IN THE MATTER OF SECTION 268(2) OF THE *INSURANCE ACT,* R.S.O. 1990, AND *ONTARIO REGULATION 283/95, AS AMENDED BY REGULATION 38/10*

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

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

DEFINITY INSURANCE COMPANY

Applicant

- and -

AVIVA INSURANCE COMPANY

Respondent

DECISION

COUNSEL:

Eric Grossman, Matthew Owen and Alexander Dos Reis for the Applicant, Definity

Hussein Pirani and Andy Smith for the Respondent, Aviva

BACKGROUND:

1. Patrick C was driving an uninsured motorcycle when it collided with a Hyundai Elantra on August 6, 2024. The driver of the Hyundai was SD. Mr. D was operating the vehicle as a rideshare vehicle, through the Lyft application, at the time of the accident.

2. Patrick C sustained serious injuries as a result of the accident. He has been declared to be "catastrophically impaired" under the *SABS.*

3. Mr. D was insured under a policy issued by Definity Insurance Company ("Definity") that covered the Hyundai for personal, non-commercial use at the time of the accident. The Claimant submitted an application for payment of benefits under the *SABS* to Definity, and they have paid benefits to him and on his behalf.

4. Aviva Insurance Company ("Aviva") provided coverage to Mr. D, the driver of the Hyundai, while the Lyft application was engaged, pursuant to a standard OAP 1 automobile policy. The policy includes an APCF 6T Endorsement titled "Coverage for Ridesharing Endorsement".
Both Aviva and Definity acknowledge that Mr. C would be able to claim accident benefits from them under section 268(2)2(iii) of the *Insurance Act*, and that benefits are not available to him under any other policy.

5. Definity contends that Aviva is in higher priority to pay Mr. C's claim, as it was the "insurer" of the Hyundai Elantra at the time of the accident while it was being operated under the Lyft application. Its argument is based on the wording of Aviva's policy and the Rideshare Endorsement. Aviva claims that this endorsement only provides primary coverage to the driver of the vehicle while it is being operated under the Lyft app, and does not extend this coverage to passengers involved in an accident with the vehicle, such as the Claimant.

6. Both parties filed thorough written submissions outlining their positions on the issue raised, and made focused oral submissions at a hearing convened via videoconference.

ISSUE:

1. Which insurer is in higher priority to pay Mr. C's claim, Definity or Aviva ?

The parties agree that this question boils down to whether the Aviva policy and endorsement that provides primary coverage to a "rideshare driver" while the Lyft application is engaged also provides primary coverage to a passenger of another vehicle that is involved in an accident with the rideshare vehicle.

RESULT:

1. Aviva is in higher priority to pay Mr. C's claim, as its policy provided primary coverage for Accident Benefits to the automobile driven by Mr. D while the Lyft application was engaged.

EVIDENCE:

8. The parties filed a Statement of Agreed Facts setting out the basic facts outlined above. Various documents were also filed, including the automobile policies issued by Aviva and Definity, and the APCF 6T Ridesharing Endorsement attached to the Aviva policy. Bulletin A-12/16, issued by the Financial Services Commission of Ontario in July 2016 relating to insurance issues with 'ridesharing', was also filed.

9. The interpretation of these documents is central to this case. I will summarise the relevant parts below.

Definity's policy

10. Definity issued a standard OAP 1 policy to Mr. D providing coverage to the Hyundai Elantra that he was driving at the time of the accident. There is no dispute that it was a valid policy in effect at that time.

11. As stated above, Definity acknowledges that it was an "insurer" of the Hyundai pursuant to section 268(2)2(iii) of the *Act* at the time of the accident.

Aviva's policy

12. The Certificate of Insurance for the Aviva policy names "Lyft Canada Inc." as the named insured. Schedule 1 to the policy provides that any Rideshare Drivers and Rideshare Vehicle Owners are additional named insureds while the Lyft application is in the "pre-acceptance" or "post-acceptance" period. These two periods essentially cover the period when the application has been engaged and is in use for commercial purposes. The parties agree that the accident in question took place during the "post acceptance period", which begins once the rideshare driver accepts a ride request through the digital Lyft network.

13. The first line of the Certificate states that it is "proof of a contract of insurance between the Named Insured and the insurer, subject in all respects to the Ontario Automobile Policy (OAP 1)". It also states that the contract provides the coverage outlined in the Certificate for "a specific automobile" if a premium amount is shown. Various types of coverage are shown on the Certificate, including Accident Benefits. The description under the category titled "Accident Benefits" says "as stated in Section 4 of the Policy".

14. Page 3 of the Certificate provides a brief explanation of the insurance coverages outlined in the document. Under the heading of "Accident Benefits", it states that the coverage "provides benefits that you and other insured persons are entitled to receive if injured or killed in an automobile accident".

Section 4 of the OAP 1 policy

The relevant part of this provision states:

> **Accident Benefits Coverage**
>
> *You only have a particular coverage for a specific automobile if your Certificate of Automobile Insurance shows a premium for it or shows the coverage is provided at no cost.*

4.1 Who is Covered

For the purposes of Section 4, insured persons are defined in the Statutory Accident Benefits Schedule. In addition, insured persons also include any person who is injured or killed in an automobile accident involving the automobile and is not the named insured, or the spouse or dependant of a named insured, under any other motor vehicle liability policy, and is not covered under the policy of an automobile in which they were an occupant or which struck them.

4.2 Types and Benefits

The details of the Accident Benefits Coverage are set out in the Statutory Accident Benefits Schedule of the Insurance Act (Ontario)*. This Section outlines the benefits that you and other insured persons may be entitled to receive if injured or killed in an automobile accident. If there is a difference between the interpretation of the wording in this Section and the interpretation of the wording in the Statutory Accident Benefits Schedule, the Statutory Accident Benefits Schedule*
prevails.

(emphasis in original)

15. I note that the *SABS* definition of an "insured person" includes "a person who is involved in an accident involving the insured automobile, if the accident occurs in Ontario".

APCF 6T Coverage for Ridesharing Endorsement – Aviva Policy

16. Section 1 of this document states that the purpose of this endorsement is to remove the "General Exclusion" in Section 1.8.1of the OAP 1 to permit the specified automobile to be used to carry passengers while the rideshare app is engaged. It states that primary coverage will be provided "for the automobile(s) as outlined in the Certificate of Automobile Insurance only while the automobile is used in the Pre-Acceptance Period and the Post-Acceptance Period".

17. Section 2 refers to the 'priority ladder' for payment of Accident Benefits in section 268 of the *Act.* It provides that the policy will respond to a claim made by the Rideshare Driver "prior to any other policy of which the Rideshare Driver is an insured or named insured" while the application is engaged.

The relevant sections of the endorsement are set out below:

APCF 6T - COVERAGE FOR RIDESHARING ENDORSEMENT

1. Purpose of This Change

This change is part of your policy. It removes one of the limitations in Section 1.8.1 of your policy, “General Exclusion”, to permit the automobile(s) to be used to carry passengers only in relation to the Pre-Acceptance period and the Post-Acceptance period.

2. What We Will Cover

We will provide primary coverage for the automobile(s) as outlined in the Certificate of Automobile Insurance (For Ridesharing-Ontario), only while the automobile is used in the Pre Acceptance Period and the Post-Acceptance Period, subject to Section 3 Limitation On Your Coverage and Section 4 What We Will Not Cover of this endorsement.

For greater clarity, for the purpose of determining the order in which to pay Statutory Accident Benefits as set out under s. 268 of the Insurance Act in respect of claims made for Statutory Accident Benefits by a Rideshare Driver, this policy shall respond prior to any other policy of which the Rideshare Driver is an insured or named insured, subject to section 4 What We Will Not Cover of this endorsement.

3. Limitation On Your Coverage

3.1 *It is a condition precedent to coverage under this endorsement for Collision AND Comprehensive that the same coverage be "in force"* at the time of loss on the Rideshare Vehicle Owner's Ontario Automobile Policy (OAP 1) or Ontario Garage Automobile Policy (OAP 4) insuring the automobile.*

4. What We Will Not Cover

*We will not cover the automobile(s) while used for any other purpose other than in the **Pre-Acceptance Period** or in the **Post-Acceptance Period.***

FSCO Bulletin A -12/16

18. The FSCO Bulletin issued by the Superintendent of Financial Services in July 2016 referenced above provides “interim approval” for a fleet policy issued by Intact Insurance that

provides coverage under the OAP 1 policy for private passenger vehicles using the "Uber application". The parties agree that the policy issued by Aviva to Lyft is identical to the Intact policy referred to in the Bulletin.

19. The Bulletin provides that the Intact fleet policy only provides coverage when the rideshare driver is logged into the Uber application, and that coverage under his or her personal owner's policy would apply at other times. It then provides that "primary insurance coverage is provided during the pre-acceptance period (i.e. from the moment a rideshare driver has logged into the Uber online-enabled application and is available to receive requests for passengers and before a request has been accepted)", including statutory Accident Benefits. The Bulletin also provides that the Intact policy provides "primary insurance coverage that includes statutory accident benefits" during the "post acceptance period", once a ride request has been received.

20. The Bulletin includes the following provision regarding the priority of payments for Accident Benefits:

> ***Priority of Payments for Accident Benefits***
> *For the purpose of determining liability to pay statutory accident benefits under section 268 of the Insurance Act, the Intact policy provides primary coverage and will respond to a claim for statutory accident benefits by a rideshare driver in priority to any other policy in respect of which the rideshare driver is an insured or a named insured.*
>
> *For passengers, pedestrians or other persons involved in accident with a rideshare vehicle, the applicable rules governing the liability of an insurer to pay statutory accident benefits are set out in section 268 of the Insurance Act.*

RELEVANT PROVISIONS:

The parties referred to the following statutory and regulatory provisions, which are relevant to the determination 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,

268.3 *(1) The Chief Executive Officer may issue guidelines on the interpretation and operation of the Statutory Accident Benefits Schedule or any provision of that Schedule.*

(2) Subject to section 268.2, a guideline shall be considered in any determination involving the interpretation of the Statutory Accident Benefits Schedule.

(2.1) Despite subsection (2), a guideline that is incorporated by reference into the Statutory Accident Benefits Schedule is binding.

Statutory Accident Benefits Schedule

1.*(1) In this Regulation,*

"insured person" means, in respect of a particular motor vehicle liability policy,

(a) the named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and a dependant of the named insured or of his or her spouse,

(i) if the named insured, specified driver, spouse or dependant is involved in an accident in or outside Ontario that involves the insured automobile or another automobile, or

(ii) if the named insured, specified driver, spouse or dependant is not involved in an accident but suffers psychological or mental injury as a result of an accident in or outside Ontario that results in

a physical injury to his or her spouse, child, grandchild, parent, grandparent, brother, sister, dependant or spouse's dependant,

(b) a person who is involved in an accident involving the insured automobile, if the accident occurs in Ontario,

PARTIES' ARGUMENTS:

21. The parties agree that the Claimant was not a named insured or listed driver on a policy at the time of the accident. He was also not a spouse or dependent of an insured, and was not provided with "regular use" of a vehicle at the time. They agree that he was an "occupant" of a vehicle that was involved in an accident with the Hyundai, and accordingly has recourse against "the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose" under section 268(2)2(iii) of the *Act*.

22. Both parties acknowledge that Definity and Aviva were both "insurers" of the Hyundai at the time of the accident, and that there is no tie-breaker provision that applies to section 268(2)2(iii). They agree that both policies accordingly need to be interpreted in order to determine which one is in higher priority.

Definity's submissions

23. Counsel for Definity contends that a review of the Aviva policy and Rideshare Endorsement makes it clear that that policy undertakes to provide primary coverage for Accident Benefits to someone in the Claimant's position, and that Aviva is accordingly in priority to pay Mr. C's claims. Counsel noted that Aviva's Certificate of Insurance provides that the policy is subject to the OAP 1, and that it provides coverage for Accident Benefits under section 4 of that document. Section 4.1 of the OAP 1 provides that this coverage is extended to "insured persons" as that term is defined in the *SABS,* which includes a person involved in an accident with the insured automobile, if the accident takes place in Ontario. Counsel states that the Claimant clearly falls within that definition.

24. Definity also highlights the fact that the Rideshare Endorsement to the Aviva policy explicitly states that it provides “primary coverage for the **automobile** as outlined in the Certificate of Insurance”. Counsel argues that this, combined with the provisions outlined above, expresses a contractual obligation to provide Accident Benefits coverage to all insured persons, as defined above, who are involved in an accident with the vehicle insured under its policy while the Lyft application is engaged. He contends that this is clearly expressed to be primary coverage, and that Aviva is therefore in higher priority to pay benefits to Mr. C.

25. Definity acknowledges that the Endorsement only specifies that the Aviva policy should respond prior to any other policy to Accident Benefits claims that are made by “Rideshare Drivers”. Counsel notes, however, that there is no exclusion or “carve out” in the endorsement stipulating that pedestrians or passengers in a vehicle involved in the accident should not be similarly treated. He contends that the fact that section 2 is silent on this point should not lead to the conclusion that it does not apply to those “insured persons” as well. He argued that the overall structure of Aviva’s policy suggests that a person in the Claimant’s position can access Accident Benefits under that policy, given the clear expression of primary coverage in the endorsement for the automobile while it is being used as a rideshare vehicle.

26. Counsel cited Arbitrator Cooper’s finding in *Northbridge Insurance Company v. Intact Insurance Company* (May 15, 2018) in support of his position. He noted that Arbitrator Cooper determined, in the context of similar facts, that a plain reading of the Endorsement (issued by Intact, but same wording as Aviva’s in this case) leads to the conclusion that the coverage provided by Intact was primary. He also noted that Arbitrator Cooper referred to the “unambiguous language” in section 2 of the Endorsement, stating that primary coverage is provided for the “automobile” while the Uber app is engaged, and that there is no language suggesting that passengers in a vehicle involved in the accident do not have access to Accident Benefits under the Intact policy.

27. Mr. Grossman suggested that the excerpt from the FSCO Bulletin cited above contains inconsistent language, as it states that the priority rules in section 268 should be followed for pedestrians and passengers claiming Accident Benefits, but also states that coverage under the Rideshare Endorsement is primary. He highlighted Arbitrator Cooper's finding that the Bulletin is not binding on arbitrators determining priority disputes, and that it does not alter the plain language of the Endorsement and the phrase "primary coverage". He submitted that I should not consider this document in my analysis.

28. Counsel for Definity contends that there is no ambiguity in the relevant wording in Aviva's policy and Rideshare Endorsement, and that the meaning of the words and terms used is clear. He stated, however, that if I do find that the provisions are ambiguous, the rules of statutory interpretation require that the parties' expectations should be considered. He submitted that the parties in this case would have considered the risks posed by Mr. D's use of the Hyundai for commercial use pursuant to the Lyft application, whereas his personal policy with Definity contains an exclusion for commercial use. He submitted that this should lead to a finding that Aviva's policy is in higher priority to pay the claim.

29. Counsel also submitted that if I accept Aviva's argument that the Endorsement provides primary coverage to the Rideshare Driver but not to a passenger in an 'involved vehicle', despite the grant of primary coverage to the automobile specified in the Aviva policy, that would suggest that the language of the policy is inconsistent. He contended that in that case, the grant of coverage should be interpreted broadly, and interpreted *contra preferentum* against Aviva, which would lead to the same result.

Aviva's submissions

30. Counsel for Aviva accepts that his client would have priority for the Rideshare Driver's claim under its policy, but disputes that this "super priority" extends to pedestrians, passengers or other people involved in an accident with a vehicle that it insures.

31. Mr. Smith submitted that the Rideshare Endorsement to Aviva's policy is the key document to be interpreted, as it overrides the OAP 1 exclusion for commercial use of a vehicle, and also alters how priority for Accident Benefits payments should work. He noted that section 2 of that document states "for greater clarity, for the purpose of determining the order in which to pay SABS as set out under s 268 of the *Insurance Act* in respect of claims made…by a Rideshare Driver, this policy shall respond prior to any other policy of which the Rideshare Driver is an insured or named insured…". Counsel argues that this clearly suggests that the rules to determine the priority for payment of Accident Benefits claimed by passengers or anyone else involved in an accident with the specified vehicle, even when it is being used as a "rideshare vehicle", must be determined in accordance with section 268(2).

32. Counsel contends that Definity's position requires a "reading in" of words that simply do not appear in the Rideshare Endorsement. He submits that explicit language is required to override the priority ladder set out in section 268 of the *Act*. He also submits that the language of the Endorsement is clear and unambiguous, and supports the interpretation set out above.

33. Aviva argues that the section addressing "Priority of Payments for Accident Benefits" in the FSCO Bulletin, referred to above, is consistent with its position. Counsel highlighted the statement excerpted above that provides that the rules governing which insurer should pay benefits set out in section 268 of the *Act* apply for passengers, pedestrians or other persons involved in an accident with a rideshare vehicle. Mr. Smith acknowledged that the Bulletin is not binding upon me, but submitted that it constitutes guidance from the government regarding how this provision should be interpreted, and should not be ignored. He noted that section 268.3(2) of the *Act* provides that any guideline issued by the Chief Executive Officer should be considered in interpreting the SABS.

34. Counsel for Aviva also referred to the *Northbridge v Intact, supra,* decision relied on by Definity, and submitted that it was not binding on me. He suggested that it was wrongly decided and that the Arbitrator failed to consider the case law regarding the interpretation of

unambiguous policies. He noted that the Supreme Court of Canada found in *Ledcor Construction Ltd. V. Northbridge Indemnity Insurance Co.* [2016] 2 S.C.R. 23 and *Co-operators Life Insurance Co. v. Gibbens* [2009] 3 S.C.R. 605 that the words of an insurance contract must be given their "ordinary and grammatical meaning", and submitted that while the Rideshare Endorsement explicitly extends "super priority" to the Rideshare Driver, this is not extended to passengers, pedestrians or other persons involved in the accident. Counsel argues that if the words of the contract are given their "ordinary and grammatical meaning", Mr. C would not be able to access Accident Benefits under the Aviva policy, and urged me to reach this conclusion.

Definity – Reply submissions

35. With respect to Aviva's arguments regarding the FSCO Bulletin, counsel for Definity notes that section 268.3 of the Act refers to "guidelines" issued rather than "bulletins", and that the dispute in this case does not center on the interpretation of the *SABS*. Counsel also noted that the Bulletin itself contains a footnote that states "this overview is intended as a summary for reference purposes only" and provides that if there is "any inconsistency between this summary and the actual wording of the approved endorsement forms it should be resolved in favour of the wording contained in the approved forms".

ANALYSIS & REASONS:

36. The parties agree that both Definity and Aviva qualify as "insurers" under section 268(2)2(iii) of the *Act* at the time of the accident, and that Mr. C, as a passenger of the motorcycle that was involved in an accident with the Hyundai Elantra, is accordingly able to claim Accident Benefits under either policy. The Act does not provide a 'tie-breaker' mechanism for that section, as appear in other parts of section 268. The parties accordingly agree that I must interpret each policy to determine which one is in priority to respond.

37. Mr. C applied to Definity for benefits. He has been declared to be "catastrophically impaired" and Definity has paid out a large sum in response to his many claims for benefits. It contends that Aviva is in higher priority to pay, as its policy provides coverage for Accident

Benefits to the "specified automobile", and the Rideshare Endorsement provides primary coverage for Accident Benefits while the Lyft application is engaged.

38. Definity highlights the reference to section 4 of the OAP 1 in Aviva's Certificate of Insurance. That provision states that coverage for Accident Benefits applies to "insured persons" as defined in the *SABS*. Counsel for Definity argues that the Claimant qualifies as an "insured person" on two counts. The *SABS* definition includes "a person who is involved in an accident involving the insured automobile, if the accident occurs in Ontario", that would clearly include the Claimant. In addition, the second sentence of paragraph 4.1 of the OAP 1 provides that an "insured person" includes someone injured in an accident involving the automobile, who is not a named insured, spouse or dependant of a named insured under another policy, and is not covered under the policy of an automobile in which they were an occupant. The Claimant would also fit within this category, as the motorcycle he was riding was not insured.

39. I accept Definity's argument on this point. In my view, the "grant of coverage" to the specified automobile in Mr. D's Aviva policy is clear. The policy provides coverage to that vehicle, including Accident Benefits coverage, as noted on the Certificate of Insurance filed. The Certificate specifies that this coverage is "as stated in Section 4 of Policy", meaning the OAP 1 Standard Owner's Policy. Page three of the Certificate explains that Accident Benefits under the policy are available to "you and other insured persons". It is clear from the part of section 4 excerpted above that the SABS definition of "insured person" is the one to apply. It includes anyone who is involved in an accident involving the insured automobile, if the accident occurs in Ontario. Mr. C clearly fits within that definition, and is therefore an "insured person" for purposes of this analysis.

40. Section 2 of the Rideshare Endorsement to Aviva's policy must then be considered. This endorsement modifies the policy, as it removes the "General Exclusion" in Section 1.8.1 of the OAP1 that excludes coverage for an insured using his or her automobile "to carry paying passengers". Section 1 sets out the stated purpose of the Endorsement as being to "permit the automobile to be used to carry passengers only in relation to the Pre-Acceptance period and the Post-Acceptance period." Section 2 is titled "What We Will Cover", and states - "We will provide

primary coverage for the automobile as outlined in the Certificate of Automobile Insurance" while the automobile is being used in the Pre-Acceptance and Post-Acceptance periods.

41. In my view, these words are clear and unambiguous. The only limits placed on this coverage appear in section 4 of the Endorsement, which do not apply in this case. I read Section 2 as meaning that Aviva agrees to provide coverage to the Hyundai while the Lyft application is engaged, and that this coverage, which includes coverage for Accident Benefits, is "primary".

42. The meaning and effect of the second paragraph of Section 2 of the Endorsement is the nub of the dispute between the parties in this case. As set out above, it states –

> *For greater clarity, for the purpose of determining the order in which to pay Statutory Accident Benefits as set out under s. 268 of the Insurance Act in respect of claims made for SABS by a Rideshare Driver, this policy shall respond prior to any other policy of which the Rideshare Driver is an insured or named insured….*

43. Aviva contends that the fact that no other person or term is included in this provision clearly implies that the policy is not intended to cover passengers either in the rideshare vehicle or any other vehicle involved in the accident, and that the "primary coverage" mentioned in the prior paragraph only extends to the Rideshare Driver. I do not agree. In my view, the second paragraph of Section 2 is a necessary clarification regarding which of the driver's policies would respond first, given that Section 3 of the Endorsement requires that the Rideshare Driver have both "collision coverage" and "comprehensive coverage" for the vehicle when it is not being used while the Lyft app is engaged.

44. I will not speculate about why there is no corresponding paragraph that directly addresses which policy should respond first to a passenger's Accident Benefits claim, or to a claim brought by a pedestrian who may be involved in an accident with the insured vehicle. Again, my view is that the grant of coverage in Aviva's policy to the "automobile" makes that clear, as does the provision for "primary coverage for the automobile" specified in section 2 of the Endorsement. I do not accept Aviva's contention that the fact that the Endorsement is silent on this point must

mean that it does not change or affect the priority of payment for passengers' Accident Benefits claims.

45. I also agree with Arbitrator Cooper that the "for greater clarity" paragraph in the Endorsement regarding the order in which policies should respond for a driver's claim does not limit the general "grant of coverage" provided in the prior paragraph. It would be different if there was a clear 'carve out' for passengers' claims, or a specific direction that those claims should be addressed by the priority rules in section 268 of the *Act.* In my view, the fact that the Endorsement does not contain such a statement should not be interpreted to mean that the Aviva policy would not respond first, as Aviva contends.

46. I acknowledge that the FSCO Bulletin explicitly states that the rules for determining priority of claims "for passengers, pedestrians or other persons involved in accident with a rideshare vehicle" are those set out in section 268 of the *Act*. If this phrase appeared in the Endorsement to Aviva's policy, it would create a clear inconsistency and ambiguity. However, it does not. Both parties acknowledge that a FSCO Bulletin is not binding on me. Aviva contends that these provisions express the government's view on rideshare issues, and should be heeded.

47. I do not agree. I note that section 268.3 of the Act, referred to by Aviva in its submissions, refers to "guidelines" rather than "bulletins". Subsection (1) gives the Chief Executive Officer the right to issue guidelines on the interpretation of the *SABS.* Subsection (2) provides that those "shall be considered in any determination involving the interpretation of the *SABS*". There is a fundamental difference between "guidelines" that must be considered in interpreting SABS provisions and contractual terms contained in an insurance policy. There is no statutory requirement that a FSCO Bulletin be considered in this context.

48. And, as pointed out by counsel for Definity, Footnote 3 to the Bulletin itself states "This overview is intended as a summary for reference purposes only. If there is any inconsistency between this summary and the actual wording of the approved endorsement forms it should be resolved in favour of the wording contained in the forms as approved". The paragraph cited above

is inconsistent with the wording of the Endorsement, and I accordingly disregard this excerpt from the Bulletin.

49. Both parties cited authorities that provide guidance on how contractual provisions in insurance policies should be interpreted. The Supreme Court of Canada held in *Ledcor v Northbridge, supra,* that "the primary interpretive principle is that where the language of the insurance policy is unambiguous, effect should be given to that clear language, reading the contract as a whole" (at para.49). I have interpreted what I find to be "clear language, reading the contract as a whole" and reached the conclusion that the Aviva policy should respond to Mr. C's claims in priority to the Definity policy, for the reasons expressed above.

50. While I find the language in question to be clear, it is evident that not all of the documents considered and outlined above are consistent. In my view, that does not create an ambiguity, as the grant of coverage to the automobile in Aviva's Certificate of Insurance is clear. If I am incorrect in that assumption, and the fact that section 2 of the Endorsement specifically provides that that policy will respond first in the event of a driver's claim for benefits, but is silent with regard to passengers, can be characterised as ambiguous, I note that Wagner, J. states as follows in paragraph 50 of the *Ledcor* v. *Northbridge Indemnity, supra*, case:

> *Where, however, the policy's language is ambiguous, general rules of contract construction must be employed to resolve that ambiguity. These rules include that the interpretation should be consistent with the reasonable expectations of the parties, as long as that interpretation is supported by the language of the policy; it should not give rise to results that are unrealistic or that the parties would not have contemplated in the commercial atmosphere in which the insurance policy was contracted, and it should be consistent with the interpretations of similar insurance policies. See Progressive Homes*, at para. 23, citing *Scalera*, at para. 71; *Gibbens*, at paras. 26-27; and *Consolidated-Bathurst Export Ltd. v. Mutual Boiler and Machinery Insurance Co.*, [1980] 1 S.C.R. 888, at pp. 900-902.

51. I find that a consideration of the parties' reasonable expectations leads to the same result. The OAP 1 Standard Owner's Policy contains a 'coverage exclusion' when the insured uses the automobile to "carry paying passengers". The Coverage for Ridesharing Endorsement on the Aviva

policy explicitly removes that limitation, and permits automobiles to carry passengers while the Lyft app is engaged. The Definity policy issued to Mr. D., the driver of the Hyundai vehicle, has no such endorsement. It is reasonable to conclude that when Aviva issued its policy, it would have contemplated that the vehicle in question would potentially be driven for several hours each day, in many locations that it would not get to if it were not being used for commercial purposes. This level of driving activity creates more risk than if Mr. D restricted his use of the vehicle to purely personal use. Presumably, Aviva received premiums that address that risk.

52. For the reasons expressed above, I find that Aviva is in higher priority to pay Mr. C's claims under section 268(2)2(iii) of the *Act.* Aviva must accordingly reimburse Definity for the benefits it has paid to date pursuant to the *SABS*, and assume carriage of the Claimant's Accident Benefits claims if they have not yet been resolved on a full and final basis.

COSTS:

Given the result, Definity is entitled to payment of its legal costs, on a partial indemnity basis, from Aviva. If counsel cannot agree on the quantum of costs payable, I invite them to contact me and a process will be convened to have this issue determined.

DATED at TORONTO, ONTARIO this 18th DAY OF SEPTEMBER 2026

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Shari L. Novick, Arbitrator