

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

BETWEEN:

CERTAS DIRECT INSURANCE COMPANY

Applicant

- and -

ALLSTATE INSURANCE COMPANY OF CANADA

Respondent

AWARD

Counsel Appearing:

Jason Duyck: Counsel for Certas Direct Insurance Company (hereinafter called Certas)

Kevin D.H. Mitchell: Counsel for Allstate Insurance Company of Canada (hereinafter called Allstate)

Introduction:

This matter comes before me pursuant to the *Arbitration Act* 1991 to arbitrate a dispute between two insurers with respect to a priority issue that has arisen pursuant to the *Insurance Act*, R.S.O. 1990 c I.8, as amended and specifically Section 268 of the *Insurance Act* and Regulation 283/95, as amended.

By way of background this case arises out of a motor vehicle accident that occurred on March 18, 2018. On that day the adult claimant was driving her car with her son in the vehicle when they were involved in a motor vehicle accident as a result of which they sustained various injuries. The claimant applied to Certas for Statutory Accident Benefits.

Certas confirms that it insured a 2015 Toyota Yaris pursuant to policy no. D2282695. However, Certas takes the position that as of the date of loss the adult claimant (hereinafter called the claimant) had added an OPCF-16 Suspension of Coverage which was in full force and effect on the date of the accident and accordingly Certas claims that there was no coverage for Statutory Accident Benefits available to the claimants on March 18, 2018.

Certas claims that Allstate is therefore the priority insurer pursuant to Section 268 of the *Insurance Act*. Allstate insures a 2016 Nissan Rouge pursuant to policy no. 051480245. This vehicle was involved in the accident with the claimant's Toyota.

The issue proceeded before me with the filing of documentary evidence and written submissions. In addition counsel had an opportunity to make oral submissions on September 14, 2020.

The following were the exhibits at the hearing:

- | | |
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| Exhibit 1 | Arbitration Agreement dated April 22, 2020 |
| Exhibit 2 | Joint Arbitration Record (45 tabs) |
| Exhibit 3 | 8 pages with respect to various letters between the Financial Service Commission of Ontario and The Personal Insurance Company/Certas |

Counsel also filed Factums and Books of Authorities.

Issues in Dispute:

While the Arbitration Agreement sets out a very broad issue in dispute with respect to which insurer is responsible for paying Statutory Accident Benefits to the claimants this issue was further fine-tuned during the course of our pre-hearings and both oral and written submissions. The issues that I had been asked to address are as follows:

1. Is there satisfactory evidence that the OPCF-16 used by Certas was an approved form as required under Section 227 of the *Insurance Act*;
2. Does the OPCF-16 require the signature of the insured and/or the date in order to be effective;
3. What effect if any is there on the validity of the OPCF-16 of the policy renewal and delivery of a subsequent certificate of insurance within the timeframe that the OPCF-16 was alleged to be in effect

Facts

The claimant was the named insured on a policy of insurance relating to a 2015 Toyota Yaris with Certas. This vehicle was owned and not leased. The certificate of insurance shows the initial policy period to be February 25, 2017 to February 25, 2018. A further certificate of insurance indicates that the policy was renewed for a further term of February 25, 2018 to February 25, 2019.

The underwriting log notes from Certas indicate that on July 13, 2016 the claimant called in and requested a suspension to the coverage on her 2015 Yaris from July 14, 2016 to September 14, 2016. The note indicates "claimant aware of limits of end 16".

The underwriting log notes of Certas show that on January 17, 2018 the claimant called in to request a suspension of her coverage for 2 months. Under comments the following is noted:

"client wants suspension from January 18 to March 19, 2018. She was edu'd on reduction. Client claims previous suspensions were "free". No notes or pmt history to verify these "free" months. Client clearly edu'd on cost and coverage for suspension and that the vehicle cannot be driven. She was also edu'd we do not provide any road side assistance services.

Exhibit 2 Tab 1 shows an OPCF-16 was issued by Certas on January 18, 2018. The relevant portions of this document are as follows:

1. The document indicates that the purpose of this change is to cancel the coverage for the use or operation of the vehicle during the time shown in the certificate of an automobile.
2. The insured agrees that amongst the coverages to be cancelled are Accident Benefits coverage
3. That the cancellation is in effect for the period of time shown in the certificate of automobile insurance.

This document has a signature line for the insured and a date line. It is an agreed fact that the document was not signed or dated.

Accompanying the OPCF-16 is a Certificate of Automobile Insurance where it is indicated under "Insurance Coverage" the following:

Vehicle 1 OPCF-16 Suspension of Coverage from 2018-01-19 to 2018-03-19

There was no issue raised before me that the Certificate of Automobile Insurance and the OPCF-16 were not sent or were not received by the claimant.

Exhibit 2 Tab 34 shows a Certificate of Insurance was issued by Certas for a policy period of February 25, 2018 to February 25, 2019 to the claimant. An OPCF-16 was also issued. These documents show that the policy was being renewed. The OPCF-16 is in the identical format to the earlier one. The Certificate of Insurance indicates under Insurance Coverage the following:

Vehicle 1 OPCF-16 Suspension of Coverage from 2018-01-19 to 2018-03-19

Again no issue was raised before me that the Certificate of Automobile Insurance and the OPCF-16 were not sent or were not received by the claimant.

Neither the claimant nor a representative of Certas were examined under oath or called to give oral evidence with respect to the circumstances surrounding the OPCF-16 in 2018.

What we do know is that according to a Statutory Declaration completed by the claimant on April 30, 2018 that on the date of the accident she was driving the Toyota Yaris to get some medicine for her son when she was involved in the accident.

Post-accident over the course of the next few months various OCF-1s were submitted to both Certas and Allstate. Ultimately Certas accepted that they had received the first OCF-1 and commenced adjusting the file subject to the argument that the OPCF-16 prevented the claimants from recovering Statutory Accident Benefits.

Certas issued a Notice of Dispute dated April 23, 2018 to Allstate claiming that the OPCF-16 was in full force and effect on the date of loss and accordingly there was no coverage under the Certas policy and therefore Allstate was the priority insurer.

Allstate responded taking the position that the Endorsement was not signed and as such was not effective for the purpose of excluding accident benefits to the claimants.

A Notice to Submit to Arbitration was issued by Certas as against Allstate on April 4, 2019.

Initially there was a dispute as to whether proper notice had been provided to the insured of the dispute but that was withdrawn before the oral hearing.

Position of the parties:

Preliminary Issues

Allstate in its Factum raised a question as to whether the OPCF-16 Endorsement of Certas was an approved form by the Superintendent of Insurance as required under Section 227 of the *Insurance Act*.

In its reply, Certas attached a number of documents (Exhibit 3) which purported to suggest that the OPCF-16 used in this case was an approved form. Allstate objected to the filing of these materials on the grounds that they did not form part of the Arbitration Record and that Allstate had not been provided with these documents as part of the production process at the pre-hearing.

It should be noted that counsel at the arbitration for Certas was not counsel who participated in the pre-hearings. Counsel at the hearing advised that he was not aware whether the

Endorsement had been approved was an issue. Various emails were provided to support that Allstate had put Certas' previous counsel on notice that was an issue.

Ultimately I determined that in the circumstances the documents relating to the approval of the Endorsement by the Superintendent of Insurance were admissible and I would consider them. Counsel for Allstate maintained his argument that the documents were not sufficient to show that the specific OPCF-16 had been approved and even if it had been approved whether or not the document was sufficient to meet the contractual obligations of the insurer to provide sufficient information to the insured about the effect of the Endorsement.

Therefore the question of the approval of the Endorsement remained an issue.

Certas' position with respect to the Endorsement approval:

Certas takes the position that the documents that were admitted into evidence clearly indicated that the OPCF-16 that would have been in effect at the time of this accident was an approved form. They pointed to a filing authorization letter from 2016 from a senior rate analysis at the office of the Superintendent indicating that filings submitted by Certas on August 8, 2016 had been approved and could be used 30 days after August 8, 2016. Certas referred to a further document entitled "Submitted filing No.: 2016-00464" and under filing selection/insurer comments reference is made to the OPCF-FNPO16 for private passenger vehicles. Certas submits that this information is sufficient to show that the Certas format of the OPCF-16 was submitted and approved by the Superintendent of Insurance.

Counsel for Allstate submissions on this point were that the documents came in late and were not clear on the face. I disagree and I am satisfied that the OPCF-16 that was sent to the claimant was an approved form as required under Section 227 of the *Insurance Act*.

Allstate however argues that even if the Endorsement is approved that it was not used properly in the circumstances in this case as the Endorsement was combined with a certificate. Allstate points out that the Endorsement does not have the date for which the coverage is suspended and that it refers the insured to the Certificate of Insurance. Allstate submits that is not sufficient and that case law supports (see Certas & CGU Award of Samis December 5, 2005) that an insurer cannot use a certificate as an Endorsement to effectively reduce coverage and that only the use of OPCF-16 can effect that. Allstate relies on this decision to support their argument that even if an Endorsement is approved if that Endorsement does not carry all the required information for the insured as under the approved form of the Superintendent that cannot be corrected by making reference to the certificate of insurance.

Certas argues that the cases referred to by Allstate can be distinguished as in those cases no OPCF-16 was used at all, only a certificate of insurance and therefore the facts of this case are distinguishable.

Is the OPCF-16 valid:

Certas acknowledges that the OPCF-16 has a signature line on it and a date line on it whether one is looking at the Superintendents form or the Certas approved form. Certas further acknowledges that the OPCF-16 was not signed or dated by the claimant.

It is Certas' position that there is nothing in the provisions of the *Insurance Act* or in any case law that requires that this document be signed.

Certas submits that at best one can argue that the failure to sign the document or date it would constitute "imperfect compliance" which would be insufficient to invalidate the OPCF-16. Certas relies upon the decision of the Court of Appeal in *Royal & Sun Alliance Insurance Company of Canada v. Intact Insurance Company 2017 ONCA 381*. In that case the court held that it was not up to the courts to determine what the effect is of a noncompliance with Section 227 of the *Insurance Act*. Rather that is up to the Superintendent of Insurance. Certas notes that Justice Juriansz on behalf of the court pointed out that it is not the role of the courts while applying the law of contract to read into Section 227 that a noncompliant form is necessarily void as a matter of contract law. Certas submits that even if I conclude that the form requires a signature and/or a date that I should find that is imperfect compliance and reject Allstate's argument as the Court of Appeal rejected the argument of Royal & Sun Alliance Insurance Company of Canada in somewhat similar circumstances.

With respect to the issue of the Endorsement making reference to the certificate, Certas submits that there is no legislative regulatory or legal precedent to suggest that it is inappropriate to use an Endorsement and a certificate together. Certas submits that the case law relied upon by Allstate only deals with cases where no OPCF-16 was used at all and in those cases it was properly determined that an OPCF-16 Endorsement had to be used in order to suspend coverage. Certas submits that in this case all the necessary information was set out in their approved OPCF-16 Endorsement sent to the insured and that the only supplemental information which was referenced to the certificate was the date that the coverage was in place which was in accordance with the insured's own instructions.

With respect to the issue of the effect of the renewal, Certas takes the position that that is irrelevant. On the date of loss the insured had been provided with a Certificate of Insurance and an OPCF-16 that covered the time period of February 25, 2018 to February 25, 2019. The OPCF-16 Suspension of Coverage clearly indicated on the renewal that it was in effect from January 19, 2018 to March 19, 2018. Certas submits that it would make no sense to vary the suspension of coverage to a time period that predated the renewal policy. The insured was aware and in fact requested the suspension of coverage for that specific time period. Certas properly issued a renewal and a further OPCF-16.

At the heart of their submissions is Certas' position that even if there is any finding on imperfect compliance that there is no doubt that the insured wanted to and intended to add an

OPCF-16 to her policy and suspend coverage. The Insured was familiar with the use of the OPCF-16 as it had been added to her policy previously. A copy of the Endorsement was sent to the insured and the consequences of it were clearly explained to her. She understood the duration of the suspension of coverage and the form clearly outlined that Accident Benefits were suspended for a specific time period. Therefore Allstate is the priority insurer.

Allstate takes the position that even if the Endorsement OPCF-16 is approved that it still lacks substantial information. It does not have the name of the insured, it does not have the effective date of the change, it does not have the policy number, it does not have the vehicle to which the change applies and it does not have the refund amount. All these are found on the certificate. Allstate submits that that information had to be on the OPCF-16 for it to be a form sufficient to provide the insured with enough information about the Endorsement without having to refer to the certificate. Allstate submits that the case law that establishes that a certificate is not sufficient to suspend coverage is applicable even when an OPCF-16 is used that is not in the actual approved form issued by the Superintendent of insurance and where there is missing information.

With respect to the signature, Allstate submits that that is on both the approved form of the Superintendent and on the Certas form. Allstate submits that if a signature and date is on the form then it is required to be signed and is not in effect absent a signature and date.

Allstate points to two cases where there is reference to the signature being required. In the decision of Arbitrator Jones in *Enterprise Rent-A-Car & ING Insurance Company of Canada* (Decision November 1, 2006) Arbitrator Jones notes that Section 227 of the *Insurance Act* sets out that certain forms must be issued in accordance with approved forms. He goes on to state

“Those forms make it relatively clear what coverage is being removed and accordingly what remains. It required that the policy holder sign and return the form.”

Allstate also relies on the decision of Arbitrator Samis in *Certas & CGU/Aviva* dated December 5, 2005. This case also involved a suspension of coverage issue. In that case Arbitrator Samis states the following at page 6:

“It is important to recognize that the OPCF-16 differs greatly from the documentation used by Certas. OPCF-16 is written in relatively plain language which, in my view, better communicates the effect of changes contemplated by the document. Secondly OPCF-16 apparently requires the signature the signature of the insured person. The approved form has a place for the signature and the heading at the beginning of the Endorsement states “Please sign and return this form. Keep a copy for your records.”

He goes on to say later in the decision “It (the OPCF-16) is obviously a useful and purposeful document. It explains in reasonably clear language the effect of the changes to the contract. It requires the signature of the insured person, thereby communicating

the import of the decision taken". Allstate points out that under the approved Superintendent's OPCF-16 there are still the words as noted by Arbitrator Samis "Please sign and return this form. Keep a copy for your records."

Those words do not appear on the OPCF-16 form of Certas.

Allstate submits that the form of OPCF-16 even though approved by the Superintendent is not sufficient to provide the insured with the information required and is invalid as the necessary information is only found in the certificate of insurance.

On the issue of renewal Allstate's position is that one cannot change a motor vehicle liability policy midterm to a comprehensive only policy without terminating the former and issuing a new policy for the latter. Allstate submits that the purported change to the Certas policy during one term cannot simply be transferred forward to the next term without entering into a new contract and agreement with the insured. If the 2017/2018 policy term was reduced to residual coverage then it should have been renewed as a full policy for 2018 to 2019 and then a further meeting of the minds to take place with the insured to reduce the coverage on the full policy to comprehensive for a new time period that was commensurate with the renewal policy.

Allstate relies on the decision of *Dominion v. Optimum 2016 ONSC 985* (Justice Perell February 8, 2016) with specific reference to paragraph 42 set out below.

"there are sound policy reasons to requiring the use of OPCF-16 midterm even though it means that the insured cannot cancel his or her liability coverage. The fact that the insurance policy is subsequently renewed as just a comprehensive policy begs the question of what was renewed and begs the question of whether the insured understood what he or she was purchasing in renewing a policy that at one time included liability coverage.

Para44: the public policy advantage supporting the use of the OPCF-16 midterm or the alternative of starting fresh with a generally new policy is that it sustains the purposes of non-fault insurance regime where more than one insurer may be liable for paying SABS unless they have clearly limited their exposure and it makes it more likely that the insured as a consumer understands what insurance coverage he or she has."

Decision and Analysis:

Approved Form

As I noted earlier I am satisfied on the evidence provided to me that the Certas OPCF-16 form was an approved form. It is my view that once the form is approved it then falls within the provisions of Section 227 of the *Insurance Act* which provides as follows:

“227 (1) An insurer shall not use a form of any of the following documents in respect of automobile insurance unless the form has been approved by the Chief Executive Officer:

1. An application for insurance.
2. A policy, endorsement or renewal.
3. A claims form.
4. A continuation certificate.”

The Certas OPCF-16 having been approved in accordance with Section 227 elevates it to the position of an approved form pursuant to Section 227 and it is not therefore available to the insurer in a priority dispute to suggest that the form is deficient.

While I appreciate that the form itself is missing information that is on the approved FSCO form (the name of the insured, the policy number, the effective date of the change and a requirement direction that it be signed and returned and a copy kept) if these deficiencies were not raised by FSCO when the form was approved then I do not see any argument can be made in the context of this arbitration that the form is not satisfactory. I therefore find that the Certas’ OPCF-16 form is an approved form pursuant to the provisions of the *Insurance Act*.

The key issue in this case in my view is whether that form in order to be effective had to be signed and dated. While the form of the Certas OPCF-16 did not ask the insured to sign and return the form and keep a copy there was still a signature line and date at the bottom of the form in blank. I attach a copy of the Certas OPCF-16 form to this decision as well as a copy of the FSCO form for ease of reference. It is somewhat ambiguous as to whether Certas required the form to be signed or not. While it left a space for a signature and the date there was no direction on the form itself or in the Certificate of Insurance nor in fact any documentation produced in this arbitration to suggest that Certas when the form was provided to the insured asked her to sign it and return it. Practically speaking in the context of modern day insurance transactions it makes sense not to require an actual signature and date and for the form to be returned for coverage to be effective. While it is certainly a good business practice to have a signed form in cases such as this it does not necessarily mean that insured did not agree with the Endorsement or was not aware of the coverage because they did not return the form.

In this case I find the underwriting log notes of Certas to be quite compelling with respect to what the claimant expected and what contract she understood she was arranging with Certas. The claimant on July 13, 2016 requested an OPCF-16 Suspension of Coverage on her Yaris vehicle for July 14, 2016 to September 14, 2016. I agree with Certas’ position that the claimant had previous experience with an OPCF-16 and that is indeed a relevant fact.

We then have the entry on January 17, 2018 which appears to be a call initiated by the claimant to Certas who is a direct underwriter requesting a suspension of her coverage for 2 months. The author of the note indicated that he educated the insured on cost, what is covered during suspension and that the vehicle cannot be driven. I find that the claimant knew what she was

asking for, understood what the suspension coverage meant and understood that she would possibly be getting some form of premium reduction.

Counsel for Allstate argues that evidence should have been led by Certas by the way of oral evidence or EUOs of either the claimant or the underwriter with respect to what was understood at that exchange in January of 2018. I am satisfied that the underwriting log note is clear on that point and that is sufficient evidence for me to make a ruling on.

According to the certificate of insurance and the accompanying OPCF-16 the suspension of coverage would have gone into place two days after the claimant contacted Certas to request the suspension. It would have been impossible for Certas to issue the OPCF-16 and the certificate, provide it to the claimant and her sign it and return it before the coverage went into place. Further if Allstate is right and the OPCF-16 is not valid without the signature then the claimant in this case would have been left with full coverage based on a reduced premium. I agree with Certas that if anything the failure to sign and/or date the OPCF-16 would be considered an imperfect compliance and would not render the OPCF-16 invalid.

There is no dispute that the claimant received the certificate of insurance and received the OPCF-16. There is no dispute that she requested that that suspension of coverage be put in place for a specific time period and that is exactly what happened. There was nothing in the documents sent to the claimant that specifically asked her to sign and return the document. The claimant could have been under the impression that there was no obligation upon her to sign the document and return to it to the insurer in the absence of such a request. Particularly in light of the fact that she was the one that called and arranged this alteration in her coverage.

I have carefully reviewed the case law that was referred to by Allstate with respect to whether or not a signature is required. In every case the comment with respect to the signature was in relationship to a case where no OPCF-16 had been used. The reference to the signature by both Arbitrator Jones and Arbitrator Samis was in the context of noting why the OPCF-16 was required to reduce coverage as opposed to either a certificate alone or no OPCF-16 at all. In neither case was the arbitrator asked whether the failure to affix a signature to the document would invalidate it. In neither case was the arbitrator considering an OPCF-16 form where there was no specific request for the insured to sign and return the document to the insurer. I therefore do not find those cases helpful on the issue before me. In all the circumstances I conclude that the lack of the signature and date on the OPCF-16 of Certas did not invalidate the suspension of coverage and it was in place on the date of loss.

Turning to the question of the use of the approved Endorsement in conjunction with the certificate and whether that negates the validity of the certificate itself. I have found the decisions of the Court of Appeal in *Royal & Sun Alliance & Intact (supra)* and the decision of Arbitrator Bialkowski in the case of *Belair Direct & Wawanesa Insurance Company & COSECO Insurance Company* (decision dated September 12, 2017) to be helpful.

In the Royal & Sun Alliance decision, which was a priority dispute, Royal took the position that the OPCF-28A form that had been used was not a form preapproved by the Superintendent and therefore was void because it did not strictly comply with Section 227 (1) of the *Insurance Act*. In the Royal case the insured and her husband met with her insurance broker because her driver's license had been suspended for unpaid fines and her insurance was being cancelled. She wanted to maintain coverage on the car so her husband could drive it and insurance was arranged with Intact on the basis that W would be an excluded driver. An excluded driver Endorsement was executed. The proper Endorsement OPCF-28A was used but it had not been filled in correctly. The wife then had her driver's license reinstated and she drove the vehicle and was involved in a motor vehicle accident. At trial evidence was introduced that when the spouse completed the form the broker explained to her and she understood that even if her driver's license was reinstated Intact would still not insure her and the excluded driver Endorsement would continue to apply.

Therefore the issue in the Royal Case initially before the trial judge was not whether a preapproved form had been used but whether a deviation from the use of the preapproved form by failing to fill out certain boxes was sufficient to void the form. Relevant to this case is the fact that in the Royal case the boxes that were not filled out included the vehicle and the serial number of the vehicle to which the policy changes were made. Rather the words were inserted "see your certificate of automobile insurance". The certificate of insurance was in a separate document which set out those identifying details.

The Court of Appeal held that this was a case of imperfect compliance rather than non-compliance. The court noted that Section 227 is silent on the what happens if a form is used that has not been pre-approved or indeed if the form is not properly filled out. The court concluded that that was an issue for the Superintendent and not for the courts to determine. The Court of Appeal noted that Section 439 of the *Insurance Act* sets out what are unfair and deceptive practices. Unfair and deceptive practices are prescribed by Regulation 7/00 and item 12 notes that it is an unfair and deceptive practice to use a document in place of a form approved by use of the Superintendent unless none of the deviations of the document from the approved form effect the substance or is calculated to mislead. The court drew from this while a form may not strictly comply with Section 227 that a deviation that does not effect the substance and would still be a valid contract.

I find that the fact of the Royal case are very much on all fours in the fact of this case. While an approved form was used two boxes were not completed: the box with the signature and the box with the date. Irrespective of whether the applicant was or was not asked to sign those documents I find that this is a deviation in the document that does not affect substance and nor was it calculated to mislead. I further find that Royal is authority for my conclusion that the combined use of the OPCF-16 and the certificate of insurance is acceptable. The use of a certificate only has been clearly found not to be acceptable when involving an OPCF-16. The Court of Appeal however directs that where there is an executed Endorsement with some

information missing but where that information is contained in the certificate of insurance that is satisfactory and results in a valid Endorsement.

Turning briefly to the decision of Arbitrator Bialkowski in the Belair & Wawanesa case. That case did involve an OPCF-16. The question before the arbitrator was whether the Wawanesa policy issued to the insured reduced comprehensive coverage where no OPCF-16 was used but the only information outlining the reduction of coverage, the premium and time frame was set out in the certificate of insurance. Arbitrator Bialkowski distinguished the Royal case on the grounds that there was a combined Endorsement and certificate in that case whereas in the case before him there was a certificate only. He also pointed out that in the case before him there was no evidence as to what the understanding was of the insured and/or the broker. There was no evidence before him oral or otherwise as to the dealings between the insured and her broker. He felt this was also a distinguishing feature from the Royal case. In the case before me while I did not have any oral evidence on this point I did have the notes of the underwriter which in my view were sufficient to indicate the dealings between this direct writer and it's insured as to what was being asked and what was agreed upon.

Arbitrator Bialkowski states in his decision and I quote:

“It would be unfair for an insured to proceed with a reduction to comprehensive only without an explanation of residual Accident Benefits and other residual coverage that could be available and clearly set out in the printed form if the OPCF-16 were used. Without this it would be unclear in my view to the insured as to what coverage would remain”.

I agree with Arbitrator Bialkowski but note in this case that the claimant did receive the OPCF-16.

Counsel for Allstate also pointed out that in this decision Arbitrator Bialkowski noted that the OPCF-16 would have required the insured's signature. Again the context in which the arbitrator makes that statement is reflective of the benefits of receiving the OPCF-16 Endorsement. The Arbitrator did not specifically find that in order for that Endorsement to be valid it must be signed.

On the last issue raised by Allstate with respect to the renewal of the policy midway within the suspension of coverage. I find that that has no effect on the OPCF-16. As of the date of the accident the claimant was aware that she had requested and was provided with a suspension of her coverage for a specific time period. She had received an OPCF-16 and a certificate of insurance clearly delineating that time period. I do not agree with Allstate that renewal midterm has any effect on the validity of the OPCF-16. The fact is that when the renewal was issued a new OPCF-16 was sent out at the same time.

On all the evidence I am satisfied that the OPCF-16 was valid on the date of loss to reduce coverage for the claimants to exclude Statutory Accident Benefits. Therefore Allstate is the priority insurer.

Award:

In response to the question that is raised on the Arbitration Agreement I find that as between the applicant and the respondent Allstate Insurance Company of Canada is responsible for paying Statutory Accident Benefits to the claimants arising out of the motor vehicle accident of March 17, 2018.

Costs:

Pursuant to the Arbitration Agreement costs of the arbitration are to be paid by the unsuccessful party. Accordingly the cost of the arbitrator and the costs of Certas will be payable by Allstate. The Arbitration Agreement requests that the cost not be quantified by the arbitrator. In the event that there is a dispute with respect to the scale or quantum of costs I can be contacted to schedule a costs hearing.

If there is any dispute with respect to the quantum of the Statutory Accident Benefits to be reimbursed by Allstate to Certas I would ask counsel to let me know and we can schedule a pre-hearing to start dealing with the quantum issues.

DATED THIS 2nd day of November, 2020 at Toronto.



Arbitrator Philippa G. Samworth

DUTTON BROCK LLP

**OPCF 16
Suspension of Coverage**

Issued to	Policy Number	Effective Date of Change Year Month Day
<input type="checkbox"/> This change applies only to automobile(s) number _____ indicated on your Certificate of Automobile Insurance. The refund for this change is \$ _____.		
<input type="checkbox"/> See your Certificate of Automobile Insurance for which automobile(s) this change applies to. The refund for this change is \$ _____.		

Please sign and return this form. Keep a copy for your records.

1. Purpose of This Change

This change is part of your policy. It cancels coverage for the use or operation of the described automobile until coverage is reinstated.

2. What you Agree to

2.1 In return for the refund, you agree that the described automobile will continuously taken out of use and not operated as of the effective date of this change.

2.2 You agree that the following coverages will be cancelled for the **use or operation** of the described automobile, a newly acquired automobile, and a temporary substitute automobile:

- Section 3, "Liability Coverage,"
- Section 4, "Accident Benefits Coverage,"
- Section 5, "Uninsured Automobile Coverage," and
- Section 6, "Direct Compensation – Property Damage Coverage."

2.3 You also agree that the following coverages will be cancelled for the described automobile, newly acquired automobile and temporary substitute automobile:

- Section 7, "Loss or Damage Coverages (Optional)"
 - All Perils, but only for loss or damage caused by Collision or Upset, and
 - Collision or Upset.

2.4 We may choose to refund a portion of your premium when you sign this change or when we reinstate your coverages.

2.5 We will not pay a refund if you suspend your coverage for less than 45 consecutive days.

3. Period of Suspension

This cancellation will be in effect from the effective date of this change until coverage is reinstated by OPCF 17, "Reinstatement of Coverage."

All other terms and conditions of your policy remain the same.

Signature of Insured	Date
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Suspension of Coverage

OPCF 16

See your Certificate of Automobile Insurance for which automobile(s) this change applies to. The refund for this change is shown on your Certificate of Automobile Insurance.

1. Purpose of This Change

This change is part of your policy. It cancels coverage for the use or operation of the Described Automobile for the period of time shown in the Certificate of Automobile Insurance for this policy change form.

2. What You Agree To

2.1 In return for the refund, you agree that the Described Automobile will be continuously taken out of use and not operated as of the effective date of this change.

2.2 You agree that the following coverages will be cancelled for the use or operation of the Described Automobile, a newly acquired automobile and a temporary substitute automobile:

- Section 3, "Liability Coverage";
- Section 4, "Accident Benefits Coverage";
- Section 5, "Uninsured Automobile Coverage"; and
- Section 6, "Direct Compensation - Property Damage Coverage".

2.3 You also agree that the following coverages will be cancelled for the Described Automobile, newly acquired automobile and temporary substitute automobile:

- Section 7, "Loss or Damage Coverages (Optional)"
 - All Perils, but only for loss or damage caused by Collision or Upset; and
 - Collision or Upset.

2.4 We may choose to refund a portion of your premium upon the effective date of this policy change form.

2.5 We will not pay a refund if you suspend your coverage for less than 45 consecutive days.

3. Period of Suspension

This cancellation will be in effect for the period of time shown in the Certificate of Automobile Insurance for this policy change form.

All other terms and conditions of your policy remain the same.

Signature of Insured

Date