

**IN THE MATTER OF THE *INSURANCE ACT*,  
R.S.O 1990, C 1.8 SECTION 268 AND  
O.REG 283/95 MADE UNDER THE *INSURANCE ACT***

**AND IN THE MATTER OF AN ARBITRATION**

**BETWEEN**

**VERRASURE INSURANCE COMPANY**

and

**THE MOTOR VEHICLE ACCIDENT CLAIMS FUND**

**DECISION**

**COUNSEL**

Daniel Strigberger counsel for Onlia the Applicant (hereafter referred to as Verasure).

Mark MacNeill counsel for the Motor Vehicle Accident Claims Fund (herein after called MVAF)

**BACKGROUND**

This matter comes before me in the context of a priority dispute between Verrasure and Motor Vehicle Accident Claims Fund in accordance with section 268 of the *Insurance Act* RSO 1980, c1.8 iii.9 and Ontario Regulation 283/95 as amended.

In this particular case the dispute is between Verrasure and MVACF as to who stands in priority to pay statutory accident benefits to the claimant who was involved in a motor vehicle accident on December 9, 2022.

**INTRODUCTION**

On December 9, 2022 the claimant was a pedestrian when she was struck by a car that was allegedly insured by Verasure. The claimant did not have access to any other insurance. She was not a named insured on any policy or a listed driver. She was not dependent on anyone. She did not have a spouse. Further, she did not have regular use of any vehicle.

With respect to the striking vehicle Verasure takes the position that their policy was properly cancelled on October 1, 2022 for non payment.

If the Verasure policy was cancelled prior to the date of loss then priority would fall to the MCVAF as the “payer of last resort”.

## PROCEEDINGS

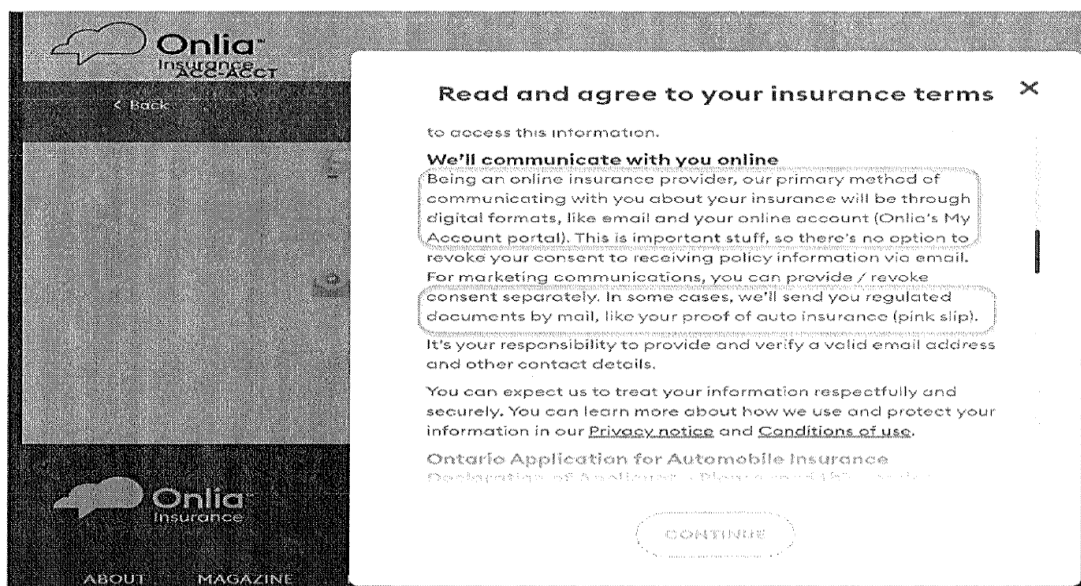
As noted, I was appointed arbitrator in this matter on consent. A number of pre-hearings were held. The matter then proceeded to a written hearing where the parties submitted Factums, Document Briefs and Books of Authority. The documents included various e-mail communications between Onlia and their insured, a copy of the cancellation notice and various underwriting documents. There was also an examination under oath of a representative of Verassure that took place on April 1, 2024. In addition, the parties provided a copy of the Police Report, OCF-1 and Notice to Applicant of Dispute Between Insurers dated January 26, 2023. Finally, the parties made oral submissions to supplement and clarify their written materials.

## FACTS

Onlia Agency Inc. is an online distributor of auto insurance policies. These policies are underwritten by Verassure in Ontario. The company's digital platform is available to users at Onlia.ca.

If one goes to the Onlia website a user can obtain a quote for automobile insurance. If they then decide to proceed to purchase an auto policy, they must complete several questions on the online platform.

Before the application process can be finalized and a policy issued all applicant's are required to review and agree to various terms. This document that has been referred to in this hearing as a consent form. Broadly it has an applicant agreeing to receive communications about their policy by digital means. The specific wording of that "consent" is key to this arbitration. It is reproduced below.



Notably this document confirms that the primary method for communication between the insured and Onlia will be through a digital format like e-mail and/or the online account known as "Onlia's My Account Portal".

On July 11, 2020 the owner of the vehicle that struck the claimant went to Onlia.ca and completed an online application form.

After having got through all the various questions, this gentleman successfully obtained an auto policy with Verasure bearing policy no. 1010604.00002. There is no disagreement that this policy insured the Sentra which was the vehicle involved in the accident. Included in the documents submitted as part of this arbitration were the "underwriting documents". This showed a history of various communications between Onlia and their insured. The document indicates the nature of the document, the date it was delivered and then how it was delivered. This document shows numerous entries between July 11, 2020 and October 3, 2022 whereby the insured received e-mail communications. In addition, the document would indicate whether there was an attachment although it did not describe the attachment. It would also indicate whether the message has been successfully sent. In some occasions there was a notation "The recipient has clicked on a link in the message" or "The message has been open/read by the recipient".

These documents show that on or around August 21, 2020 a payment reminder was sent to the insured. On September 18, 2020 a cancellation statement letter was sent to the insured. There were some further follow-up bill payment reminders and then on November 20, 2020 a cancellation statement letter sent. The underwriting notes also show that on December 1, 2020 the policy was cancelled. However, it appears that the insured reinstated his policy as the document showed he continued to be covered. In fact, his policy with Verrasure ran from July of 2020 until the alleged cancellation in October of 2022.

In or around September of 2022 the insured premiums again fell into arrears. Initially, a bill of first reminder was sent via e-mail on September 3, 2022. This advises the claimant that the policy will be cancelled September 30, 2022. Onlia does not rely on that cancellation letter.

Onlia relies on a subsequent letter dated September 13, 2022. This was also sent via e-mail and the status is noted as "The message has been successfully sent." There is no indication in the underwriting file or elsewhere as to whether the claimant clicked on the link, opened the e-mail or read the letter.

The letter advises that the claimant's policy is being cancelled due to non-payment of premiums. The relevant portions are set out below:

"All active policies under your account will be cancelled on October 1, 2022 at 12:01 a.m., unless the full amount due, being \$532.45, is paid or delivered not later than 12:00 noon on September 30, 2022.

Payment can be made in cash, by money order, or certified cheque payable to the order of Onlia Agency Inc. and delivered to our address: 351 King Street East, Suite 1801, Toronto, Ontario M5A 0L6."

There is no dispute that the insured never paid the outstanding premiums. The policy was then terminated for non-payment on October 1, 2022. The underwriting documents show that on October 3, 2022 at 13:58 an account notification, confirmation of cancellation for non-payment was sent to the insured's e-mail. It is indicated that that message was successfully sent.

According to the EUO of the representative of Verasure the "consent" document is part of the binding process that an applicant has to complete before they can purchase insurance. While they are online completing the application, a window will pop up and they will have to read it and then press continue. She claimed that the document indicates that the insured consents to communicating and receiving information via e-mail. She states:

"By reading this, the insured should anticipate and expect that their policy and communications will be done electronically as they are buying a policy with an online company."

The representative of Verasure did confirm that there was a secondary method of communication that would be through mail. She confirmed that pink slips would be mailed to the last known address on file.

When asked if an insured could revoke their consent to receiving documents via e-mail she advised that they were not allowed to revoke their consent. They could only opt out of being contacted for marketing communications. They were not able to unsubscribe from receiving digital communications about their policies.

## **ISSUE**

The issue in this case revolves around whether or not the Verasure insured "consented" to have a termination notice with respect to his policy delivered via electronic means.

If there was no consent, whether implied or express, Verasure acknowledges that the policy will not have been compliant with the statutory conditions. If I find that the insured consented to receive a termination notice by electronic means then Verasure will have complied with the statutory conditions and the policy would have been properly terminated leaving MVACF to having to handle the accident benefits claim.

## **SUBMISSIONS OF THE PARTIES**

Before turning to the submissions of the parties, it is important to set out the relevant Statutory conditions that were in existence at the time the Verasure policy was entered into and at the

time of the notice of termination.

Section 235 of the *Insurance Act*, R.S.O. 1990 c. I.8 provides as follows:

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

The rules with respect to how to effect proper notice are set out in subs. 11 of the Statutory Conditions - Automobile Insurance Ontario Regulation 777/93. The relevant portions of s. 11 which went into force by way of an amendment effective January 1, 2022 are set out below:

"Termination

11(1) Subject to section 12 of the *Compulsory Automobile Insurance Act* and s. 237 and s. 238 of the *Insurance Act*, the insurer may give to the insured a notice of termination of the contract by,

(a) registered mail;

(b) personal delivery;

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

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

The amendment that went into effect in January of 2022 was to permit a notice of termination to be sent electronically "if the insured consents".

Prior to that date the only option to serve the notice of termination are set out in paragraphs (a) through (c) above.

Also relevant is s. 11, 5.1(b) which provides that where the insured gets notice by electronic means it will be deemed to have been received the day after the notice is sent.

Section 12(2)4 of the Regulation provides as follows:

"Written notice may be given to the insured named in this contract in the following ways:

4. It may be delivered by electronic means if the insured consents to the delivery by electronic means."

### **Submissions of Verassure**

Verassure acknowledges that prior to January 1, 2022 statutory conditions 11 and 12 only authorized an insurer to give an insured notice with respect to termination by either registered mail or personal delivery.

Verassure points to the fact that these two statutory conditions were amended in 2022 during COVID. Verassure suggests that these amendments were critical to bring the regulations relating to auto insurance to reflect the fact that many insurers now provided auto policies through online formats. Thus these amendments expanded the ways an insurer could send notice to an insured consistent with an insurer like Verassure which had an online platform only.

Verassure made reference to the government's "Putting Drivers First Blueprint" that was announced in the 2019 Ontario budget. The auto insurance policy unit of the financial institutions policy branch of the Minister of Finance released a proposal to stakeholders commenting on these proposed amendments, one of which included the use of electronic communications. The document indicated that the purpose of these amendments was to facilitate electronic communications and make it faster and simpler for people and insurance companies to do business. The document made the following comment:

"This includes clarifying that insurance companies can use electronic communications and e-commerce, except for policy terminations, when interacting with their customers."

Verassure acknowledges that this initial proposal was not going to apply to policy terminations. It was not until the auto insurance policy unit released a second proposal on February 11, 2021 (during COVID) that the revised amendments also included the right to send termination notices by electronic means. Again, this proposal highlighted that the goal was "to enable digital insurers to operate in Ontario." This was then the lead up to the amendments allowing the notice of termination to be served electronically with consent that went into force on January 1, 2022.

Verassure therefore submits that any interpretation of the amendment to s. 11 of the Regulation must be done with the clear policy statements of the legislature in mind. Verassure submits that any decision must permit a digital insurer like Verassure to terminate a policy for non-payment without introducing additional steps or conditions that could counteract the purpose of these amendments.

It is Verassure's position that when the insured in this case clicked on the online "I accept conditions" when he entered into his policy in July of 2020 that he provided either express or implied consent to send notices electronically including notices of termination.

Verassure points out that neither the statutory condition 11 nor s. 235 of the *Insurance Act* defines the word "consent". Verassure says that there is nothing in the wording of the relevant legislation that says the consent must be explicit.

Verassure submits that the insured's consent to receive all communications including notices of cancellation electronically is inherent from the underwriting history shown over the course of 2020 through to October of 2022 including the earlier cancellation in September of 2020.

Verassure points to the fact that the underwriting transactions show numerous digital communications between Onlia and the insured over 15 months including notices about bill payments, renewals, payment reminders and the earlier cancellation. Verassure submits from this, consent can clearly be inferred even if I conclude that the consent was not explicit. Verassure therefore submits that it complied with the statutory requirements and that it had its insured's explicit and implied consent to accept notices of termination digitally and therefore the policy was validly terminated on October 1, 2022.

Verassure also argues that s. 235 of the *Insurance Act* is permissive in terms of the use of the word "may". Section 235 says that an insurer may deliver a notice of termination by electronic means. Further, there is nothing in s. 235 that says it has to be with consent. That only arises under the statutory conditions. Further, the statutory condition itself does not indicate the nature of consent that is required.

As to the fact that the right to serve a notice of termination electronically came into place after the policy was entered into, Verassure's position is that there was no provision made at the time of the amendment for any transition. There is no wording in the *Insurance Act* or the Regulation itself as to how the new amendment to s. 11 of the Regulation will apply. This, Verassure argues, means that the statutory condition is retroactive and would apply to whatever policy is in force and effect at the time it comes out and accordingly would apply retroactively for this particular insured. In other words, the insured in this case is deemed to have retroactively consented to receiving notices of terminations electronically which would be consistent with his agreement to receive all other policy information from Verassure electronically.

Verassure also relies on the *Electronic Commerce Act 2000*, S.O. 2000 c. 17, s. 3.

Section 3 provides that nothing in the Act requires a person who uses, provides or accepts information to accept it in an electronic form unless they provide their consent. However, under s. 3(2) there is reference to implied consent. The section states:

"Consent for the purpose of subsection (1) may be inferred from a person's conduct if there are reasonable grounds to believe that the consent is genuine and is relevant to the information or document.:

### **Submissions of MVACF**

MVACF's position is that the document that is relied upon by Verassure to establish the insured's consent to receive the notice of termination electronically would have been agreed to by the claimant on July 11, 2020 and at that time the *Insurance Act* and its regulations specifically did

not permit a notice of termination to be delivered by electronic means.

MVACF further submits that the terms and conditions document itself does not reference any consent to delivery of a notice of termination by electronic means. The document they submit is quite vague. The document suggests that the primary method of communicating between Onlia and the insurer will be through digital formats like e-mail. However, it goes on to say "In some cases we will send you regulated documents by mail, like your proof of auto insurance (pink slip)."

MVACF submits there is nothing in that document that references a notice of termination and how it will be served. There is nothing in the document where the claimant specifically says, for example, "I consent to receiving all communications via e-mail." It simply advises the insured that they will be receiving communications online and others via mail. This, MVACF submits, cannot constitute a clear consent to receive any specific communications by e-mail, let alone a notice of termination. The closest the document comes to setting out some sort of consent format is in the following wording: "This is important stuff, so there is no option to revoke your consent to receiving policy information via e-mail."

MVACF points to other portions of the terms and conditions where express language is used in order to reach an agreement with the insured such as "I agree to" or "I authorize you to collect", etc. MVACF's position is that this document lacks any clarity with respect to what is being consented to in terms of online information versus regular mail or other means of delivery of information and specifically makes no reference to notices of termination which at the time this policy was entered into had to be delivered by registered mail, personal delivery or pre-paid courier.

MVACF specifically acknowledges that it does not dispute the ability of an insurer such as Verassure to operate as a digital insurer and to provide notices of termination electronically subsequent to January 1, 2022. MVACF submits however that it must be done properly and in accordance with the legislation and that that was not done in this case.

MVACF asks "How can Onlia say that their insured consented to the insurer doing something back in January of 2020 that they were not permitted to do?" The Fund submits that there could have been no meeting of the minds.

MVACF submits that there is clearly no evidence of any express consent being provided subsequent to January 1, 2022. There is no evidence that Onlia sent out any new information to the insured via e-mail through their online platform to secure consent to this new legislative change. Absent any consent subsequent to January 1, 2022 MVACF submits that Verassure's policy simply is not properly cancelled.

MVACF also rejects Verassure's argument with respect to implied consent.

MVACF references a number of cases dealing with whether or not a cancellation notice is



sufficient in order to establish a cancellation in accordance with the Regulation.

MVACF points out that a number of arbitrators and judges have taken the position that a rigorous standard must be imposed on insurers when they are trying to cancel policies for non-payment of premiums. The case law is clear that the requirements of s. 11 must be strictly complied with for notice to be valid (see *Dominion of Canada General Insurance Company v. Belair Direct Insurance*, 2019 Carswell ON 1491).

MVACF also points to the decision in *Gallagher v. Todish et al*, 2023 ONSC 4894 wherein Her Honour Justice J. Cameron comments (see paragraph 20):

"Courts have emphasized that the power of cancellation must be strictly exercised. The right of an automobile insurer to terminate a contract is severely restricted. The statutory conditions must be strictly complied with. Failure to comply with them keeps them bound by the policy."

MVACF points to a number of arbitration decisions where policy cancellations have been found not to meet the requirements of the Regulation because an address has not been given in the notice, the notice has not advised the claimant that they can pay the amount outstanding by cash or there has not been an identification with any clarity as to what the administrative fee is.

MVACF therefore submits that even if there were an argument to be made that there had been implied consent in this case, that that is not how I should interpret the requirement for the insured to provide consent. As this Regulation is to be strictly complied with then similarly there must be explicit and clear consent by the insured to receive the documents electronically in order for the notice of termination to have been properly sent.

## **DECISION AND ANALYSIS**

In this case I agree with the submissions of MVACF and I conclude that the Verasure notice of termination was not properly sent as the insurer did not have the consent of its insured to receive a notice of cancellation by electronic means.

A careful review of the insurance terms that Verasure says constitutes the consent to receive insurance documents digitally including the notice of communication suggests it is a very poorly drafted document, vague and lacks any specificity with respect to what documents the potential insured is agreeing to receive online and what he might receive via mail.

At the time that this policy was entered into the *Insurance Act* and its Regulations clearly prohibited a notice of termination to be served electronically with or without the consent of the insured. In Verasure's document the insured is told that as Onlia is an online insurance company provider, that "our primary method" of communicating with you about your insurance will be through digital format. It does not make any reference in that paragraph with respect to what types of communication will be through the digital format. I find that there is nothing in this

document that would set out clearly what the insured is actually consenting to. While the document advises the proposed insured that there is no option to revoke their consent to receiving policy information via e-mail, there is no similar provision in the document setting out what the insured is actually consenting to. All a potential insured knows is that Onlia's primary method of communication with them about their insurance will be digitally.

They are then told "in some cases" we will send you regulated documents by mail like your proof of auto insurance (pink slip). This is a clear recognition by Onlia that the *Insurance Act* prohibited certain documents to be delivered electronically. However, the document does not go on to say in what other cases will documents be sent by mail. This despite the fact that at that time the notice of termination could not be served electronically. One would have thought this document would have included in the list of regulated documents that might be sent by email to include only the notice of termination. Overall, this document is vague and in my view cannot be relied upon to establish what exactly the insured was consenting to in terms of receiving specific documents electronically.

On top of that, at the time this document was agreed upon by this particular insured there was no right for Verassure to serve a notice of termination by electronic means. I agree with MVACF that the insured could not be found to have retroactively consented to receiving a notice of termination electronically when at the time he agreed to the terms and conditions that there was no right to serve that document electronically.

I have carefully reviewed the case law provided by MVACF and I feel bound to follow my fellow arbitrators as well as the court decisions that are unequivocal in requiring an insurer to strictly comply with s. 11 of the Regulation when providing the notice of termination. If a notice of termination can be found to not meet the requirements of s. 11 by simply not including the words "and cash", then clearly the notice of termination cannot be found to be valid if the insured's consent was not clearly sought and provided to receive the notice of termination electronically. In my view, this interpretation is consistent with the object of the Regulation and the case law that has interpreted it to date. If the notice of termination does not strictly comply with s. 11 of the Regulation, then the insurance contract remains in force.

While I agree with Verassure that neither the statutory condition or the *Insurance Act* defines the word consent, I do not agree with Verassure that the consent for delivery by electronic means must not be explicit consent. In light of the case law interpreting the requirement for strict compliance with s. 11, I find that an insured must provide explicit consent to receive a notice of termination electronically.

Even if I am wrong with respect to that I do not find in this case there is evidence of implied consent to receive a notice of termination electronically. While the claimant did receive a notice of termination electronically in September of 2020, that was at a time when there was no right of the insurer to serve that notice electronically. There was no evidence before me as to whether the insured also received that notice of termination as required by s. 11 of the Regulation. The fact that the insured received various communications about his policy online in accordance with

the Onlia policy does not in my view suggest that the claimant specifically turned his mind to accepting a notice of termination via electronic means, particularly when from July of 2020 to January 1, 2022 there was no right of the insurer to serve the notice of termination electronically.

I therefore find that the insured did not provide explicit consent, retroactive consent or implied consent to receive a notice of termination by electronic means.

With respect to Verasure's argument concerning s. 235 of the *Insurance Act* I find that the permissive use of the word "may" in that section refers to the choice of delivery method not to suggest a more permissive approach to complying with the delivery requirements set out in s. 11. I find that the strict requirements set out in s. 11 with respect to the contents of the letter applies equally to the delivery method.

Therefore, the Verasure policy was not properly cancelled on the date of loss of December 9, 2022 and Verasure remains responsible for paying statutory accident benefits to the claimant.

### **COSTS**

Subject to any submissions from the parties as MVACF was entirely successful in this matter costs of the arbitration including any disbursements are payable by Onlia and Onlia is also responsible for paying the legal and disbursements of MVACF arising out of this arbitration.

DATED THIS 9<sup>th</sup> day of May, 2025 at Toronto.



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