

IN THE MATTER OF an Arbitration under the *Arbitration Act*, S.O. 1991, c. 17, as amended, an pursuant to the provisions of the *Insurance Act* and Ontario Regulation 283/95 thereunder

AND IN THE MATTER OF an Arbitration

BETWEEN:

SECURITY NATIONAL INSURANCE COMPANY

Applicant

- and -

INTACT INSURANCE COMPANY

Respondent

AWARD

Counsel Appearing:

Annie Padhani: Counsel for the Applicant, Security National Insurance Company (hereinafter called Security)

Maya Krishnaratne: Counsel for the Respondent, Intact Insurance Company, (hereinafter called Intact)

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 July 19, 2020. On that day the claimant was a passenger in a vehicle insured by Security. She was involved in a motor vehicle accident. She sent in an Application for Accident Benefits to Security. Security has handled her claim.

Intact insures the claimant's mother under Policy: KF46YJ674. The claimant is a listed driver on that policy. Security therefore claims that Intact is the priority insurer. Intact claims that its policy was cancelled prior to the date of loss.

Broadly, the issue before me is the status of the Intact policy as of July 19, 2020.

Proceedings:

These proceedings were conducted in writing. The Applicant and Respondent each filed a Factum and each filed various documents that they were relying upon as well as a Brief of Authorities. The parties also filed an Arbitration Agreement dated July 4, 2022.

Issue:

The issue identified in the Arbitration Agreement is set out below:

“Was the insurance bearing policy number "KF46YJ674" valid and active on July 19, 2020, the date of the motor vehicle accident?”

Facts:

The facts are not in dispute. SS (the claimant’s mother) was the owner of a vehicle that was insured with Intact (Jevco) pursuant to the insurance policy noted above. On Sunday, July 19, 2020, at 8:19 a.m. SS sent an email to her broker: BrokerLink. The email is set out below:

“Am canceling my policy AS SOON AS POSSIBLE FROM TODAY.”

The representative at BrokerLink who received the email sent a subsequent email at 8:26 a.m. on July 20, 2020 to CBL Central Service Team. The email stated the following:

“Please assign the insurer’s request to cancel his policy as per email below to a Service IA.”

At 3:42 p.m. a representative from the Central Service Team emailed SS. The subject line indicated “Auto Cancellation Form Required”. The email itself is set out below:

“Please find attached a cancellation form that I need you to sign and date to cancel your auto insurance with Jevco effective July 19, 2020 – please sign and date the form and then send back to centralserviceteam@brokerlink.ca

We are unable to cancel the policy until I have the signed form returned.”

The claimant responds to the email at 8:01 p.m. on July 20, 2020 advising “Thanks see u soon. I sold my car”.

In the meantime, according to the Application for Accident Benefits completed by the claimant on September 11, 2020, a motor vehicle accident occurred while she was a passenger in her mother's vehicle at 11:00 p.m. on July 19, 2020. On her Application for Accident Benefits, the claimant indicated that she was not covered under a policy that lists her as a driver or under a policy for any person that she is a dependent on. She advanced her claim for Statutory Accident Benefits to Security: the vehicle that she was in when the accident occurred.

The cancellation form that BrokerLink required the insured to complete was ultimately signed by SS on July 31, 2020. This form is entitled "Cancellation Form". It correctly identifies the insurer, the policy number, and the insured. Under cancellation date is the following: July 19, 2020.

The form also indicates the following:

"We hereby agree that Policy Number: KF46YJ674 issued by Jevco Insurance Company in the names of SS along with all related renewal Certificates is cancelled and that the insurer is relieved from all liability effective July 19, 2020".

BrokerLink receives this form on August 5th. On August 5, 2020 an auto insurance cancellation advice is completed by Jevco Insurance Company. This provides the calculations with respect to any refund of premium. The document notes that the policy was cancelled July 19, 2020 and the refund is \$388.71. The document confirms "your policy has been cancelled".

Security puts Intact/Jevco on Notice with respect to its intent to pursue a claim as against it for priority. In a letter dated July 27, 2021, Intact/Jevco advises Security that they have investigated the issue and have confirmed the policy was cancelled effective July 19, 2020 at 12:01 a.m. The letter goes on to state the following:

"We do allow some grace period for the transaction and the paperwork to be facilitated. In this case, it looks like the insured called the broker on the 19th to initiate the cancellation, the broker would have drawn up the document and either mailed or emailed it to the insured to sign and date and then the insured would have returned it either by mail or email.

The insured signed the cancellation for effective July 19, we assume that all coverage stops at 12:01 a.m. on July 19th unless the broker specifies otherwise, which they did not".

This Arbitration was then commenced on November 4, 2021.

Position of the Parties:

Security

Security takes the position that the Intact/Jevco policy was valid and active on July 19, 2020 when the motor vehicle accident occurred. They submit that the earliest this policy was cancelled was either July 20, 2020 when the broker acknowledged the email and sent out the cancellation form or on July 31, 2020 when the policy owner signed and submitted the signed cancellation form to BrokerLink.

Security submits that the policy could not be retroactively cancelled and that the position taken by Intact that the policy was cancelled at 12:01 a.m. on July 19th results in the cancellation becoming effective before the request was even made by the insured for cancellation.

Security acknowledges that there are no legislative or regulatory terms under the *Insurance Act* or within the policy itself that sets out any terms or conditions as to how an insured can effectively cancel their policy. However, they submit that a proper interpretation of an insurance policy should be one that affords the insured with the greatest possible protection and not to minimize the duration of time that coverage is in place.

Security submits that even though they accept that the insured had requested that her policy be cancelled that was not sufficient to effect a cancellation. The insured was advised the following day that thy policy could not be cancelled until she had returned the signed cancellation form. Security submits that the language used by BrokerLink in their email was quite clear “We are unable to cancel the policy until I have the signed form returned”. As this form was not returned until July 31, 2020 then that must be the effective date of the cancellation.

Therefore, Security submits that at the time the accident occurred on July 19, 2020 the policy on the car was still valid and active as there had not yet been a mutual agreement with respect to the cancellation of the policy nor had the cancellation form that was a required part of the cancellation process been completed, signed, and submitted.

Intact

It is the Respondent’s position that the policy was effectively cancelled when the insured sent the email at 8:19 a.m. on July 19, 2020 **requesting that her policy be cancelled as soon as possible from today.**

Intact submits that there is absolutely no requirement set out in the policy of insurance, the *Insurance Act*, or its Regulations as to how an insured effects cancellation.

Intact points to Section 1.7.1 of Ontario Auto Policy (OAP-1). It tells the insured:

“You may cancel your insurance at any time by advising us. If you cancel, we will calculate the premium you owe on a short rate basis... we will refund anything due to you as soon as possible”.

Intact points out that neither the policy nor the legislation requires any paperwork for the insured to submit in order to effect the cancellation. Intact submits that such requirement would conflict with the spirit of consumer protection that is evidenced by Section 1.1.1 of the OAP-1, which clearly places no restriction on an insured’s ability to cancel the policy.

Intact submits that the activity that occurred subsequent to July 19, 2020 at 8:19 a.m. when the insured requested her policy to be cancelled was simply paperwork to finalize the cancellation. The paperwork was not needed to effect a cancellation but only to refund a premium if appropriate and to effect the necessary paperwork for both the broker and insurer to reflect the cancellation period.

Intact also points out that as of July 19, 2020 the insured had sold her car and therefore she had no vehicle to insure.

Lastly, Intact states that SS did not report the incident involving her daughter to Intact between July 19 and August 5, 2020.

Intact submits some case law to support their position. Intact submits that these cases and particularly the decision of Justice Holland in *Baptist Convention of Ontario and Quebec v. Hartford Fire Insurance Company* 1978 CarswellOnt 1496 stands for the proposition that once an insured requests that a policy be cancelled that the subsequent paperwork to effect the final closing of the cancellation does not relate to the date of cancellation. The paperwork is simply a procedure to be adopted to effect the final closing and the cancellation itself is effective when the insured makes the request.

Analysis and Decision:

Having reviewed all the facts, I agree with the submissions on behalf of Intact.

Neither the Respondent nor the Applicant were able to point to any provision within the OAP-1, the *Insurance Act*, or its Regulations that specified any conditions that are attached to an insured’s cancellation of the policy.

Section 1.7.1 of the OAP-1 is quite clear. It tells the insured that they can cancel their policy at any time by “advising us”. There is nothing in the wording of 1.7.1 that says that some paperwork must be completed or any forms or documents done in order to effect that cancellation. All the insured has to do is “advise”.

In this case, the policy holder clearly advised BrokerLink at 8:19 a.m. on July 19, 2020 to cancel her policy “as soon as possible from today”. That in my view clearly constitutes the policy holder advising the insurer to cancel the policy. The subsequent paperwork sent by BrokerLink and specifically the cancellation form was merely paperwork to complete the cancellation. This conclusion is supported by the email sent by BrokerLink and its cancellation form. On July 20, 2020, BrokerLink advises the policy holder that the cancellation form needs to be signed in order to cancel the policy “effective July 19, 2020”. The email does not say that the policy will be cancelled once the cancellation form is signed but in fact confirms that in effect the policy is cancelled as of July 19 but paperwork needs to be done as a matter of format.

The cancellation form itself clearly referenced a cancellation date of July 19, 2020 and the documents sent by Intact/Jevco clearly indicates that the effective date of cancellation is July 19th.

I do not agree with Security that this in essence a retroactive cancellation of the policy. Rather, it is simply providing paperwork to effect the cancellation as of the time the insured requested it, which was July 19th.

This conclusion is supported by the Authorities submitted by Intact. I carefully reviewed the decision of Justice Holland in the *Baptist Convention of Ontario and Quebec v. Hartford Fire Insurance Company* (supra). While that case involved a fire policy, the review of the case indicates that as with the standard automobile policy there was no provision in the fire policy that set out any specific requirements for an insured to cancel their fire policy. According to the decision, Statutory Condition 5(1)(b) allowed the insured to cancel “at any time upon request”. It could also be cancelled by mutual agreement.

One of the insurers in that case argued, as indeed Security did here, that the cancellation was not effective at the time the insured made the request but only when the paperwork had been completed and the cancelled policy had been physically delivered to the insurer.

The Defendant submitted, as does Intact here, that the policy in fact was cancelled as soon as the insured made the request to the company’s agent. Justice Holland agreed with the Defendant. He concluded that there was a proper request made by the insured to cancel the policy to a person authorized to accept that cancellation. With respect to the paperwork he stated:

“The paperwork if I may so describe it, dealing with the procedure to be adopted to effect the final closing of the matter did not relate, in my opinion, to the date of the cancellation”.

A similar conclusion was reached in a British Columbia decision from their county court in the case of *Tomeson Saunders Whitehead LTD. V. Smith et al* [1985] I.L.R. 1-1890. A similar issue was in dispute in that case. The Defendants had verbally instructed the Plaintiff to cancel the policy

on July 23, 1982 and took out a new policy with another company on August 1, 1982. The Notice of Cancellation was given on August 4 by writing. The Plaintiff claimed that the cancellation was not valid, as the Defendants did not return the policy of insurance to it and without it being returned the cancellation was not effective. The court disagreed and concluded that the Notice of Cancellation given on July 23 was effective and all that remained was “the paperwork”.

Therefore, based on the wording of Section 1.7.1 of the OAP-1 and the case law noted above, I find that the Intact/Jevco policy was cancelled by the policyholder on July 19, 2020 when she advised her broker to cancel the policy as soon as possible: today. I do not find that the later paperwork results in the policy being cancelled on a retroactive basis. The paperwork is simply, as Justice Holland pointed out, the procedure that needs to be done to complete the closing of the matter but does not relate to the actual date of cancellation.

Therefore, I find that Security National Insurance Company is the priority insurer with respect to the claim for Statutory Accident Benefits on behalf of the claimant arising out of the accident on July 19, 2020 on the basis that the Intact policy was not valid and active on the date of the motor vehicle accident.

Award:

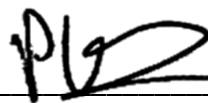
Security National Insurance Company is the priority insurer to adjust and fund the Accident Benefits claim of the claimant in relation to the motor vehicle accident that occurred on or about July 19, 2020.

Costs:

Paragraph 11 of the Arbitration Agreement provides that the costs of the Arbitration including the Arbitrator’s fees and expenses is to be borne by the unsuccessful party. In this case that is Security National Insurance Company and I so Order that Security cover the costs noted above.

As to the costs of Intact, in relation to their legal fees and any disbursements, I leave that up to the parties to reach an agreement on. If they are unable to reach an agreement with respect to who is to pay costs and/or the amount of those costs then a further pre-hearing can be scheduled to set down a costs hearing. Similarly, if there are any offers to settle that should be considered in terms of an Award of costs that can also be dealt with at the costs hearing.

DATED THIS 15th day of August, 2022 at Toronto.



Arbitrator Philippa G. Samworth
DUTTON BROCK LLP