IN THE MATTER OF SECTION 268(2) OF THE *INSURANCE ACT*, R.S.O. 1990, c. I. 8, and *ONTARIO REGULATION 283/95* THERETO;

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

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

ECHELON GENERAL INSURANCE COMPANY

Applicant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

(THE MOTOR VEHICLE ACCIDENT CLAIMS FUND)

Respondent

DECISION ON A PRELIMINARY ISSUE

COUNSEL:

Jason Goodman and Jamie Pollack for the Applicant

John Friendly for the Respondent

ISSUE:

1. Did the policy issued by Echelon to Abdikaram Omer, lapse or expire prior to the date of the accident in which the Claimant was injured?

RESULT:

2. Yes, the Echelon policy expired prior to the date of the accident. The Fund is accordingly obliged to reimburse Echelon for benefits paid to Mr. Farah, subject to any arguments relating to the reasonableness of payments made, and to take over adjusting the claim.

BACKGROUND:

3. The parties are involved in a priority dispute regarding whether Echelon or the Fund is in higher priority under section 268(2)2 of the *Insurance Act* to pay accident benefits to Abdiraham Farah, as a result of injuries suffered in an incident on May 15, 2010. Mr. Farah alleges that he was struck as a pedestrian by a vehicle insured by Echelon, and owned by Abdikaram Omer. He submitted an application for accident benefits to Echelon, and they have paid benefits to him and on his behalf. He has been determined to have suffered a catastrophic impairment under the *Schedule.*

4. Echelon acknowledges that it insured Abdikarim Omer at one point, but takes the position that it did not insure the vehicle in question at the relevant time. It contends that it is therefore not in priority to pay Mr. Farah's claim, and has provided timely notice to the Motor Vehicle Accident Claims Fund ("the Fund"), under section 3 of *Regulation 283/95*. I was subsequently appointed to arbitrate the matter.

5. Counsel have identified a few preliminary issues to be addressed. They have agreed that I should first determine the question of whether the policy issued by Echelon to Mr. Omer expired or lapsed prior to the date of the accident. This issue was argued on the basis of an Agreed Statement of Facts filed, with one document appended to that. Counsel each filed written submissions on the issue, accompanied by Briefs of Authorities containing various cases to which they referred.

6. Counsel agreed that if I determine that the Echelon policy had lapsed or expired prior to the accident, the Fund will accept priority for Mr. Farah's claim, subject to potential arguments regarding the quantum of benefits, and adjusting and legal fees to be repaid to Echelon. If not, the question of whether the Echelon policy was validly cancelled prior to the date of loss would be the subject of further submissions.

AGREED FACTS:

7. Abdiraham Farah alleges that he was struck as a pedestrian by a vehicle owned by Abdikarim Omer on May 15, 2010. The parties are prepared to assume for the purpose of this preliminary hearing that Mr. Farah was not covered by any other automobile policy at that time. He submitted an Application for payment of accident benefits under the *Schedule* to Echelon, and they have paid benefits to him, as required by section 2 of *Regulation 283/95.*

8. Echelon had provided coverage to Mr. Omer for the vehicle that struck the Claimant. The policy issued had a six-month term, commencing on November 29, 2008 and expiring on May 29, 2009.

9. Echelon sent a letter addressed to Mr. Omer by registered mail dated December 9, 2008 entitled "Notice of Cancellation – Automobile". It indicates a "cancellation date" of December 28, 2008 and advises that "it has become necessary to discontinue the insurance provided by this policy. Coverage will remain in full effect until December 28, 2008 12:01 a.m." The letter further provides that the reason for discontinuing coverage is the non-payment of the premium owed, and requests payment of the amount $481.11 representing the "earned premium which has not been paid".

10. The parties stipulated in the Agreed Statement of Facts that no response was received to this letter, and that there was no further communication between

Echelon and Mr. Omer. Counsel agreed that for the purpose of this preliminary hearing, it would be assumed that Echelon's attempt at cancelling the policy was invalid.

RELEVANT PROVISIONS:

The following sections of the *Insurance Act* inform my analysis of this issue:

Insurance Act -

268(2) *The following rules apply for determining who is liable to pay statutory accident benefits:*

> *2. In respect of non-occupants,*
>
> *i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,*
>
> *ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,*
>
> *iii. if recovery is unavailable under subparagraph i or ii, the non-occupant has recourse against the insurer of any automobile involved in the incident from which the entitlement to statutory accident benefits arose,*
>
> *iv. if recovery is unavailable under subparagraph i, ii or iii, the non-occupant has recourse against the Motor Vehicle Accident Claims Fund*

236(1) *If an insurer does not intend to renew a contract or if an insurer proposes to renew a contract on varied terms, the insurer shall,*

> *(a) give the named insured not less than thirty days notice in writing of the insurer's intention or proposal; or*
>
> *(b) give the broker, if any, through whom the contract was placed forty-five days notice in writing of the insurer's intention or proposal.*

(3) *Notices given under subsections (1) and (2) shall set out the reasons for the insurer's intention or proposal.*

(5) A contract of insurance is in force until there is compliance with subsections (1), (2) and (3).

PARTIES' ARGUMENTS:

The parties exchanged written submissions and referred to arbitration awards and several court decisions on this issue.

Echelon's submissions

11. Echelon's initial factum was quite brief. Counsel essentially contended that as the policy issued to Mr. Omer had expired well before the date of the accident, the fact that Echelon may not have complied with the termination or cancellation requirements in the *Act* was of no consequence.

12. Counsel relied on Arbitrator Bialkowski's decision in *Certas Direct Insurance v. Security National Insurance* (February 2, 2012) in support of its contention. In that case, the Arbitrator first considered whether Security National had properly terminated its policy, and determined that the letter of cancellation sent to the insured did not meet the legislative requirements. He then found, however, that the policy in question was not in effect on the date of loss, as the last day of its intended term was prior to the date of loss. He concluded that the policy had therefore expired prior to the date of the accident.

13. Arbitrator Bialkowski referred to the Supreme Court of Canada's decision in *Patterson v. Gallant* (1994) 3 S.C.R. 1080, in which the court stated that "when the policy simply expires because of non-payment of the renewal premium, no formal termination procedure needs be followed". He referred as well to Justice Baltman's decision in *Pomarico v. Petrovic* (2006) O.J. No. 1153. She also cited the Supreme Court's comments above in finding that "it is not necessary for an insurer to terminate or cancel the alleged insurance in accordance with the *Insurance Act* where the policy expires because of the non-payment of the renewal premium".

Justice Baltman stated that "a lapsed policy does not need to be formally terminated".

14. Counsel for Echelon also cited Arbitrator Samis' decision in *Economical v. Wawanesa* (May 7, 2014). The insured in that case was involved in an accident on August 12, 2009. He had previously contracted with Economical for a series of six month policies, the last of which began on August 3, 2008 and was to end on February 3, 2009. Economical purportedly cancelled the policy due to non-payment of the premium on January 22, 2009, a couple of weeks prior to the end of the policy term. The question posed was whether the policy had been validly cancelled, and if not, whether coverage under the policy extended past its expiry date to August 12, 2009, the date of loss.

15. Arbitrator Samis stated that in order for him to determine that the Economical policy was in force in August 2009, he would have to conclude that Economical's attempt to terminate the policy was ineffective, and that the policy continued in force for two subsequent renewals, by authorisation of law. He cited the Supreme Court's comments in *Patterson v. Gallant, supra*, that "each renewal represents a new contract with its own offer and acceptance", and reasoned that the only way the policy could have remained in force at the time of the accident would be for him to find that there had been two further cycles of offer and acceptance, which the evidence did not support.

The Fund's submissions

16. The Fund asserts that the Echelon policy remained in effect on the date of loss for two reasons. Firstly, counsel submits that as the policy was not cancelled in accordance with the statutory conditions in the Act – as the parties have stipulated for the purpose of this preliminary issue - it continued by operation of law. Alternatively, counsel contends that Echelon did not comply with section 236 of the *Act* governing renewals or variations of policies, the effect of which is that coverage under the policy continued and was in force on the date of loss.

17. Counsel acknowledged the Supreme Court of Canada's decision in *Patterson v. Gallant, supra,* but emphasized that the court was not addressing the question posed before me. Rather, the question before the court was whether a renewal offer or "pink slip" forwarded by the insurer had the effect of continuing coverage under the policy in the absence of acceptance, in the form of payment of premiums owing. Counsel submitted that the *Patterson* decision does not address the consequences that flow from an insurer's improper attempt to terminate a policy pre-emptively, as was the case here.

18. Mr. Friendly argued that an improperly cancelled policy remains in force until proper notice is given, and that it does not lapse at expiry. He relied on the case of *Jackson v. Dennis* (1998) Ont. Gen. Div. O.J. No. 288, upheld by the Court of Appeal at (1999) O.J. No. 3468, as support for this proposition. He noted that Justice Lax determined that the policy in question in that case would remain in force until proper notice was given to the lien holder of the cancellation of coverage.

19. Counsel also noted that the court's decision in *Pomerico, supra*, and Arbitrator Samis' decision in *Economical v. Wawanesa, supra,* both addressed situations in which a policy had been properly terminated but was not renewed, whereas Echelon's attempt to cancel its policy in this case did not satisfy the statutory conditions in the *Act.*

20. Further, counsel for the Fund noted the Supreme Court's comment that "in the absence of legislation to the contrary, which does not exist in this case, a lapsed policy does not need to be formally terminated". He contended that that statement implies that the court was aware that the PEI *Insurance Act* did not require the formal termination of a lapsed policy, and based its decision on that fact. He submitted that given the existence of section 236 of the Ontario *Act*, the court's comments do not apply in this jurisdiction.

21. Counsel for the Fund noted that in the instant case, Echelon attempted to terminate an existing policy for non-payment of premiums, rather than because renewal premiums were not received, as had occurred in *Patterson, supra.* He contended that *Patterson* does not stand for the proposition that if an insurer wrongly terminates a policy, it can then rely on the lapse of the policy, and that to the extent that Arbitrator Bialkowski relied on *Patterson* for that proposition, his decision in *Certas v. Security National, supra,* was wrongly decided. Counsel submitted that if that proposition was correct, an insurer could always avoid the consequences of a wrongful termination, which would be contrary to the public policy goals of enforcing the termination provisions against insurers strictly.

22. Finally, Mr. Friendly contended that section 236 of the *Act* overrides the common law with respect to the lapsing of automobile policies, and that the effect of that section is to create an automatic renewal unless proper notice of termination is received. He contended that section 236 turns an automobile policy into a "continuous policy", and relied on Justice Gans' decision in the appeal of the arbitration award in *Economical Mutual Insurance v. Pafco Insurance* [2001] O.J. No. 3419 in this regard. Counsel submitted that by failing to send a notice of renewal, or by providing notice to Mr. Omer that his policy would not be renewed, Echelon did not comply with the requirements in section 236(1). He urged me to find that the policy issued to Mr. Omer in November 2008 accordingly remained in force on the date of loss.

Echelon's Reply submissions

23. Echelon filed a lengthy Reply factum, following receipt of the Fund's submissions. It referenced and attached a series of email messages between Mr. Omer, the policyholder, and an insurance broker. Counsel for the Fund objected to the filing of this new material, and contended that many of the submissions made in the factum relied on facts that were not stipulated in the Agreed Statement of Facts, and were

also not proper Reply submissions. A pre-hearing call was convened to discuss the matter.

24. After hearing submissions from both sides, I ruled that much of the Reply material filed was improper. The document attached to the factum went well beyond what was contained in the Agreed Statement of Facts previously filed by counsel. I ruled that it should be removed from "the record" and any paragraph in the factum that referred to the information contained in that document was struck out. As a result, I did not consider any submissions with respect to Echelon's position that the policy had been terminated by Mr. Omer.

25. Counsel for Echelon submitted that nothing in the *Act* requires that an insurance policy be renewed by an insurer. He stated that section 236 requires insurers to provide thirty days notice of their intention not to renew a policy, or to vary the terms of the policy upon renewal, in order to provide an insured with sufficient time in which to obtain another policy, so as to ensure that their coverage can continue. He noted, however, that there is no evidence in this case that Echelon ever made any offer to renew its policy with Mr. Omer.

26. Counsel argued that an insurance policy is issued for a specific time period, with a stated expiry date. If renewed, each renewal is a separate contract, requiring a fresh offer by the insurer and acceptance by the insured party. He cited the Supreme Court of Canada's comments in *Patterson, supra,* that a "lapsed policy does not need to be formally terminated" in support of his contention that in circumstances such as these, in which a policy has either lapsed or expired due to the non-payment of a premium, it is not necessary for an insurer to formally terminate the contract.

27. Mr. Goodman pointed out that the decisions cited by counsel for the Fund in support of its contention that Echelon was required to deliver a notice of expiry under section 236 all involve circumstances in which the insured either paid, or promised to pay the outstanding premium, and the policy period had not yet

expired. He noted that in this case, Mr. Omer had not made any payments beyond December 2008, almost eighteen months before the accident date, and that the policy expired almost one year before the accident.

28. Counsel acknowledged Justice Lax' finding in *Jackson v. Dennis, supra,* that the insurer's failure to provide notice to the lessor of the vehicle involved meant that the coverage under the policy continued. He noted, however, that the accident in that case had occurred within the policy period. While the judge held that the coverage remained in force until proper notice was provided of the reduction in coverage, she did not go as far as to state that the policy would remain in force indefinitely. He emphasized that none of the decisions relied on by the Fund involved a situation in which coverage was extended beyond the policy period, where no premium had either been paid or was promised.

29. Echelon submitted that while the legislators may have intended insurers to bear the risk of improper cancellations, or of the failure to provide renewal notices in a manner consistent with the Act, they did not intend insurers to have to bear the risk beyond the date of expiry of the policy.

ANALYSIS & FINDINGS:

30. After considering the submissions of both parties, I have reached the conclusion that the Echelon policy issued to Mr. Omer expired at the end of its six-month term on May 29, 2009, and was therefore not in force at the time of the accident in May 2010.

31. Coverage under the policy commenced on November 29, 2008, and was to run for six months until May 29, 2009. According to the Agreed Statement of Facts, Echelon sent a letter titled "Notice of Cancellation – Automobile" a mere ten days into the policy term, advising Mr. Omer that the policy would be terminated on December 28, 2008 due to non-payment of the premium owing. The parties have

stipulated for the purposes of this preliminary issue that this attempt at terminating the policy was not valid, and I approach this analysis with that in mind.

32. The question then becomes – in light of an invalid attempt at cancelling the policy, did coverage extend beyond the last day of its term until May 15, 2010, the date of the accident ? Despite the able arguments made by counsel for the Fund, I am not persuaded that coverage remained in place almost one full year after the expiry of the policy's stated term, either by operation of law or by virtue of a breach of section 236 of the *Act*.

33. Both parties referred at length to the Supreme Court of Canada's decision in *Patterson v. Gallant, supra,* in their submissions. I have reviewed that decision closely, and while any pronouncement by the Supreme Court that touches on an area of focus must be considered closely, the context in which some of the court's comments were made are sufficiently distinct from that of the instant case, that its specific findings are of limited value to the analysis required in this case. The court did, however, make some general statements regarding the application of contract law principles to automobile policies that must be heeded.

34. The question before the court in that case was whether a "pink slip" delivered by the insurer constituted a policy, and bound Co-operators to cover the insured, despite the fact that the premium due on renewal had not been paid. The accident in question occurred on February 20, 1989, and the premium was due on February 5, 1989, two weeks earlier. The Appeal Division of the Supreme Court of Prince Edward Island determined that the insurer's delivery of the pink slip was akin to the delivery of a binding policy, and that Co-operators was obligated to provide coverage to the insured despite the premium not having been paid.

35. That finding was appealed to the Supreme Court of Canada. Justice Major's comments are mostly focused on the question of whether the "pink slip" delivered by Co-operators constituted a renewal of the policy. He found that the pink slip sent

did not constitute a renewal certificate, and that it was therefore not a policy under the Act. He accordingly determined that coverage was not in effect after the date the policy term ended, and allowed the appeal.

36. While that conclusion disposed of the appeal, Justice Major made some further comments in *obiter*. He allowed that the provisions in the *Insurance Act* can override the common law of contract, and addressed an argument raised by the respondent that despite there not having been an acceptance of the Offer to Renew sent by Co-operators, certain statutory provisions suggest that it evidenced a binding policy. He dismissed that argument, and stated:

> *It is unnecessary for the applicant to terminate or cancel the alleged insurance in accordance with Statutory Condition 8(1). This is only necessary where there is a binding insurance policy. Where the policy simply expires because of the non-payment of the renewal premium, no formal termination procedure need be followed by the appellant. To the extent of Colven Distributors Ltd. V. Allstate Insurance Co. (1992), 10 C.C.L.I (2d) 157 (Ont. Gen. Div.) decided otherwise it should not be followed. In the absence of legislation to the contrary, which does not exist in this case, a lapsed policy does not need be formally terminated.*
>
> (at para.38)

37. Justice Major also stated that in the context of automobile insurance, each renewal represents a new contract, requiring evidence of a further offer and subsequent acceptance.

38. Counsel for the Fund noted that all of these comments were made in the context of a consideration of whether the document sent by Co-operators constituted a valid renewal of a policy. He contended that the *Patterson* decision does not address the consequences that flow from an insurer's invalid attempt to terminate a policy prior to the end of its term, as was the case here. I agree. However, the Fund alleged that what essentially distinguishes the *Patterson* decision from the instant case is that unlike in PEI, Ontario does have legislation that governs policy renewals, namely section 236 of the *Act*.

39. I do not agree with this assertion. Section 236 of the *Act* simply provides that an insurer must provide the named insured with at least thirty days written notice of its intention either not to renew the contract, or to renew it but on different terms. In either of these scenarios, the notice must set out the reasons for the "insurer's intention or proposal" (subsection (3)). If these terms are not complied with by an insurer, subsection (5) provides that the policy is in force until there is compliance (i.e. proper notice is given).

40. It is clear that Echelon did not provide an offer to renew the policy to Mr. Omer. The Fund contends that section 236 of the *Act* operates to create an automatic renewal of a policy unless proper notice is provided, and that this provision "turns the automobile policy into a continuous policy". Mr. Friendly cited Justice Gans' decision in *Economical Insurance v. Pafco Insurance, supra,* as support for this proposition.

41. I have reviewed this case closely, and do not agree that it stands for this principle. The case before Justice Gans was an appeal of an arbitration award in a priority dispute, in which the arbitrator determined that Economical, as the insurer of the vehicle in which the claimant was an occupant at the time of the accident, owned by his sister, was in highest priority to pay the claim. Economical had issued a thirty day "binder" to the insured, under which coverage began on August 30, 1994. The accident took place on October 1, 1994. Economical argued that the policy was void *ab initio*, as a result of misrepresentations made in the application for insurance.

42. The arbitrator rejected Economical's argument. He determined that the policy provided coverage to the insured for thirty days from August 30, 1994, and that as no notice of termination had been sent, section 236 of the *Act* applied. He found that under that provision, Economical was obliged to provide the insured with thirty days written notice of its proposal to terminate the contract, and that its failure to do

so meant that the policy renewed automatically on October 1st, the date of the accident.

43. The Arbitrator went on to express the opinion that in light of this ruling, thirty-day binders "no longer exist in any meaningful way". He stated that while in theory an insurer could continue to issue binders, the duration "would have to be at least 30 days, plus the additional number of days which the insurer estimated that it would need to carry out its investigation into the proposed risk".

44. Economical appealed the arbitrator's decision. It argued that section 236 of the *Act* does not apply to a temporary contract such as a thirty-day binder, as the requirement in the section to provide thirty days notice to an insured would effectively invalidate the idea of a 30 day binder. Justice Gans did not accept the arbitrator's finding that an insurer cannot terminate a temporary binder unless it provides thirty days notice of its intention to do so. He stated that an insurer is at liberty to terminate a 30 day binder (or contract of insurance of a duration of less than 60 days), as long as it provides written notice to an insured in accordance with sections 11 and 12 of the Statutory Conditions.

45. Justice Gans also determined, however, that the arbitrator's statement about the continuing effect of "thirty-day binders" was not integral to his decision. He concluded that the arbitrator did not err in law in determining both that the contract of insurance issued by Economical was not void *ab initio*, and that having so determined, section 236 of the *Act* did apply to the thirty-day binder issued. The result of that was an automatic renewal of coverage on the 31st day after the binder was issued, which was the date of the accident.

46. The focus of this ruling is on whether section 236 of the *Act* should be applied to thirty-day binders issued by insurers. Justice Gans determined that it does. In my view, this finding cannot be extrapolated in the manner suggested by counsel for the Fund. I do not accept that if an insurer's attempt to cancel a policy does not comply

with the requirements set out in the Statutory Conditions to the *Act*, that coverage under the policy continues into perpetuity, without any payment of premiums. This would be contrary to the well-accepted principles of contract law around offer and acceptance, and contrary to the expectations of the parties. While I accept that provisions of the *Insurance Act* can supersede the common law, I find that section 236 does not operate to extend coverage under a policy indefinitely, in the absence of payment of premiums.

47. The Fund also relied on the decision in *Farmers' Mutual Insurance Co. v. McAlister (2003) 65 O.R. (3d) 307* as support for the proposition that an improperly cancelled policy remains in force beyond the date of its expiry. That decision is also focused on the applicability of section 236 of the *Act* to temporary binders of insurance. Farmers' contended that as Mr. McAlister was involved in an accident thirty-two days after it had issued a "thirty-day binder", they were not obliged to cover the loss. The policy had not been formally terminated in accordance with the Statutory Conditions under the Act.

48. Mr. McAlister had applied for insurance through one of Farmers' agents on December 18, 1998. He provided a cheque for two months worth of premiums at that time. He was given a pink slip that had the words "30 days" written on it. Farmers' decided not to accept his application due to his not having disclosed convictions for various driving infractions, and notified the agent of this fact by letter dated January 6, 1998. The agent then wrote to Mr. McAlister on the following day to advise that his application had not been accepted.

49. Mr. McAlister was involved in an accident on January 19, 1999, before receiving the agent's letter. Justice Belch determined that there was coverage under the Farmers' policy on the date of the accident. In reaching this conclusion, he noted both that the application for insurance submitted indicated that the term of the contract was to be for one year, and that the Certificate of Automobile Insurance issued indicated a policy term of one year, from December 18, 1998 to December

17, 1999. He found that both of these documents formed part of the "contract" between the parties. Again, I find the facts of this case to be sufficiently different from those of the instant case, that this ruling is not persuasive authority that is relevant to the issue before me.

50. The Fund also cited the decision in *Jackson v. Dennis, supra,* in support of its position. That case involved a driver of a leased Porsche, who had habitually stored the vehicle indoors for the winter. He claimed that he had reduced the coverage under his policy with Liberty Mutual to "comprehensive" coverage only. He then wanted to drive the car one day after the coverage had been reduced, attempted to contact his broker to advise him that he would be driving that day, but could not reach him. He took the car out for a drive with a passenger, and was involved in a serious collision.

51. Claims for accident benefits and tort damages were brought under the Liberty Mutual policy. Liberty denied the claims, citing the reduction in coverage prior to the accident. Justice Lax initially focused on the factual dispute surrounding whether Mr. Dennis had requested the deletion of coverage. Having found that he had done so, the legal question of whether Liberty Mutual had a duty to notify the lessor of the vehicle of the deletion in coverage arose. Justice Lax determined that Liberty was obliged to do so, and that its failure to communicate the deletion of coverage resulted in full coverage remaining on the vehicle on the date of loss. Her decision was confirmed by the Court of Appeal, without any additional reasons or discussion.

52. Again, I find the focus of this case to be quite different than the one before me, and of limited value to my analysis. The question before Justice Lax was whether the lack of notice to the lessor of the vehicle of the reduction in coverage resulted in coverage for accident benefits and third party liability remaining in place. Unlike in the instant case, the accident in question occurred during the term of the policy period. There was no discussion by the judge about whether the policy lapsed once

its term ended, or whether it continued by operation of law or as a result of a breach of section 236 of the *Act.*

53. In sum, none of the cases cited by the Fund stand for the proposition that if an insurer fails to properly cancel a policy during its term, the policy continues beyond the stated term indefinitely, in the absence of a renewal offer and acceptance.

54. Echelon relied on the decisions of Arbitrator Bialkowski in *Certas v. Security National, supra,* and Arbitrator Samis in *Economical v. Wawanesa, supra,* both of which determined that despite improper attempts at cancellation, the policies in issue expired at the end of their terms. In both of those cases, as in the instant case, the accident took place well past the date at which the policy was to end. Counsel for the Fund takes issue with these findings and states that if they are correct, an insurer could always avoid the consequences of an improper termination of a policy, which would be contrary to the public policy goals of enforcing the termination provisions of the statutory conditions against insurers strictly. He submitted that the legislators have clearly intended that insurers should bear the risk of improperly cancelled policies, and /or the failure to provide renewal notices.

55. I agree that the intention behind the statutory provisions is for insurers to bear the risk of an improperly cancelled contract. In this case, the parties have stipulated for the purpose of this preliminary issue that Echelon's attempt to cancel the policy it issued to Mr. Omer was invalid. Accordingly, if Mr. Omer's vehicle was involved in an accident during the term of the policy, Echelon would be obliged to respond.

56. However, I cannot agree that the legislative intention behind these provisions is to extend coverage under the policy into perpetuity, with no offer and acceptance or premiums being paid, in cases where an insurer's attempt at terminating a policy is invalid and no notice is provided of non-renewal. Very clear language would have to be in place in order for such a dramatic result to have been intended, and I find

that in the absence of such language, coverage under a policy will lapse at the expiry of the policy term.

ORDER:

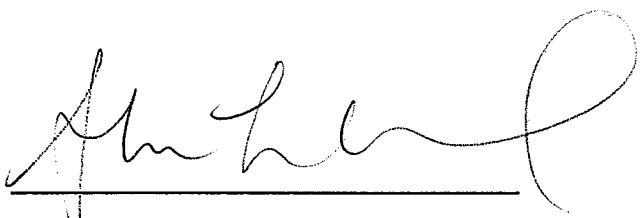
57. As set out below, coverage under the Echelon policy issued to Mr. Omer lapsed on May 29, 2009, the last day of its term, prior to the date of the accident. Accordingly, the Fund is the priority insurer under section 268(2)2 of the *Act*. I hereby order the Fund to reimburse Echelon for the benefits it has paid to Mr. Farah and on his behalf to date, subject to any arguments counsel may raise regarding the reasonableness of payments made, and Echelon's entitlement to be repaid for adjusting fees and legal fees..

58. The Fund shall also take over the adjusting of Mr. Farah's claim. I leave it to counsel to work out the necessary arrangements. I remain seised of the matter in the event that there are any difficulties in implementing my findings.

COSTS:

59. As the successful party, Echelon is entitled to recover its costs of this proceeding on a partial indemnity basis. If counsel cannot agree on the quantum of costs payable, they may contact me and a teleconference will be convened to discuss the matter.

DATED at TORONTO, ONTARIO this 10TH DAY OF DECEMBER, 2015.



Shari L. Novick
Arbitrator