel".

With respect to the "ripening issue", Chubb submits that the decision of the Court of Appeal in *Clapp v. Travelers* is no longer good law or its continued correctness is highly questionable considering the decision of the Court of Appeal in 2019 in *Merino v. ING* (*supra*).

In *Merino* the Court of Appeal considered statutory condition 11 in the context of a termination for material misrepresentation. In such a case, statutory condition 11(1.1)(a) requires a termination letter to indicate the policy will terminate 15 days after the insurer gets notice. In the case before the Court of Appeal the letter did not allow 15 days but in fact purported to terminate the policy immediately.

The Court of Appeal found the termination letter void and concluded the policy continued in full force and effect. Chubb argues that this means the Court of Appeal did not allow the policy to ripen 15 days after the notice of termination was delivered.

The facts of the *Merino* case were that if the Court of Appeal had allowed the termination to ripen then the termination would have become effective prior to the motor vehicle accident (notice delivered July 2, 2002 and accident September 12, 2002). Therefore, Chubb submits that any cases dealt with by various courts or arbitrators prior to *Merino* considering *Clapp* must be re-looked at in light of the *Merino* decision.

Chubb submits that there is no right to ripen in this case and relies on *Merino* with respect to that.

Chubb also made some submissions orally with respect to the wrong amount of premium being noted in the cancellation letter.

The first policy that is set out in the renewal letter of July 2023 sets out a premium of $6,075 with monthly amounts of $512.04.

The revised premium amount, once some of the coverage is removed, reduces the premium and in the insurer's calculations it assumes that a payment has been made of $512.84 which then reduces the premium over the next 11 months to $463.33.

The cancellation letter refers to the amount of $512.84. However, Chubb submits that the correct amount should have in fact been $443.19. The amount of $512.84 had not in fact been paid. Therefore, the premium should have been $5,318.25 (not reduced for the payment of $512.80) and then 12 months worth of premiums would be $443.19.

Therefore, a letter sent suggesting the outstanding amount that is NSF of $512.04 is contrary to the requirement under statutory condition 11(1.4) that the amount sought "shall not exceed the amount of the installment".

Chubb submits that as the first policy with the higher premium had been replaced by a second policy with coverage removed, that that second policy had replaced the initial one and therefore it was only the second policy that the insurer could cancel. Therefore its letter demanding a premium of $512.04 is clearly in violation of the requirements of the statutory condition.

DECISION AND ANALYSIS

I will review each of the four points raised by the Respondent, Chubb, set out my analysis and my decision with respect to each point. However, before doing that, I set out some general principles that I rely upon in reaching my conclusion.

The scheme of the *Insurance Act* and its regulations carefully sets out in specific terms the rights and obligations of the insured and the insurer with respect to how a policy can be terminated.

If a notice of termination does not comply with s. 11 the statutory condition, then the insurance contract remains in force (see *Ontario (Finance) v. Traders General Insurance (Aviva Travelers)*, 2018 ONCA 565).

Section 11 of the statutory condition sets out the obligations of the insurer and what the termination notice must contain.

Cases have held that this is consumer protection legislation and must be interpreted with the goal of protecting the public and policyholders. Therefore, a rigorous standard must be imposed on an insurer to ensure that statutory condition 11 has been complied with before they can cancel their insurance policy for the non-payment of premiums (see *Echelon General Insurance Company v. Her Majesty the Queen*, 2016 ONSC 5019; *The Commonwell Mutual Insurance Group v. Certas Direct Insurance* (Arbitrator Samworth, December 12, 2023); and *Definity v. Allstate* (Justice Chalmers, *supra*)).

While strict compliance is necessary, a standard of perfection is not required (*Allstate v. Her Majesty the Queen*, Justice Davies: *supra*). Therefore, if there are minor typographical errors but the essential elements as set out in statutory condition 11 have been included, then the notice of termination may stand. While each case is to be decided on its own facts, ultimately an arbitrator must have recourse to the wording of the regulation to determine whether the essential elements have been included in the notice of cancellation.

Failure to deliver by registered mail

On this issue I agree with Echelon that statutory condition 11 and relevant case law do not set out a requirement that there must be evidence that the registered letter was delivered to the claimant.

Both parties in this case agree that the registered letter was not delivered to the claimant. However, the evidence is clear that the letter was delivered to Canada Post, received and registered by Canada Post for delivery, but then was missorted.

A careful review of the case law, in my view, clearly indicates that an insurer has complied with statutory condition 11(1)(a) in terms of delivering the notice of termination to the insured if it delivers the letter to Canada Post for registration at the last known address of the insured.

This was established in the decision of the Court of Appeal in *Clapp v. Travelers Indemnity* (*supra*). In that case, the court held that once the registered letter was sent to the relevant post office with the insured's last known address, the insurer had completed its responsibility in terms of delivery. The court stated:

> "This provides that notice can be given, not by the actual receipt by the insured of the letter, nor by the receipt of the post office of the insured ... These would necessitate the insurer taking the risk of the mail. The provision is that the notice is to be 'by registered letter addressed to him at his last post office address, notified to the insurer' indicating clearly that the risk of the mail is to be on the insured, who has in effect told the insurer to mail the letter to him. In my view, the notice is complete though the insured never receives it, never has a chance to receive it, has never heard of it, once the registered letter so addressed is placed in the post office."

While the *Clapp* decision is from 1931, nothing has changed in terms of the wording under the *Insurance Act* or subsequent case law to change the court's finding that once the letter is sent out by registered mail, the risk transfers to the insured and is not with the insurer.

Chubb argues that the risk shifts to the insurer if there is evidence that the notice was not delivered. I do not agree with Chubb and find that the case law does not support that.

In addition to *Clapp* (*supra*), we have the decision of District Judge King in *Michalis v. Kingsway General Insurance Company*, 2003 CarswellOnt 6430. The issue in that case was whether the auto policy had been cancelled effectively. The court stated:

> "In his evidence the plaintiff stated his reluctance to accept a registered mail as it usually meant bad news. That approach you take at your own peril. And that is why the legislature has worded section (5) as it did. I find no duty on the insurer to go looking for the plaintiff after it has complied with the statute ... I also find no duty on Atto to chase after its clients who receive a notice of cancellation for non-payment. It may be good business practice, it may be good customer relations, but I do not find a duty."

A similar conclusion was reached in *Singh v. Sangha, Aviva and Traders*, 2014 ONSC 5147. In that case a registered notice was sent to the plaintiff by Aviva by registered mail at his last known address. The letter was not actually delivered but rather a registered notice was delivered to the address and left there. Canada Post held the registered notice for pickup for some time and then declared it unclaimed and returned the letter to Aviva. Justice Chiappetta held that there was an effective delivery. She noted:

> "There is no duty on an insurer to follow up on returned mail or to go looking for an insured after it has complied."

The court found that Aviva had complied with the statutory requirement for delivering the registered notice and therefore concluded it had been effectively delivered and the termination was valid.

Lastly, I note the decision of Justice Brown in *Her Majesty the Queen in the Right of Ontario v. Progressive Casualty Insurance Company of Canada*, Court File 02-CV-234033CM2. This case dealt with the question of whether or not automobile insurance had been validly terminated as required under statutory condition 11(1) and (3). Justice Brown stated:

> "Under these statutory conditions actual receipt of a notice of termination was not required to effect valid service. The statutory conditions place the risk of actual delivery on the insured; the insurer need only demonstrate that the registered letter reached the post office to which it was addressed."

In this case, the facts are clear. The registered letter that was sent to the insured's last known address was received by Canada Post on August 10 and manually sorted on August 11 and later sent out for delivery. The fact that it was not delivered as it was missorted is irrelevant. I also find there is no duty on Echelon to have followed up to see if the registered letter was delivered or if its insured had notice.

Therefore, on this point I find that Echelon complied with its requirements with respect to delivery of the termination letter by registered mail.

The cancellation notice did not indicate the premium owing

On this point I also agree with the submissions of Echelon. I find that the cancellation notice, which identified an administrative fee of $50 and a total payment requirement of $562.84, to be compliant with statutory condition 11.

In the decision of Arbitrator Bialkowski, *Definity and Gore* (*supra*), which was upheld on appeal by Justice Chalmers (Court File No. CV-22-00690425-0000), it was confirmed that the requirement under statutory condition 11(2) which requires the insurer to set out the premium due and any additional charges separately is an essential element of the notice of termination and must be strictly complied with.

I have carefully reviewed all of the cases that were submitted by both Chubb and Echelon. Each of them had slightly different facts than the case before me. In *Definity and Allstate*, Arbitrator Bialkowski held that the administrative fee needed to be separately identified and that this was the essential element. I agree with Arbitrator Bialkowski. In this case, the administrative fee was separately identified as being $50. Chubb argues that the premium should have been separately set out at $512.84 and not combined with the administrative fee, even though the administrative fee is separately identified. I do not agree with Chubb and find that the notice of termination as set out in Echelon's letter of August 4, 2023 is compliant with statutory condition 11.

This is consistent with the decision of Arbitrator Bialkowski in *The Co-operators v. Wawanesa* (February 10, 2026, Arbitrator Bialkowski). In that case, The Co-operators sent out a termination letter in which they set out an NSF fee of $25 and then that the total amount outstanding was $322.88. This letter included the cancellation fee of $25 and did not separately set out the actual amount of the premium owing. Arbitrator Bialkowski held that the notice of termination complied with the statutory condition, noting that he accepted that an insured reviewing the wording would conclude that the administrative fee of $25 was being charged in addition to the premium arrears. I find the same is true in this case and that the insured would have been aware that the amount owing was an administrative fee of $50 and a premium of $512.84. The letter clearly indicates, "Please pay $562.84 which includes an administrative fee of $50."

Therefore, on this point I conclude that the notice of termination is effective.

Echelon was not in a position to cancel the policy for non-premium

On this issue I also find in favour of Echelon. A careful review of the chronology with respect to the premium renewal, NSF notice and cancellation policy confirms in my view that Echelon was legally in a position to terminate the policy in August of 2023 for the non-payment of the premium in the amount of $512.84.

This is a factually-driven issue and does not reflect on any specific requirement under statutory condition 11 other than the recognition that this is consumer legislation and I must be satisfied

that the manner in which the notice of termination was effected was consistent with that.

The important facts are set out below. The policy that Echelon was seeking to cancel covered a time period of August 23, 2022 to August 23, 2023. It was Echelon's practice to send out a notice of renewal in advance and Echelon did that by letter dated July 9, 2023.

It was also Echelon's practice to set out a 12-month premium schedule with the first payment due pre-dating the policy inception date. This is a contractual arrangement between the insured and insurer and I find nothing in the *Insurance Act* or its regulations that would suggest that this was improper.

The total premium for the policy renewal sent to the claimant on July 9, 2023 was $6750. The 12-month premium was $512.84 and the first payment was due July 23, 2023.

There is no dispute that when Echelon attempted to withdraw the premium on July 23, 2023 that there were insufficient funds.

A letter dated July 27, 2023 was sent by Echelon to the broker advising that the withdrawal had been unsuccessful and a second one would be attempted in three to five days. The evidence is that that withdrawal was unsuccessful.

A termination notice was then sent by letter dated August 4, 2023, to the correct address of the claimant noting the appropriate policy and noting that the $512.84 had not been withdrawn. Between July 23, 2023 and the termination notice of August 4, 2023 Echelon and the claimant agreed to a different premium with certain coverages being removed from his policy. The fact that the letter noting the revised premium assumes $512.84 had been paid is irrelevant in my view. This was relating to a new policy albeit for the same date but for different terms. At the time of the August 4, 2023 letter, the first premium payment of $512.84 had not been made. The new payment schedule for the revised policy started August 23, 2023 with the reduced premium of $836.86 and that first payment had not yet become due when the August 4, 2023 letter was sent out.

I agree with Echelon's submissions that Echelon was in a position to send out their notice of termination relating to the policy terms and conditions in effect in July of 2023 and that therefore the notice of termination cannot be found to be defective or "illegal" on those grounds.

The cancellation notice was sent too late

With respect to this issue, I will set out my analysis and decision not only with respect to the argument as to whether the cancellation notice was too late under statutory condition 11(1.2), but will also address the submissions of Echelon with respect to whether the policy can ripen per the decision of the Court of Appeal in *Clapp* (*supra*).

On this issue I agree with Echelon that while the cancellation notice was sent late and not in

accordance with statutory condition 11(1.2), that *Clapp v. Travelers* is still good law and I find that the Echelon policy ripened prior to the date of loss and therefore was effectively terminated by the time of the accident of December 29, 2023.

I agree with Chubb's submissions that the Canada Post records indicate the cancellation letter was processed on August 10, 2023. The cancellation notice indicated the policy would terminate on September 11, 2023 and this is therefore non-compliant with the statutory condition as it is a 28-day period and not a 30-day period. Section 11.1(a) clearly requires that the notice of termination shall "specify a day for the termination of the contract that is no earlier than the 30th day after the insurer gives the notice, if the insurer gives the notice by registered mail."

Echelon does not make any rigorous argument to suggest that their notice was timely under the statutory condition but rather relies on the "ripening" approach.

As argued by Echelon, if one applies the theory of ripening then as long as the 30-day period set out in the statutory condition had come and gone by the time of the relevant event (motor vehicle accident), then the termination is still valid and the policy is effectively cancelled prior to the date of loss.

In this particular case, if notice was given on August 10, 2023 and the motor vehicle accident occurred on December 29, 2023, then that is clearly 30 days after August 10, 2023 and accordingly the notice of termination had ripened and the policy was properly cancelled. As noted, I agree with Echelon on this point.

I find, as did Arbitrator Densem in *RSA v. Echelon* (*supra*), that *Clapp v. Travelers* is still good law and is distinguishable from the Court of Appeal's decision in *Merino v. ING*. The facts in *Clapp* are important to review. This was a claim by Mr. Clapp against his insurer to recover monies from his insurer with respect to a judgment against him for a motor vehicle accident. The plaintiffs had sued Mr. Clapp, received judgment, and the monies were unpaid because the insurer took the position that the policy was cancelled before the motor vehicle accident.

The policy had been cancelled for non-payment. The provisions at that time required 15 days' notice from the letter to the effective date of termination. In that particular case, the date of the notice and the effective date were not 15 days as required. However, the court held that as the accident was August 28, that that was more than 15 days after the effective notice of cancellation date and therefore the termination had ripened prior to the date of loss and therefore the policy was effectively cancelled even though technically the notice and termination date only allowed 13 days.

I looked at this issue in my decision *Co-operators General Insurance Company and Aviva Insurance Company of Canada* (Arbitrator Samworth, December 14, 2021). I reviewed a number of decisions that had followed *Clapp* and concluded I was bound by the Court of Appeal's decision in *Clapp*, and in that case the Co-operators policy had ripened into effective notice of cancellation on the expiry of the 30-day period prior to the motor vehicle accident.

Chubb argues that since my decision the Court of Appeal has released its decision in *Merino v. ING* and that that effectively overruled the *Clapp* decision.

I agree with Arbitrator Densem in his *RSA v. Echelon* decision that *Merino v. ING* does not change the law in *Clapp* as the facts are distinguishable. In his learned decision, Arbitrator Densem reviewed a number of cases, including *Merino*, and concluded that there was no legitimate basis upon which *Clapp* could be distinguished from the case before him. He felt that as *Clapp* was a decision of the Court of Appeal, he was bound to follow it and apply it in his case.

On the facts before Arbitrator Densem, the termination letter had been deposited with Canada Post on March 9, 2022 and the effective date was April 4, 2022 (less than 30 days). However, the accident was in September of 2022. Therefore, Arbitrator Densem allowed the ripening. With respect to *Merino*, Arbitrator Densem first of all noted that the court in *Merino* did not address *Clapp v. Travelers*. He noted that that issue was not before the court for consideration. Therefore, he felt that *Merino* did not derogate from the "ripening" principle set out back in 1931. Arbitrator Densem also noted that he agreed with my analysis of the effect of *Clapp v. Travelers* in my *Co-operators and Aviva* decision.

I agree with Arbitrator Densem and find that *Merino* is distinguishable. *Merino* involved a case where the insurer attempted to void the insured's policy *ab initio* for misrepresentations that the insured had made on the application for insurance. An injured plaintiff commenced a claim against ING for payment of insurance money under its policy to the insureds who were the driver and owners of the car that injured the plaintiff. The question in *Merino* was whether the policy had been properly cancelled, and if not whether the policy still remained in full force and effect despite the passage of time.

Before the court was the question of whether or not voiding policies *ab initio* was still permitted. The court held that s. 258 of the *Insurance Act* had essentially eliminated a *void ab initio* defense even in cases of misrepresentation. Therefore, the termination letter sent to the insured was not a proper termination letter. It did not provide the 15 days' notice that was required. The court noted there is no common law right to rescind and void a policy *ab initio* and therefore in accordance with s. 235 of the *Insurance Act* the policy remained in full force and effect.

Arbitrator Densem noted, and I agree that it was relevant that statutory condition 11 was not before the Court of Appeal but rather s. 258 of the *Insurance Act*. I agree with Arbitrator Densem that *Clapp* is still good law on the issue of whether a termination notice that is defective on its face with respect to the date of termination can ripen into a valid notice as long as the relevant notice period passes before the accident occurs.

Therefore, while Echelon's notice of termination did not comply with the 30-day requirement, I conclude that the termination notice had ripened prior to the accident in December of 2023. Accordingly, the notice of termination was effective and the policy was cancelled when the date of loss occurred.

Mutual understanding of termination and lack of insurable interest

As I have found, based on the four issues raised by Chubb, that the Echelon policy was properly terminated, this issue raised by Echelon is really moot. However, for the sake of completeness I do not find in favour of Echelon on this point. I find there was simply not enough credible evidence for me to reach a conclusion as to whether there was a mutual understanding of termination and whether there was a lack of insurable interest.

With respect to the mutual understanding, there is no clear indication in my view that the claimant mutually agreed to have his contract terminated. While there is some suggestion of that in his evidence in the EUO, I agree with Chubb that the e-mail of the claimant to his broker on October 3, 2023 muddies the waters to the point that I cannot conclude that as of the date of the accident there was a mutual agreement for this policy to be cancelled.

The claimant's evidence in his EUO also does not clarify the mutual interest argument and certainly there is no credible evidence that I can rely on from the EUO to support that the claimant had sold his vehicle for scrap prior to December 29, 2023. The claimant appeared to be completely confused with respect to that timing and gave inconsistent evidence. He could not remember who his insurer was. He could not remember at one point who actually terminated the policy. It would seem to make little sense that the claimant would be renegotiating the premium on his policy in August of 2023 if the vehicle had been broken into and he had sold it in the summer of 2023 as he suggests. The same is true with respect to the e-mail of October 3, 2023. Why would he say he never wanted to cancel his auto insurance if by that point in time his car had been broken into and it had been sold?

There was no evidence before me of any searches that had been done to determine when the vehicle had been sold. There was no evidence as to who purchased it. Therefore, it is my view that I cannot, on the evidence available, conclude that there was no insurable interest in the Dodge Charger on December 29, 2023. While I agree with Echelon that the case law has established that an arbitrator can look at circumstances that would support a termination based on a mutual understanding between insured and insurer despite a non-compliance with statutory condition 11 in the notice of termination, there is insufficient evidence of that before me.

AWARD

I have found that Echelon's notice of termination of August 4, 2023 is compliant with statutory regulation 11 of Ontario Regulation 777/93. Therefore, the Echelon policy was no longer in full force and effect at the time of the accident of December 29, 2023.

Therefore, Chubb Insurance Company is the priority insurer under s. 268 of the *Insurance Act* with respect to the payment of statutory accident benefits to the claimant arising out of the accident of December 29, 2023.

COSTS

As Echelon has been entirely successful in this arbitration, I find that Chubb is responsible for paying the arbitrator's fee and any related disbursements as well as the legal fees of Echelon and any related disbursements on a partial indemnity scale. If the parties cannot agree on the amount of costs, a further pre-hearing can be scheduled to deal with that issue.

DATED THIS 8th day of June, 2026 at Toronto.

Arbitrator Philippa G. Samworth
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