IN THE MATTER OF THE INSURANCE ACT, R.S.O. 1990, C.I.8, AS AMENDED,
AND IN THE MATTER OF ONTARIO REGULATION 283/95, AS AMENDED
AND IN THE MATTER OF THE *ARBITRATION ACT*, 1991, S.O. 1991, C.17, AS AMENDED
AND IN THE MATTER OF AN ARBITRATION
B E T W E E N:

ECHELON INSURANCE

Applicant

- and –

ECONOMICAL INSURANCE COMPANY, COMMONWELL MUTUAL INSURANCE GROUP, ELITE INSURANCE and DESJARDINS INSURANCE COMPANY

Respondents

DECISION

COUNSEL APPEARING

M. Jennifer Cosentino, counsel for the Applicant, Echelon Insurance (hereinafter called "Echelon").

Rachelle Villaneuva, counsel for the Respondent, Elite Insurance Company (hereinafter called "Elite").

Lora Castellucci, counsel for the Respondent, Economical Insurance Company (hereinafter called "Economical").

Colin MacDonald, counsel for the Respondent, Commonwell Mutual Insurance Group (hereinafter called "Commonwell").

Nathan Fabiano, counsel for the Respondent, Desjardins Insurance Company/The Personal (hereinafter called "The Personal").

INTRODUCTION

This matter comes before me as a private arbitrator pursuant to the *Arbitration Act 1991*, *s.* 268 of the *Insurance Act* and Regulation 283/95, as amended to arbitrate a dispute as to which of a variety of insurers is obligated to pay statutory accident benefits to the claimant as a result of an accident that occurred on June 1, 2025.

The parties selected me as their arbitrator on consent. An Arbitration Agreement was filed dated

July of 2026.

By way of background, on June 1, 2025 the claimant was operating a motorcycle when he was involved in an accident. The motorcycle was ostensibly insured by Echelon under policy X400084834. However, it was later determined that the pink slip was in fact fraudulent.

Elite insures the claimant's 1962 Mercury pickup truck.

Commonwell issued a policy to both the claimant and a numbered company under which he operates through the course of his self-employment. The Commonwell policy covered a number of vehicles.

The claimant was also a named insured under the Economical policy which insured two Ski-Doos and a snowmobile.

The claimant and his wife were named insureds under a policy with The Personal which insured the claimant's wife's vehicle.

There is no dispute that the policies of the Respondents were in full force and effect. However, they take the position that Echelon has no right to proceed with this priority dispute as it has not made any payments to the claimant for statutory accident benefits.

In addition, while the four Respondents agree that their policies all rank equally under s. 268 of the *Insurance Act*, the Respondents and Applicant (other than Economical) take the position that the claimant elected, in accordance with s. 268 of the *Insurance Act* to pursue a claim for statutory accident benefits against Economical and therefore if this arbitration is permitted to proceed, that Economical would be the priority insurer as a result of the claimant's election.

THE PROCEEDINGS

All of the parties had an opportunity to submit various documents, written submissions and authorities upon which they relied. In addition, the parties were given an opportunity to make oral submissions. There was no oral evidence called, however a transcript of the EUO of the claimant that took place on December 18, 2025 was put into evidence.

In addition, the following were submitted for my consideration:

1. OCF-1 dated June 18, 2025 submitted to Echelon;
2. Various letters from Echelon to the claimant;
3. OCF-1 dated July 18, 2025 submitted to Economical;
4. Letter dated July 29, 2025 from counsel for the claimant to Echelon;
5. Affidavit of Roxanne Leon, Senior Technical Specialist at Echelon sworn July 7, 2026.

Lastly, copies of the various policies and related certificates for all the parties were filed into

evidence as was a copy of the fraudulent pink slip with respect to Echelon.

FACTS

The claimant was involved in a motor vehicle accident on June 1, 2025. On that day, he was operating a motorcycle he had purchased some four weeks previously through a private sale. Another car came out of a driveway resulting in a collision. The claimant sustained some significant injuries.

At the time of the accident, the claimant was insured under a number of policies:

1. He was the named insured under a policy with Elite Insurance Company bearing policy no. A39839967-02. This policy insured a 1962 Mercury M100 pickup described as a classic car.

2. The claimant had a number of vehicles insured through Commonwell Mutual Insurance. The named insureds under these policies are the claimant and 2861188 Ontario Inc. which is the name under which the claimant operates his self-employment. These policies covered:

   (a) A 2017 Stealth TET 6X12 trailer;
   (b) A 2024 Chevrolet Silverado pickup truck used for work;
   (c) A 2007 Ski-Doo MXZ Adrenaline 500 snowmobile; and,
   (d) A 2024 Can-Am Outlander 850 four-wheeler ATV.

3. He was the named insured under an Economical policy which insured two ski-doos and a snowmobile.

4. The claimant and his wife were named insureds under a policy with The Personal which insured the claimant's wife's 2023 GMC Acadia. The claimant was a secondary driver under that policy.

It is undisputed that the motorcycle was not insured on the date of loss.

After the claimant purchased the motorcycle he contacted his broker to arrange for insurance on the vehicle. However, he did not have an M2 licence and therefore the quotes were very high and the claimant's evidence at his EUO was that he could not afford them.

However, he came across an Instagram page with a site called Safety Cartel. For $300 this social media site offered a pink slip which would look like an insurance pink slip so that the claimant would have "proof of insurance".

According to the claimant's EUO, when he sent in the $300 to secure the pink slip, he was aware

that this was fraudulent. He was aware that there was no coverage. He knew that buying insurance through Instagram was not the proper way to do it. He knew the pink slip was fraudulent and not legitimate. When the claimant received the pink slip, it identified Echelon as providing insurance coverage on the motorcycle. The claimant believes the pink slip would likely have been with his motorcycle when the accident occurred.

The claimant retained McLeish Orlando to handle his injury claims and specifically his accident benefit claim.

By letter dated June 18, 2025, McLeish Orlando sent an OCF-1 to Echelon. The OCF-1 was dated June 18, 2025 and was signed by the claimant's wife. The claimant was hospitalized for some three months post-accident and therefore his wife completed these documents on his behalf.

The OCF-1 confirmed that the claimant was seeking coverage under the Echelon policy on the grounds that it covered his motorcycle: a Yamaha VSTR Tourer 1300 2007. It identified the policy number as X400083834. This was the information on the fraudulent pink slip. The OCF-1 did not indicate any other policies that he might be covered on, including his spouse's policy.

Echelon responded to the OCF-1 by letter dated June 30, 2025 advising that his claim was going to be handled on a without prejudice basis while they completed further investigation. They also requested an EUO and in a subsequent letter dated July 16, 2025 they requested relevant information to support that there was an Echelon policy in place that would cover the vehicle.

Again, there is no dispute that there was no policy with Echelon. They did not provide coverage to the motorcycle on the date of loss and the only connection of the claimant to Echelon was via the fraudulent pink slip.

By letter dated July 18, 2025 McLeish Orlando wrote to Economical and submitted an OCF-1 dated July 18, 2025 also signed by the claimant's wife. This document is identical to the previous OCF-1 submitted to Echelon other than it now identifies that the claimant is choosing to claim under his own policy with Economical bearing policy no. 502397303. Again, there is no identification of potential coverage under a spouse's policy or a company car.

The evidence is that Economical declined to accept the OCF-1 on the basis that Echelon had already received the first OCF-1.

By letter dated July 29, 2025 the claimant's counsel wrote to Echelon advising as follows:

> "Further to our investigation, we have determined our accident benefit application should have been submitted to Economical Insurance and as such we have submitted same to this insurer.
>
> Please accept this as confirmation that we are discontinuing the accident benefits claim through Echelon Insurance effective immediately."

In the meantime, Echelon had served a Notice of Dispute to Insurers dated June 30, 2025. This was prior to the claimant's letter to Economical submitting the OCF-1 and prior to the claimant's counsel's letter to Echelon of July 29, 2025. This notice was sent to the insured, Elite, Commonwell and Economical. At the time Echelon issued the Notice of Dispute, the evidence indicates it was not aware of the existence of the Personal/Desjardins policy.

On September 8, 2025 Echelon issued a Notice to Submit to Arbitration, thus commencing the arbitration process. At the time the Notice of Arbitration was issued, Echelon had still made no payments to the claimant based on their without prejudice letter from June of 2025.

An EUO was conducted of the claimant on December 18, 2025. Counsel who attended that EUO included counsel for Economical, Echelon, Commonwell Elite and a paralegal from McLeish Orlando. At this point in time, The Personal/Desjardins was not involved in the arbitration.

The following is a summary of the relevant evidence from the claimant's EUO.

He confirmed that his wife owned a vehicle on the date of loss and that he was aware it was insured through The Personal. It was his understanding he was not listed as a policyholder on the policy but that he was a second driver. That vehicle had been purchased in December of 2023.

He also gave comprehensive evidence with respect to the policies of Elite, Commonwell and Economical and what vehicles they covered.

With respect to the motorcycle, he advised that he had purchased it privately about four months before the accident and that the quotes he had received through his regular insurance channels (an insurance broker) were too high and he could not afford them.

He admitted going to Instagram and purchasing what he acknowledged was a fraudulent pink slip. He also admitted he was riding the motorcycle on the date of loss with only an M1 class licence and that he was operating it without insurance.

With respect to the vehicles insured by Commonwell where both the claimant and his business are shown as named insureds, the claimant provided detailed evidence with respect to the use of those vehicles through work, where the vehicles were usually kept and confirmed that the address shown on the Commonwell policy was the bricks and mortar address of his business.

Lastly is the following exchange between counsel for Commonwell and the claimant's legal representative in the presence of the claimant.

> "As the legal representative for Mr. Claimant, can you confirm for us that this letter is confirming Mr. Claimant's election to claim accident benefits from Economical Insurance subject to section 268 of the *Insurance Act*?"

Answer: "That seems to be correct, yes."

On January 16, 2026 Echelon sent a letter to the claimant confirming that they will not be providing any coverage with respect to his claim flowing from the accident of June 1, 2025 and they are denying entitlement on the grounds that the claimant was not an insured under any policy of insurance with Echelon and they did not insure the motorcycle on the date of loss. In addition, Echelon in the letter took the position that irrespective of the coverage issue, they relied on the exclusions under s. 31(1) of the Statutory Accident Benefits Schedule denying specified benefits to an individual who knew or ought to have known they were operating a motor vehicle without insurance.

On April 14, 2026 Economical issued a Notice of Dispute. This document described it as an "update" and noted that Echelon had issued the first Notice of Dispute between insurers in June 2025 and that subsequently, based on investigation, it had been determined that the claimant had an active policy with The Personal and thus a second updated Notice to Applicant of Dispute Between Insurers was required. While this document described Echelon as being the insurer under part 1, the document was actually initiated by Economical.

The parties agree that at the time of their submissions neither Economical nor Echelon have made any payments to the claimant for statutory accident benefits. Echelon has not made any payments on the basis that it was a fraudulent pink slip and there was no coverage and Economical has declined to make payments on the basis that Echelon received the first OCF-1. According to the affidavit of Roxanne Leon, at the time of swearing her affidavit on July 7, 2026 Echelon had not received an OCF-21 from the claimant.

POSITIONS OF THE PARTIES

I will deal with the submissions of the various parties on an issue-by-issue basis.

Issue 1: Does Echelon have standing to proceed with this priority arbitration, having paid no statutory accident benefits to date to the claimant?

Submissions of the Applicant, Echelon

Echelon's position is that it has the right to pursue this arbitration despite not having paid accident benefits to the claimant. Their position is primarily based on the fact that the only connection of the Echelon policy to the claimant was a fraudulent pink slip and that is a feature that distinguishes this case from the line of cases relied upon by the Respondents.

Echelon points to the fact that in this case the claimant admitted that he committed a fraud albeit that that admission was not made until his EUO took place on December 18, 2025.

Echelon points to s. 268 of the *Insurance Act* which requires as a precondition to the payment of statutory accident benefits that there be a "contract evidenced by a motor vehicle liability policy".

Echelon submits that at no time did it have a contract evidenced by a motor vehicle liability policy. There was no contract whatsoever, only a fraudulent pink slip.

Echelon submits that in these circumstances there is therefore no nexus or connection between Echelon and the claimant which would trigger Echelon's obligation to pay statutory accident benefits. Echelon points to the decision of *Kingsway General Insurance Company v. Ontario (Minister of Finance)* (2007 ONCA 62) where the Court of Appeal stated that while insurers cannot avoid their obligation to pay statutory accident benefits if they feel another insurer is higher in priority as long as there is some nexus. The court went on to say that only in an extreme case where "the connection with the insurer is totally arbitrary" should the insurer refuse to pay.

Echelon acknowledges that in the decision of Justice Chalmers in *Economical v. Intact* (2021 ONSC 3249), that Justice Chalmers held that an insurer cannot proceed to an arbitration hearing to dispute priority unless it first makes an accident benefit payment to the claimant. However, Echelon submits that in that case there was a nexus between the claimant and the insurers. In cases that have considered Justice Chalmers's decision such as *Gore (Anderson) v. Allstate* (decision of Arbitrator Bialkowski, January 5, 2022), there was a nexus between the insured and the insurer.

Echelon submits that in this case, where all the parties agree that the claimant committed a fraud and therefore there was no contract evidenced by a motor vehicle liability policy, that I should find that there is therefore no nexus between Echelon and the claimant. Therefore, there is no issue with respect to consumer protection. In any event, even if consumer protection were to be considered, Echelon submits that it was never the intent of the legislation to protect consumers like the claimant who committed a blatant fraud.

Echelon submits that in cases such as this involving blatant fraud, the legislation cannot be interpreted as requiring Echelon to make payments to a claimant in the face of fraud simply in order to pursue a claim for a priority dispute.

Echelon also submits that it has never received a request for payment of benefits. It points to the affidavit of the Echelon adjuster who notes that Echelon has never received an OCF-21 from the claimant. Echelon therefore submits that how can it make payments to a claimant if no payments have been requested? Again, these types of circumstances should distinguish this case from the decision of Justice Chalmers and those that have followed it.

Echelon placed heavy reliance upon the decision of Arbitrator Bialkowski in *Gore v. Allstate* (*supra*). While Arbitrator Bialkowski in that case felt that he was bound by the decision of Justice Chalmers in *Economical v. Intact* (*supra*), he outlined a number of reasons why he felt that Justice Chalmers's decision was wrong. Arbitrator Bialkowski felt that reading Ontario Regulation 283/95 as a whole, that it clearly contemplated circumstances where an insurer who was not paying benefits for a variety of valid reasons would need to initiate a priority dispute in order to comply with the time limits under Regulation 283/95. Arbitrator Bialkowski noted it would be unfair for an insurer to have such an arbitration dismissed on the grounds that no benefits had been paid

when it is clearly not the priority insurer and then to be faced with the possibility that sometime after the two-year limitation period has passed that the insured may be found to be entitled to benefits or began submitting expenses.

Echelon submits that it cannot pay benefits it has not been asked to pay and that it cannot compel a claimant to submit a request for payment of benefits. In circumstances where the claimant's connection to Echelon is entirely based on fraud, Echelon submits it should not be precluded from putting another insurer on notice within the 90 days, to initiate arbitration within the one year, or complete the arbitration within two years, even if it has not made a benefit payment.

Echelon submits in the circumstances of this case where it is clearly not the priority insurer that the need to make a payment of benefits to a fraudulent claimant should not be a precursor to having the matter resolved under ss. 7 and 8 of Ontario Regulation 283/95.

Submissions of Economical

Economical's position is that in accordance with Justice Chalmers's decision in *Economical v. Intact* (*supra*), that it is a precondition to an insurer's right to commence or maintain a priority dispute that some payments have been made for statutory accident benefits. Economical suggests that Echelon has not complied with its obligations under Regulation 283/95 on the basis it has refused to pay benefits. Economical points to s. 2.1(6) of Regulation 283/95 which states:

> "The first insurer that receives a completed application for benefits from the applicants shall commence paying the benefits in accordance with the provisions of the Schedule pending the resolution of any dispute as to which insurer is required to pay the benefits."

Economical points to Echelon's letter to the claimant of June 30, 2025 where it advises the claimant that his accident benefit file will be handled on a "without prejudice basis". While Echelon pursued s. 33 information requests in order to get more information with respect to the policy, Economical submits that its initial letter essentially took a no-payment position which was inconsistent with its obligations under Regulation 283/95.

Economical submits that Echelon was obliged to pay statutory accident benefits relying on any appropriate exclusions and it failed to do so.

Economical submits that the result of the failure to pay benefits, irrespective of whether any payments were requested or not, is that Echelon does not have the right to proceed with this arbitration.

Economical references Justice Chalmers's decision in *Economical v. Intact*, where he states:

> "It is my view that the insurer cannot proceed to an arbitration hearing to dispute priority unless it first makes a payment to the claimant.

> Here Ms. Belhumeur applied to Economical for accident benefits. Economical took the position there was no coverage and did not pay benefits. It is my view that Economical cannot bring a priority dispute against Intact when it did not first pay benefits to Ms. Belhumeur. The rationale behind the 'pay first and dispute later' policy is to promote the timely delivery of accident benefits: see Chubb, at para 40. To permit Economical to pursue a priority dispute without making any payment is inconsistent with this policy. Also, if no payment is made by Economical, there is nothing for Intact to reimburse on a priority dispute."

Economical submits that the facts of this case fall squarely within the reasoning of *Economical v. Intact*.

Economical submits that I am bound by the decision of Justice Chalmers just as Arbitrator Bialkowski (in Gore v. Allstate *supra*) found he was bound by Justice Chalmers and dismissed the arbitration in circumstances where no benefits had been paid by the applicant insurer.

With respect to Echelon's argument justifying its non-payment that it was not an "insurer" as it did not have a motor vehicle liability policy, Economical submits that if Echelon was not an insurer against whom an individual could claim benefits under s. 268(2) of the *Insurance Act*, then it would follow that Echelon therefore has no standing to invoke the priority dispute regime at all.

Economical's position is that this arbitration should be dismissed based on Justice Chalmers's decision.

Position of The Personal / Desjardins

The Respondent Desjardins takes no position on the issue of whether there is a right to proceed with an arbitration given the lack of payment of accident benefits by any insurer to date.

Submissions of Elite

Elite's submissions with respect to this issue align with Economical. However, Elite also addresses the question of whether there was a nexus between Echelon and the claimant sufficient to require them to respond to pay benefits despite the fact that there was a fraudulent pink slip.

Elite references the decision of the Court of Appeal in *Zurich Insurance Company. v. Chubb Insurance Company of Canada* (2014 ONCA 400). In that case, the claimant had rented a vehicle that was insured by Zurich. However, the claimant sought accident benefits from Chubb based on an information booklet that had been received. However, it turned out that the Chubb policy was not a motor vehicle liability policy but was one for optional death and dismemberment.

The arbitrator at first instance concluded Chubb was not an insurer and therefore there was no nexus between Chubb and the claiman. Zurich appealed. On appeal, the Superior Court disagreed

and held there was a sufficient nexus between the claimant and Chubb. Chubb appealed and the majority of the Court of Appeal upheld the arbitrator's conclusions and found no nexus.

However, Justice Juriansz in dissent noted that while the connection between the claimant and Chubb may have been remote, it was not an arbitrary one. He held that the claimant's mistaken inference that Chubb insured the vehicle should not be considered an arbitrary choice. As Chubb regularly wrote motor vehicle liability policies in Ontario, there was therefore sufficient nexus to require Chubb to respond to the receipt of the OCF-1.

On appeal to the Supreme Court of Canada the Court adopted the dissenting reasons of Justice Juriansz in their entirety. Elite submits that therefore the Supreme Court of Canada has unequivocally confirmed that the threshold for establishing a nexus test is a low one.

Elite notes that on the facts of this case it was the claimant's wife who signed and submitted the OCF-1 naming Echelon as the insurer of the motorcycle. Elite submits that the claimant's wife was not a party to his fraudulent purchase of the pink slip and therefore she mistakenly believed that her husband had coverage with Echelon. This therefore establishes a remote but not arbitrary choice. As in the Chubb case, Echelon is also a motor vehicle liability insurer.

Therefore, Elite argues Echelon should have accepted the OCF-1 and not treated the claim on a "without prejudice basis" and have commenced adjusting the file. Elite submits that while it may seem absurd and unfair to require the insurer that receives the first OCF-1 to commence adjusting and paying benefits in the face of a blatant fraud, that that is a necessary consequence of the statutory "pay first, arbitrate later" scheme that is designed to protect insureds.

Elite also relies on my decision in *Co-operators v. Economical* (September 9, 2022, Arbitrator Samworth). In that case, Economical received an OCF-1. Economical could not find any policy that they carried that matched up to the pink slip and declined to accept the OCF-1. The pink slip was later determined to be fraudulent. On the issue of whether or not Economical had deflected the claim and who received the first OCF-1, I held that the claimant's decision to apply to Economical was not a random choice and that the nexus test was satisfied.

Elite submits that if I allow this arbitration to proceed, it would create a troubling precedent. It would allow insurers to commence an arbitration without first paying benefits and rely on suspicions of fraud to deny OCF-1s. Elite submits that such an outcome would be fundamentally inconsistent with the procedure of the pay first, arbitrate later framework set out under Regulation 283/95.

Lastly, Elite relies on the claimant's letter to Echelon of July 29, 2025 wherein he advised Echelon that he would be discontinuing his accident benefit claim through Echelon. Elite submits that that effectively removes Echelon's standing to commence this arbitration in any event.

Elite's position is, for all the reasons outlined above, and including the binding decision of Justice Chalmers in *Economical v. Intact*, that this arbitration should be dismissed.

Submissions of Commonwell

Commonwell essentially adopts Economical's submission on this issue. Commonwell's position is that the appellate decision in *Intact v. Economical* is binding on the parties in this case and that the law is clear that without payment of accident benefits Echelon cannot proceed and the arbitration should be dismissed.

Economical's Reply

As Economical initiated this preliminary issue dispute, it took the position of Applicant and made its submissions first and therefore had the right of reply to Echelon's submissions.

With respect to Echelon's position that it did not make any payments as it did not receive a request for any payments, Economical submits that the receipt of an OCF-1: Application for Accident Benefits is in itself a request for the payment of benefits. Economical submits that the receipt of this document obliges the insurer to now validly consider and accept or reject benefits that may be payable.

With respect to Echelon's position that while consumer protection is relevant, the fact that this case involved a blatant fraud should be taken into consideration. Economical submits that Echelon could have relied on s. 31 of the Statutory Accident Benefits Schedule which provides that certain benefits are not payable when an individual engages in fraudulent activity or operates a vehicle without insurance.

Decision on Issue 1

While I respectfully disagree with the conclusions reached by Justice Chalmers in *Economical v. Intact*, like Arbitrator Bialkowski I find I am bound by that decision and accordingly have no choice other than to find that Echelon has no right to proceed with this arbitration in light of the fact that no accident benefits have been paid to the claimant.

I start my analysis with considering the relevant portions of Ontario Regulation 283/95.

Section 1 is set out below:

> "1. All disputes as to which insurer is required to pay benefits under s. 268 of the Act shall be settled in accordance with this Regulation."

I agree with Arbitrator Bialkowski that s. 1 clearly contemplates a priority dispute to determine which insurer is responsible for paying accident benefits under s. 268 of the *Insurance Act* irrespective of whether any payments have been made to the claimant or not.

The section does not state anywhere that an insurer is required to have paid benefits before being entitled to access Regulation 283/95. To find otherwise could result in an insurer losing its right

to dispute priority altogether in circumstances where, for good and valid reasons, no payments have been made to the claimant within the required period to commence and complete an arbitration under Regulation 283/95.

For example, if an insurer takes the position that the incident is not an accident as defined under the Statutory Accident Benefits Schedule, it can, while accepting the OCF-1, take a position that no benefits are payable until determination of that threshold requirement for entitlement is met. This requires an application at the Licence Appeal Tribunal and a determination as to whether or not the definition of accident is met. It is not hard to envision circumstances where an insurer has served a Notice of Dispute and a Notice to Commence Arbitration within the requisite time and not yet had a determination from the Licence Appeal Tribunal on the question of accident as the two-years approaches. Surely it was not the intention of the legislature to deprive that insurer of moving forward with its priority dispute in order to protect its priority claim in the event the incident was found to be an accident and benefits would then have to be paid.

Arbitrator Bialkowski gave other examples of cases where a claim had been presented but no payment had been made pending a LAT hearing on determination of issues such as catastrophic impairment or whether somebody falls inside or outside the Minor Injury. I agree with Arbitrator Bialkowski where he says it would be unfair for an insurer to be responsible for significant benefits when it is not the priority insurer because it was unable to dispute priority within the two years as payments had not been made for valid reasons.

Sections 7 and 8 of the Regulation are also relevant and I set those out below:

> "7(1) If the insurers cannot agree as to who is required to pay benefits, the dispute shall be resolved through an arbitration under the Arbitration Act 1991 initiated by the insurer paying benefits under section 2 or 2.1 or any other insurer against whom the obligation to pay benefits is claimed.
>
> (3) The arbitration may be initiated by an insurer or by the insured person no later than one year after the day the insurer paying benefits first gives notice under section 3.
>
> 8(1) Except as provided in this regulation, the Arbitration Act 1991 applies to an arbitration under this regulation.
>
> (2) The following rules apply with respect to an arbitration of a dispute relating to an accident that occurs on or after September 1, 2010.
>
> (5) Unless consented to by all parties, the hearing of the arbitration must be completed within two years after the commencement of the arbitration."

While ss. 7 and 8 do reference the "insurer who was required to pay benefits," it does not say that that insurer must have paid benefits. The insurer who is required to pay benefits is the one

that received the first OCF-1 and is obliged to pay benefits in accordance with s. 2.1 of the Regulation. If that insurer has not paid benefits for a variety of reasons, I do not see ss. 7 and 8 as being interpreted to oust that insurer from the regulatory process to bring a claim against another insurer who may stand in priority under s. 268.

With the greatest of respect, I disagree with Justice Chalmers that when looking at the Regulation as a whole that there is a requirement as a precondition to bringing an arbitration that the insurer must have actually paid a benefit as opposed to being the insurer who is "required to pay benefits."

Section 1 requires the insurer who receives the first application to commence paying the benefits in accordance with the provisions of the Schedule. This in my view does not mean benefits should be paid that are not in accordance with the provisions of the Schedule.

At paragraph 40 of his decision, Justice Chalmers does note that there may be circumstances in which a notice is to be provided before the first insurer makes a payment. This is a reference to the Notice of Dispute Between Insurers and the requirement that it be served within 90 days of the receipt of the OCF-1. Clearly, Justice Chalmers recognized that there would be circumstances when an insurer may not have made any payment for accident benefits within the first 90 days and yet be obliged to provide its notice under s. 2.1(6) of the Regulation.

Justice Chalmers went on to find that while a payment may not be a prerequisite to providing notice, it was his view that the insurer could not proceed to an arbitration hearing unless it makes a payment to the claimant. Respectfully, I do not interpret Regulation 283/95 as distinguishing between having to make a payment prior to issuing notice and having to make a payment prior to proceeding to an arbitration hearing. My interpretation of the regulation is that the sections, when read together as a whole, do not make any threshold requirement that a payment be made prior to either serving the notice of dispute, serving the notice of arbitration, or proceeding to the arbitration hearing.

Despite able arguments on the part of Echelon, I am unable to distinguish this case from the matter before Justice Chalmers. If I am unable to distinguish the facts of this case, then I find I am bound to follow Justice Chalmers' decision and conclude that as Echelon did not make any payments for statutory accident benefits, that it cannot proceed with this arbitration hearing and the hearing must be dismissed.

While I appreciate that in the decision before Justice Chalmers there were two "insurers" and no evidence of a fraudulent pink slip, I find, as I did in my decision in Co-operators v. Economical (*supra*) that the pink slip and the circumstances of the submission of the OCF-1 to Echelon were sufficient to establish a nexus. I also am bound, in my view, by the decision of the Supreme Court in *Zurich v. Chubb* where it was held that even where Chubb did not have a motor vehicle liability policy, that there was a sufficient nexus to require Chubb to respond to the submission of the OCF-1. Therefore, while I accept that Echelon has an argument that it did not insure the claimant and it did not insure the claimant's motorcycle, the choice by the claimant's wife to submit an

OCF-1 to Echelon first was not an arbitrary one albeit it was a remote one. There is sufficient nexus to require Echelon to respond to the OCF-1. In my view, Echelon should have accepted the application, adjusted the file and proceeded with its investigations. There is insufficient evidence before me to determine whether Echelon's letter of June 30, 2025 to the claimant advising his claim will be handled on a "without prejudice basis" stopped the claimant from making submissions to Echelon for benefits. The evidence is clear that at some point the claimant chose not to pursue a claim against Echelon and submitted his OCF-1 instead to Economical. While that might be a reason for Echelon having not made any payments to the claimant, I am still left with Justice Chalmers's decision that no payments having been made, the arbitration must be dismissed.

Accordingly, on this issue I find that Echelon does not have the right to proceed to this arbitration and the arbitration must be dismissed. I am hopeful that a higher court will look at this issue and consider my analysis and Arbitrator Bialkowski's analysis in the near future.

Issue 2: Did the claimant elect to receive accident benefits from Economical?

On this issue, despite my finding that the arbitration is to be dismissed, the parties have asked that I also address the election issue. I will now summarize their submissions and my decision on that point.

Submissions of Echelon, Commonwell, Elite and The Personal

As all the above insurers' submissions on the issue of the election are similar, I will deal with them together.

These parties' position is that the letter sent by the claimant's counsel on July 18, 2025 to Economical submitting an OCF-1 dated July 18, 2025 constituted an election or re-election by the claimant to claim statutory accident benefits from Economical.

It is submitted that the second OCF-1 submitted to Economical was executed by the claimant's wife who, it is submitted, would have full knowledge of the fact that her vehicle was insured by The Personal.

In addition, the parties rely to a significant extent on the evidence of the claimant's EUO with respect to the coverage available under the Economical, Commonwell and Elite policies. They point out that the claimant provided clear and concise information about the other policies known to him including the policy under which he and his wife were named insureds with The Personal insuring his wife's vehicle.

He provided detailed information with respect to the four vehicles insured through Commonwell and which of these vehicles were used for work.

Similarly, they point out that he was fully aware of his policy with Elite covering his classic car, the

1962 Mercury. He was also fully aware that he was a named insured under the Economical policy that insured the Ski-Doos and the snowmobile.

These parties submit that the letter from the claimant's counsel to Economical was clear and unambiguous that they were choosing to elect benefits from Economical noting in the letter that their previous application to Echelon "should have been" submitted to Economical. This, it is submitted, implies discretion and an informed choice on the part of the claimant to elect benefits from Economical.

These parties also rely upon the statement made by the claimant's legal representative (a paralegal) during the course of the EUO where, when asked if the letter sent to Economical confirmed an election under s. 268 of the *Insurance Act*, the response was, "That seems to be correct, yes." The claimant was present during that communication and made no comment or disagreement with the statement by the paralegal.

These parties submit that it is irrelevant that The Personal had not yet been identified in the context of the priority dispute as that only occurred during the EUO when there was disclosure of the coverage of the claimant through The Personal policy. These parties submit that it is not relevant whether The Personal was or was not a party to this hearing or was or was not under notice at the time the election was made as long as there is evidence that the claimant had full information available to him to make an informed election. The parties asked me to conclude, based on the evidence above, that the claimant would have been aware of the evidence of The Personal policy as he and his wife were both named insureds under that policy and he was aware of it at the time of the EUO and therefore would have been aware of it when the choice was made to send the second OCF-1 to Economical.

With respect to the relevant statutory provisions, these parties rely on the fact that under s. 268 of the *Insurance Act*, when looking at the hierarchy of insurers to elect benefits from, that these four insurers: Economical, Commonwell, Elite and The Personal, would all rank equally. Therefore, that would activate s. 268(4) of the *Insurance Act*, which is set out below:

> "**Choice of Insurer**
>
> (4) If, under paragraph ii or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection (2) a person has recourse against more than one insurer for the payment of statutory accident benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim benefits.

These parties submit that as all four insurers ranked equally under s. 268, that there was therefore "more than one insurer against which a person may make a claim for benefits" and accordingly the claimant would have absolute discretion to decide which insurer he would claim benefits from.

These parties submit that the claimant had adequate information in order to make an informed

choice and a reasonable opportunity to make that choice.

The parties point to the decisive language of the letter of July 29, 2025 which states "we have decided" that the OCF-1 should have been submitted to Economical. The parties submit that this strongly suggests that the claimant made his election in consultation with counsel and therefore had the benefit of legal advice and would have been aware of the insurers available to him along with the implications of this decision.

Lastly, the parties submit that there are no preconditions that are required before a claimant can make an election under s. 268 of the *Insurance Act*. The only precondition is whether there are insurers who are equal in priority. Otherwise, there is nothing in the Act or the Regulation that establishes a specific process to be used in order to make that election. While commonly in these disputes where it is agreed that an election is to be made, the parties will get together and draft a joint letter, that process is not a precondition to an election. There is no requirement that the insurers who are equal in status get together to make an agreement that there is a right to an election. These parties submit that s. 268 provides the right for the claimant to make the election in his absolute discretion with no preconditions as to when or how that election is to be made.

Economical's Submissions

The essence of Economical's position is that the claimant did not make an informed election when his OCF-1 and accompanying letter was submitted to Economical on July 18, 2025. Economical submits that there is no evidence that the claimant was advised that he had the right to elect between various insurers in accordance with s. 268(4) of the *Insurance Act*. Economical submits that there is no evidence that at the time that letter was sent that the claimant was aware that he could claim accident benefits from Commonwell or Elite. Economical submits that there is no evidence that the claimant was aware of his right to claim benefits from The Personal and in fact The Personal had not even been identified in the Notice of Dispute Between Insurers that had been sent to the claimant by Echelon on June 30, 2025. The notice was limited to Elite, Commonwell and Economical. Therefore, Economical submits there is insufficient evidence for me to make a finding that the claimant was fully aware of the four insurers that he could make a claim for statutory accident benefits from and therefore no evidence that he made an informed and conscious choice.

With respect to the EUO evidence, Economical submits that the claimant was not asked whether he was aware that he could make a claim for accident benefits from these various insurers or whether he was covered under their policies. He was simply asked about what vehicles were in the house and where they were insured. While he was certainly aware that his wife's vehicle was insured under The Personal, Economical submits he was not asked if he believed he could make a claim under The Personal's policy.

Economical also submits that at the time of the letter sent in July of 2025 that there is no evidence that all the responding insurers had agreed that they matched in priority and therefore there was a right to re-elect. Further, Economical submits there was no agreement made as to what wording

should be put to the claimant in order for him to make an informed election.

Economical also points to the two OCF-1s that were submitted by the claimant's spouse. Neither of these OCF-1s make reference to any other automobile insurance policies. For example, neither OCF-1 made reference to the spouse's policy with The Personal despite the fact that the spouse signed the OCF-1. This suggests that the claimant may not have been aware that he could claim statutory accident benefits from any of these other insurers.

Economical refers to the decision of Justice Corthorn in *Primmum Insurance Company v. L'Unique Assurances Générales Inc.* (2017 ONSC 5235). In that case, Justice Corthorn was asked to review a decision of an arbitrator with respect to whether or not the insured had exercised his discretion when choosing which policy he would claim his statutory accident benefits under.

In her decision, Justice Corthorn noted that where there are two insurers of equal rank between whom an insured can make a choice with respect to claiming statutory accident benefits, it is important that the insured person make an informed choice. The insured, before exercising their discretion, should have full information in hand and the decision should be a conscious one. Economical submits that in this case there is no evidence that the claimant had full information available, and that he made an informed choice based on a conscious decision. Economical therefore submits that I should conclude that the claimant did not make an informed election under s. 268 of the *Insurance Act*. Economical was therefore not obliged to accept the OCF-1 submitted to it in July of 2025 based on an election.

DECISION

On this issue, I agree with Commonwell, Elite, The Personal and Echelon that the claimant clearly re-elected or elected to receive statutory accident benefits from Economical. In the event that I had found that Echelon had the right to proceed with this arbitration, irrespective of the fact that it had not made any payments for benefits, I would have concluded that the claimant had elected Economical and that it was the priority insurer with respect to the payment of statutory accident benefits to the claimant arising out of the accident of June 1, 2025.

I have carefully reviewed the OCF-1s that were submitted, the letter of July 18, 2025 to Economical, the letter to Echelon in July of 2025, and the claimant's evidence at the EUO. I found the evidence from the EUO to be particularly compelling. Without any hesitation, the claimant was clearly able to identify the multiple policies and vehicles that he had insured through these various insurers. While he was not asked whether he was aware he could claim statutory accident benefits from these policies, there is little doubt in my mind that he was aware that they were automobile policies that provided coverage to himself and his spouse and therefore could access available benefits. I also find it compelling that this gentleman was aware that Echelon was a fraudulent policy from whom he could not claim benefits, thus justifying the rationale for a new OCF-1 to be sent to Economical.

At his EUO, he clearly understood that the pink slip with Echelon was not the proper way to insure

a motorcycle and not a policy upon which he could make a claim. I infer from this that he was equally aware that the proper policies for which he had made payments for Ski-Doos, four-wheelers, trailers, pickup trucks and classic cars were policies under which such claims could be advanced, as they had been properly paid and properly issued.

I agree with the four insurers that the two letters sent by McLeish Orlando to Economical and Echelon on behalf of their client seem to be definitive in terms of the claimant making a choice to not pursue a claim from Echelon and to pursue a claim with Economical. I find that the failure to identify any of the other insurers on the OCF-1 carries little weight. I do not see the OCF-1 as being the key or prime evidence to determine whether somebody has made an informed election. Simply because they do not list other policies in the OCF-1 does not mean that they are not aware of the availability of those policies. There is more than sufficient evidence before me that the claimant was aware that there was more than one insurer providing coverage to various vehicles in his household for which he would be entitled to make a claim for benefits. The very fact that the claimant chose to withdraw his application from Echelon and refile it with Economical suggests he was aware that there was a choice to be made.

In my decision *Wawanesa Mutual Insurance Company v. Northbridge Commercial Insurance Company and Allstate Insurance Company of Canada* (Arbitrator Samworth, May 4, 2018), I was asked to comment on a claimant's right to make an election and whether or not an informed election had been made.

In that case, I referenced the decision of Arbitrator Lee Samis in *Security National Insurance Company v. Markel Insurance Company* (November 20, 2009), where he dealt with a similar issue. Arbitrator Samis concluded in that case that it is not necessary for a person to have details and particulars of every possible insurer before making their election decision. As long as the insured person has a general understanding that there is more than one insurer that might be called on to respond, then that is sufficient. Arbitrator Samis pointed out that he did not believe that the mere filing of the OCF-1 with the sole known insurer would constitute a decision in circumstances where the claimant was not aware that there may be other insurers against whom it could claim benefits.

In this case, I find that the claimant had a general understanding that there was more than one insurer that he could call upon to make a claim for benefits. I agree with Justice Corthorn that it is important that an insured person make an informed choice and to properly exercise his discretion based on a conscious decision. I conclude the evidence in that case supports that. Therefore, I find that the claimant has made a proper election to claim benefits from Economical on July 18, 2025.

Some of the parties made submissions with respect to whether or not the circumstances of this case constituted a "re-election" as opposed to an election under s. 268 of the *Insurance Act*. This flows from the decision of the Divisional Court in *Botbyl v. Heartland Farm Mutual Inc.* (2025 ONSC 3349). That case involved one insurer that had optional benefits and another that did not. Both insured the claimant. The claimant sent his OCF-1 to the non-optional insurer. It accepted

the OCF-1 and started to adjust the file. When the insured realized that there had been an error, he then sent a second OCF-1 to Heartland which carried the optional benefits and Heartland, relying on the procedure under Regulation 283/95, declined to accept the OCF-1, noting that the first OCF-1 had already been sent to Economical and therefore the matter should now be resolved through a priority dispute while Economical made its payments.

Justice Bale in his decision concluded that the claimant had the right to withdraw its application to Economical and refile or re-elect a claim for benefits with Heartland. Justice Bale held that the claimant in that case had simply sent their application to the wrong insurer. They made a mistake and in order to fix the mistake all they needed to do was to withdraw the application and to reapply to Heartland. Justice Bale's decision suggests that an insured can therefore file or refile more than one OCF-1 despite the provisions of Regulation 283/95. A claimant is not precluded from re-electing if they have determined they filed the form with the wrong insurer.

As I am bound by the decision of Justice Bale, I conclude in this case that the claimant filed his initial OCF-1 with the wrong insurer, the insurer which had no connection other than through a fraudulent pink slip. On finding out this error, that OCF-1 was withdrawn and a new OCF-1 submitted to Economical. If one relies on Justice Bale's decision, this does not initiate an election under s. 268 of the *Insurance Act*, but rather a simple choice to withdraw from one insurer and refile with another. On this basis, I also conclude that the second OCF-1 was properly sent to Economical, and again if this arbitration were not dismissed, Economical would be found to be the priority insurer on that basis.

COSTS

There has been mixed success in this matter.

The Arbitration Agreement does not specifically deal with the issue of legal costs. I am not going to make a decision as to who should be paying costs in this matter or the quantum of those costs. If the parties cannot agree on this matter within the next 90 days, then we will schedule a pre-hearing to discuss costs and set down an opportunity for the parties to provide written submissions. With respect to the arbitration costs, I find that Echelon and Economical should split those costs on a 50/50 basis. Echelon was unsuccessful with respect to the preliminary issue relating to it, and Economical was unsuccessful on the election issue.

DATED THIS 9h day of November, 2026 at Toronto.

Philippa G Samworth

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Arbitrator Philippa G. Samworth
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