

**IN THE MATTER OF the Insurance Act, R.S.O. 1990,c.I.8,  
s. 268 and all regulations thereto; and in particular, Ontario  
Regulation 283/95- Dispute Between Insurers**

**AND IN THE MATTER OF the Arbitration Act, S.O. 1991, c.17**

**AND IN THE MATTER OF THE ARBITRATION**

**B E T W E E N:**

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

**- and -**

**MOTORS INSURANCE CORPORATION**

**- and -**

**NORDIC/THE NORDIQUE INSURANCE COMPANY OF CANADA  
(ING INSURANCE COMPANY OF CANADA)**

**APPEARANCES:**

Harry P. Brown and  
Jennifer Burnes  
For Motors Insurance Corporation

Scott Densem for  
Nordic/ING

**AWARD**

**ISSUE:**

As between Motors Insurance Corporation and Nordic/The Nordique Insurance Company of Canada (ING Insurance Company of Canada), which insurer is responsible to pay statutory accident benefits to Shirley Vandenberg, Marcus

Vandenberg and Justin Vandenberg, arising out of a motor vehicle accident of September 12, 2004, and to reimburse Her Majesty The Queen In Right Of Ontario for payments made to Shirley Vandenberg, Marcus Vandenberg and Justin Vandenberg.

**RESULT:**

Nordic/The Nordique Insurance Company of Canada (ING Insurance Company of Canada) is responsible to pay statutory accident benefits to Shirley Vandenberg, Marcus Vandenberg and Justin Vandenberg, arising out of a motor vehicle accident of September 12, 2004, and to reimburse Her Majesty the Queen In Right Of Ontario for payments made to Shirley Vandenberg, Marcus Vandenberg and Justin Vandenberg.

**HEARING:**

This Arbitration was held at the City of Toronto in the Province of Ontario on January 25 and 26, 2007 and February 9, 2007, before me, Bruce R. Robinson, Arbitrator, pursuant to the provisions of the *Insurance Act* and the provisions of the *Arbitration Act*.

**EVIDENCE:**

Mr. Dan Crymble gave oral evidence on February 9, 2007. The Examination Under Oath transcripts of Mr. Crymble and Mr. Ram Jaisaree were filed with other documentary evidence set out in Appendix "A".

**BACKGROUND:**

This Arbitration arises out of a motor vehicle accident which occurred on September 12, 2004. Shirley Vandenberg was the operator of a 2004 Buick Ranier motor vehicle. Her husband, Johannes Rosendaal was killed in the accident and the three children, being Justin Vandenberg, Marcus Vandenberg and Natasha Vandenberg were injured.

Payments for the statutory accident benefits to these persons are being made by the Motor Vehicle Accident Claims Fund. It is alleged that Nordic/The Nordique Insurance Company of Canada (ING Insurance Company of Canada) was the insurer of the Buick Ranier motor vehicle at the time of the accident. ING claims that its policy was cancelled effective June 18, 2004, before the date of the accident. Motors Insurance Corporation held an SPF No.8 ("Contingency Liability Policy") which will apply in the event that the ING policy was properly cancelled.

Johannes Rosendaal ("Rosendaal") submitted an application for automobile insurance to ING dated November 11, 2003 for a 1999 BMW motor vehicle. The application was submitted through Andrew Kowalczewski Insurance Brokers Limited (the "Broker"). The named insured on the application was Johannes Rosendaal and for the purposes of receiving mail, Mr. Rosendaal provided the address of his business, Pro E File Inc., 44 Queen Street South,

Mississauga. This was Rosendaal's personal vehicle and was not used for business.

The Broker and their employee, Mr. Dan Crymble, used this address in connection with the policy and the fax number at Rosendaal's business number being 905-858-3174.

The original policy issued by ING to Rosendaal was effective from November 12, 2003 until November 12, 2004. It was placed on the 1999 BMW motor vehicle. The total premium for the policy was \$4,641.00 which was to be paid by monthly withdrawals from Rosendaal's personal bank account at Duca Financial Services Credit Union in North York. In late February 2004, Rosendaal changed this to his personal bank account with the Bank of Montreal in Mississauga and provided the Broker with a void cheque for that purpose.

Rosendaal failed to pay the premium in January, March and April of 2004. ING took steps to cancel the policy but also offered the insured reinstatement if the premiums were paid by a specific date. The first registered Notice of Cancellation was dated January 14, 2004. It was sent to Mr. Rosendaal with a document entitled 'Reinstatement'. The Notice of Cancellation was also sent and received by the Broker. Rosendaal paid the appropriate amount and the policy was reinstated. The Broker sent a February 3, 2004, letter

by fax to ING advising that the Broker's cheque was being sent by courier the following day and requesting reinstatement of the policy which was done.

Mr. Rosendaal failed to make a further payment and a second registered Notice of Cancellation of the policy was dated March 10, 2004, and reinstatement document were sent to him at his business address. The reinstatement form indicated that the cancellation of the policy would be rescinded if \$819.64 was received on or before March 30, 2004. Mr. Rosendaal made arrangements to pay the Broker and on March 16, 2004, the Broker sent a letter by fax to Mr. Rosendaal confirming this and asking Mr. Rosendaal to make sure that there were sufficient funds in his bank account for the next premium withdrawal. A new Certificate of Automobile Insurance was issued by ING, effective March 31, 2004 continuing to November 12, 2004. The named insured was the same as on the original Certificate and the address was the same business address as no changes had been requested by Mr. Rosendaal. This policy again related solely to a 1999 BMW motor vehicle.

For the third time, Mr. Rosendaal failed again to pay his premium on time and ING sent him a registered Notice of Cancellation dated April 2, 2004 and a Reinstatement form. The Reinstatement form indicated that the cancellation of the policy would be rescinded if \$819.64 was received on or before April 23, 2004. Again, Mr. Rosendaal was able to place the appropriate

funds with the Broker and the Broker sent a letter by fax transmission to ING dated April 19, 2004, the result of which the policy was again reinstated.

A new Certificate of Automobile Insurance was issued by ING effective April 17, 2004, continuing until November 12, 2004. Rosendaal had requested, through the Broker, that the 1999 BMW be replaced with a 2004 Pontiac Montana. The Certificate of Automobile Insurance shows the insured as Johannes Rosendaal, Pro E File Inc., 44 Queen Street South, Mississauga, Ontario, L5M 1K4 with an endorsement showing GMAC Leaseco Corporation C/O Pitcher & Doyle Services P.O. Box 1200, Etobicoke, Ontario.

On May 15, 2004, Rosendaal requested, through the Broker, that a 2004 Buick Ranier motor vehicle be added to the policy. ING issued a new Certificate of Insurance effective May 15, 2004 and running until November 12, 2004. The Certificate again showed Johannes Rosendaal, Pro E File Inc., 44 Queen Street South, Mississauga, Ontario, as the named insured with GMAC Leaseco Corporation added in the endorsement. Both the Pontiac Montana and the Buick Ranier were shown as insured vehicles on the policy. ING takes the position that no request was made by Mr. Rosendaal that any changes be made to the address or contact number on the policy.

The Buick Ranier motor vehicle was leased by 1385041 Ontario Limited and Johannes Rosendaal living at 355 Elm Grove Road in Tecumseh,

Ontario, on May 13, 2004, from Meadow Mills Pontiac/Buick Limited. This lease was immediately assigned to GMAC Leaseco Corporation on or about the same date. The motor vehicle insurance issues pertaining to GMAC Lease for this vehicle were handled by Pitcher & Doyle who were the representatives of GMAC for all insurance issues. The documents sent on the letterhead of GMAC to the Broker regarding a request to confirm coverage were sent by Pitcher & Doyle. Motors Insurance Corporation takes the position that ING, upon receipt of various documents relating to the Buick Ranier motor vehicle, including the lease from Meadow Mills Pontiac/Buick Limited, the information from GMAC Leaseco Corporation, failed to make the appropriate changes to the Certificate of Insurance by showing Johannes Rosendaal and 135041 Ontario Limited as insureds and failing to correct the address to show 355 Elm Grove Road, Tecumseh, Ontario.

It is submitted by ING that Andrew Kowalczewski Insurance Brokers Limited provided the means of communication between ING and their insureds, Mr. Rosendaal and 1385041 Ontario Limited. It is agreed that the Broker had the authority and did, in fact, bind ING with regard to its dealings with Mr. Rosendaal. Mr. Ram Jaisaree, a project manager with ING, gave evidence under oath on September 14, 2006. The transcript of that evidence was received into evidence at this Arbitration. He confirmed the direct relationship between ING and the Broker. He also confirmed that in 2004 the business of ING was expanding, "We were very busy. So it was normally 30, 40 days to process any

documents.” He confirmed receiving a copy of the Lease Agreement from Meadow Mills Pontiac/Buick which was received on or about May 14, 2004. It showed the names of Mr. Rosendaal and 1385041 Ontario Limited and the new address at Tecumseh. When asked if this information should have resulted in any inquiries from the Underwriting Department, he replied, “It should have, in this case, because the name of the Lessee, again, is a numbered company versus what we have in our system. But because the co-lessee is the same name...”.

From the evidence presented to me, it appears that Meadow Mills Pontiac/Buick was not prepared to release the Buick Ranier motor vehicle to Mr. Rosendaal until it had confirmation of insurance from ING. A request for confirmation was made of the Broker and this confirmation is supplied by Dan Crymble. He confirmed coverage through ING. Mr. Crymble did not request that ING make any changes to the insurance policy. He was examined under oath on November 15, 2006, and indicated that he had received and viewed both the GMAC documentation and the Meadow Mills documentation which had different names and different addresses. He stated that he wanted to clarify that with the policyholder and, in fact, made a note to his file in that regard. Mr. Crymble’s handwritten note dated 17/5/04 stated, “Re Hans need new policy due to name change for insured. What does 1385041 Ontario Limited” – “1385041 Ontario Limited, mail box full, no message... 18/5/04 ‘ ‘ ‘...’ ”

In a fax transmission from Mr. Crymble to Mr. Rosendaal on April 29, 2004, he indicates that the "OK Per Hans vehicle is in the garage at Windsor 12:25 25/4/04". When Mr. Crymble received the lease material from Meadow Mills Pontiac/Buick Limited on May 14, 2004, he was again aware of the change of the proposed insured's Tecumseh address. He sent a fax confirmation of insurance to Meadow Mills Pontiac/Buick Limited on May 14, 2004, in regard to the 2004 Buick Ranier motor vehicle. He did not make any comment concerning the difference in the address or the lessees of the vehicle. I find that Mr. Crymble was concerned about the mailing address and this is evidenced in his fax of May 21, 2004, to Mr. Rosendaal where he states,

"Hans, what is your mailing and residence to be, Mississauga or Windsor as Bill of Sale shows Tecumseh and ownership shows Mississauga. Thanks, Dan."

I find that he held out to Meadow Mills Pontiac/Buick Limited that this vehicle was fully insured by ING.

Andrew Kowalczewski Insurance Brokers Limited also acted on behalf of Mr. Rosendaal with regard to his home insurance. This policy was placed with a different insurer, Premier Marine Home Insurance. As of April 21, 2004, Mr. Crymble had received and reviewed material with regard to coverage to Mr. Rosendaal's home at 355 Elm Grove Drive, Tecumseh. This included photographs of the house. The original quote had been given by Mr. Crymble to Mr. Rosendaal on February 6, 2004, with regard to the policy premium.

Mr. Crymble, therefore had received considerable information concerning the change in address and also the names on the motor vehicle policy. He began to concern himself with these changes and 17/5/04 contacted Ram Jaisaree at the ING facility concerning this conflicting information. He stated at his examination under oath,

"I would probably tell her I am trying to confirm with the insured what name it is in and we'll advise her as soon as we find out."

He further stated that in May, 2004, he had notified ING that there may be a name change and an address change.

Mr. Crymble received a crucially important note from Mr. Rosendaal dated May 31, 2004, which stated,

**"I hereby would like to inform you that we have moved from 46 Queen Street South to Elm Grove Road, Tecumseh, Ontario N8N 4H1 as per May 1, 2004".**

There is no indication as to what date Mr. Crymble received that note. He was ill at the time and working only four hours per day at the brokerage.

On June 1, 2004, Mr. Crymble issued a Canada Inter-Provincial Liability Insurance Card with the same policy number through ING Facility, Toronto, showing the name and address of the insureds to be Johannes Rosendaal operating as 1385041 Ontario Limited, 355 Elm Grove Road, Tecumseh, effective June 1, 2004 to June 12, 2004, for the Buick Ranier motor vehicle. The Liability Insurance Card was faxed to Mr. Johannes Rosendaal and ING Facility on June 1, 2004. Mr. Crymble gave evidence that he sent a seven-

page fax to ING on June 1, 2004 but it did not go through due to the fact that the ING fax machine was busy. I find that this was the period of rapid growth in the ING business which Mr. Jaisaree had referred to in his evidence. The material was sent again on June 3, 2004, and included, (1) a copy of the ownership for the Buick Ranier motor vehicle, (2) a Notice to ING of a Change of Address of the insured to 355 Elm Grove Road, Tecumseh, from 44 Queen Street South, Mississauga, and (3) information relating to other issues.

The fax also indicated that, "Both vehicles were leased from GMAC Leasing". Mr. Crymble was not sure whether or not he had spoken directly to Mr. Rosendaal on May 31, 2004.

Mr. Crymble's fax transmission to ING Facility on June 1, 2004, failed at 12:54 p.m., 1:21 p.m. and then confirmation that the seven-page fax was transmitted at 9:12 a.m. on June 3, 2004. This was a very important fax and Mr. Crymble wanted ING to receive and deal with it immediately. ING states that they did not receive this fax transmission. Mr. Jaisaree indicated that had they received the fax, they would have done several things. He stated in his examination under oath that,

"Because of the time factor, it was the 8<sup>th</sup> of May and the 1<sup>st</sup> of June. Yes, we would have reinstated the policy and processed all the changes and sent out another registered letter".

I find on ING's evidence that they would have stopped the attempted cancellation of the policy, and that they would have issued a new registered letter to the new named insureds at the new address in Tecumseh.

I find that during the period from late May until the early part of June, 2004, ING was very busy and behind in its paperwork. In May of 2004, Mr. Rosendaal was again in default of his policy premium and ING proceeded to start a fourth and final cancellation of the policy. ING prepared a Registered Notice of Cancellation which was dated May 28, 2004 and also a document entitled Reinstatement Requirements. The second document required that the policy would be reinstated on or before June 18, 2004 if the premium of \$707.23 was received. The notices were prepared at ING's accounts receivable department at 200 University Avenue, Toronto, by filling information in on a standard computer generated form. This form was then emailed to ING printing department at 75 Eglinton Avenue East, Toronto. The form was printed and returned to 200 University Avenue by internal carrier. This process took approximately 24 hours. The accounts receivable department would then manually prepare the Reinstatement Requirement document. This was done manually because specific account information had to be obtained from the computer system and put into the Reinstatement Requirement. The completed notices were then sent to ING mailing department within 200 University Avenue, from which they would be sent out by registered mail in the same envelope. The document notices were addressed to Mr. Rosendaal at Pro E File at 44 Queen Street South, Mississauga, Ontario. ING delivered the letter to the Etobicoke Post Office. The Post Office records indicate that it came into their possession on June 3, 2004

and was sent out for delivery on June 3, 2004 at 07:39 a.m.. The letter was not picked up and it was returned to the sender on June 24, 2004.

ING had also sent the Registered Notice of Cancellation on the morning of June 3, 2004, to the Lessor of the vehicles as designated on the policy, and GMAC Leaseco, c/o Pitcher & Doyle Services. The Broker also received copies of the Registered Notice of Cancellation. No notices were sent to the Tecumseh address or to 1385041 Ontario Limited. The notices were received by GMAC and the Broker on or about June 3, 2004.

Mr. Crymble stated that Mr. Rosendaal was told of the cancellation, verbally and in writing on or about June 7, 2004. A fax, of June 7, 2004, was apparently resent on June 10, 2004, indicating that the policy with ING had been cancelled due to insufficient payment. A copy of the Reinstatement Notice had been attached to the fax transmission. It was Mr. Crymble's evidence that he had a telephone call with Mr. Rosendaal on June 17, 2004, at 11:10 a.m. at which time he confirmed that Mr. Rosendaal would make the appropriate payment before 3:00 that afternoon. This was never done.

**LAW:**

The statutory condition set forth in the Regulations to the Insurance Act dictate the requirements for the termination of an automobile policy by an

insurer. The *Insurance Act* requires that these conditions be printed as part of every automobile policy in Ontario. The relevant Conditions are numbers 11 and 12 which are set out below:

### **Termination**

11. (1) Subject to section 12 of the *Compulsory Automobile Insurance Act* and sections 237 and 238 of the *Insurance Act*, this contract may be terminated by the insurer giving to the insured fifteen days notice of termination by registered mail or five days written notice of termination personally delivered.
- (2) This contract may be terminated by the insured at any time on request.
- (3) Where this contract is terminated by the insurer,
- (a) the insurer shall refund the excess of premium actually paid by the insured over the proportionate premium for the expired time, but in no event shall the proportionate premium for the expired time be deemed to be less than any minimum retained premium specified; and
  - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case, the refund shall be made as soon as practicable.
- (4) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (5) The fifteen days mentioned in subcondition (1) of this condition begin to run on the day following the receipt of the registered letter at the post office to which it is addressed.

### **Notice**

12. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province. Written notice may be given to the insured named in this

contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest post office address as notified to the insurer. In this condition, the expression, "registered" means registered in or outside Canada.

**FINDINGS:**

ING submits that its policy was terminated effective June 15, 2004, or June 26, 2004, or in the further alternative, June 18, 2004. Motors Insurance Corporation submits that ING did not successfully terminate the policy pursuant to the provisions of the *Insurance Act* and the Regulations thereunder.

I find that the onus rests with ING to show that they properly complied with the *Insurance Act* and its Regulations. It is agreed amongst the parties that the Broker, Andrew Kowalczewski Insurance Brokers Limited, and their employee, Mr. Dan Crymble, were the agents of ING with respect to all issues including that of names and addresses for the vehicles and insureds on their policies. The Broker had formal notification of the address change on the 21<sup>st</sup> of April, 2004, when the Homeowners Policy was issued through another insurer, for Mr. Rosendaal at 355 Elm Grove Road, Tecumseh. The Broker was then aware that Mr. Rosendaal was living in Tecumseh and that Mr. Rosendaal had placed the vehicle in his garage at that address.

Furthermore, the Broker had received both the Lease Agreement from Meadow Mills Pontiac/Buick and the GMAC Lease documents showing the correct names and address of the policyholders. Both Meadow Mills Pontiac/Buick Limited and GMAC had asked for confirmation of insurance on that

policy and had listed the correct names and address of Mr. Rosendaal and 1385041 Ontario Limited. I find that the Broker gave confirmation to both these entities that there was a valid policy of insurance in existence with respect to the correct names and addresses of the Lessees. Had this not been the case, Meadow Mills Pontiac/Buick Limited would not have released the Pontiac Montana and the Buick Ranier vehicles.

I find that on May 31, 2004, Mr. Rosendaal formally advised Mr. Crymble by letter of his change of address. Therefore the Broker was again made aware of his Tecumseh address on June 1, 2004. With regard to 1385041 Ontario Limited, the Broker had received information from Meadow Mills Pontiac/Buick Limited and GMAC alerting him to the proper names of the Lessees and, in fact, Mr. Crymble took immediate steps to address both the change in name and the change in address.

I find that the Broker, pursuant to its agency agreement with ING, issued a valid Canadian Interprovincial Liability Insurance Card to 1385041 Ontario Limited a/o H. Rosendaal, 355 Elm Grove Road, Tecumseh, with regard to the 2004 Buick Rainier motor vehicle, thereby binding ING Facility. The correct names and address were shown on this new Liability Insurance Card. I find that the Broker's attempts to contact ING on June 1, 2004, with regard to the change of address and names of the policy holder were not successful due to busy fax lines at ING. I further find as a fact based on the evidence that the

seven-page transmission by the Broker was sent to ING on June 3, 2004. ING is deemed to have notice of this information through its Broker who served as its agent in these matters. I find ING admitted that if they had they received this material they would have taken different steps and would have terminated their first letter of cancellation and started over again.

I find that the ING Registered Notice of Termination dated May 28, 2004, addressed to Mr. Rosendaal at Pro E File Inc, 45 Queen Street South, Mississauga, did not come into the possession of the Post Office until either June 2, 2004 or early in the morning of June 3, 2004. This is after the June 1, 2004 issuance of the new Canada Interprovincial Liability Card by the Broker to 1385041 Ontario Limited and Mr. Rosendaal at the new address.

I find that the Broker had knowledge of the change of names and address prior to ING issuing the Notice of Termination dated May 28, 2004. Between June 1, 2004 and June 21, 2004, I find there were numerous faxes sent by the Broker to Mr. Rosendaal dealing with other confusing and conflicting matters including the status of his wife as a driver and an insured. I do not find that they constitute the type of Notice of Termination contemplated by Section 11.

Justice Jenkins dealt with the notice provisions in the case of *Chenier v. Stephens* [2000] O.J. No.2721. In that case, the Broker sent the notice to the

insured at his Tecumseh address by ordinary mail. The insured did not receive the non-renewal notice; however, he admitted that it was his understanding that he was not insured at the date of the motor vehicle accident and that his policy had expired on August 10, 1995. Justice Jenkins commented on the Statement of Facts as indicated above and stated he was not required to make a finding on the credibility of the insured. He stated at paragraph 13,

“As a result, I find that the non-renewal notice was not delivered in accordance with statutory condition 12 and that it was not received by the defendant Stephens. It therefore follows that the third parties, Kingsway and All-Risks, have failed to satisfy me that the Kingsway policy of insurance issued to the defendant Stephens was not automatically renewed.”

This decision was upheld on appeal in *Chenier v. Stephens* [2002]

O.J. No.674 wherein Madam Justice Abella stated,

“We agree with Jenkins, J. that notice in accordance with s. 236 of the Insurance Act was not proven based on the Agreed Statement of Facts. Accordingly, the appeal is dismissed with costs.”

It is trite law to say that in Ontario, the right of an automobile insurer to terminate a contract is severely restricted. The courts have indicated that the statutory conditions must be strictly complied with and failure to comply will keep them bound by the policy. Furthermore, where an insurer commences a cancellation upon giving notice pursuant to section 236, the notice must be a clear and unequivocal expression of the termination of the policy. Oral notice by the insurer is ineffective to terminate a contract of insurance. In the decision of *Dick v. Allstate Insurance Company of Canada* [1976] O.J. No. 174, [1977] I.L.R.

paragraphs 1-853, Mr. Justice Weatherstone comments as follows in paragraphs 17, 18 and 19;

“As I said before, the contract of insurance was for a twelve month term, it contained a special provision for termination by the defendant under Statutory Condition Number 8; and that Statutory Condition, in my opinion must be shown affirmatively to have been complied with. I am not satisfied that there is sufficient evidence before me to find that a notice of termination was in fact given to the plaintiff by registered mail; and I am actually not satisfied that 15 days notice was given to the plaintiff by registered mail.”

Now I have read the form of notice and in my opinion it does not state unequivocally that the contract of insurance has been terminated. In fact, by addition of the portion in the bottom of the notice, it gives the right to the insured to continued insurance protection by payment of the amount past due. Reading all parts of this form together, I come to the inescapable conclusion that it can only be understood to mean that if the amount past due is not paid, the policy will be terminated on the specified date; and that, in my opinion, is not fifteen days notice of termination under statutory condition Number 8”

I find, therefore, that the policy was not properly terminated prior to the date of the accident and that it was still in force at that time and that the Plaintiff is entitled to indemnification in respect of the three judgments obtained against him.”

The *Dick v. Allstate Insurance* decision was cited by Justice Kiteley in the decision of *Harnden v Farmers' Mutual Insurance Company* [1997] O.J. No. 4412. Justice Kiteley reiterates the fact that notice must state unequivocally that the contract of insurance has been terminated and it must not be ambiguous. She states at paragraphs 21 and 26:

"To be effective as termination, the notice must state unequivocally that the contract has been terminated."

"A contract of insurance to which the statutory conditions with respect to termination apply can only be terminated in strict compliance with the statutory conditions."

Statutory Conditions and the attempts to terminate policies under those conditions reach back into antiquity. In *British Bank of Commerce v. British American Insurance Company* [1889] O.J. 95 also reported at 18 O.R. No. 234, the court comments as follows at paragraph 23,

"The strict compliance with the terms and conditions of this provision is 'a condition precedent to the exercise of the rights of rescission which the company, at its own arbitrary election, is entitled to subject the assured to.'"

Justice Jenkins in the *Chenier v Stephens* case, which was upheld by the Court of Appeal, found that even though the insured was aware of a cancellation, the insurer could not rely on that actual notice since it could not prove that it had properly terminated the policy. Here ING has the onus under Section 11 of the Regulations to establish by evidence that it gave its insureds, Mr. Rosendaal and 1385041 Ontario Limited, a clear and unambiguous notice of cancellation by (1) either registered letter with 15 days notice at the Tecumseh address, or (2) by personal service upon them of this notice. ING has acknowledged that its purported notice of cancellation of May 28, 2004 was not a proper cancellation. There is no evidence that any written cancellation notice was "personally delivered" to either of ING's insureds at any time, or that they

received any written cancellation notice. Even if Mr. Rosendaal learned of the cancellation by some other means, the case law states that this is not sufficient to meet the strict requirements of Section 11 of the Regulations.

On the evidence before me I find that ING, through its Broker, did not act with due diligence in dealing with Mr. Rosendaal and 1385041 Ontario Limited. While ING may have been going through a spurt of increased business it was still required to comply with the provisions of the *Insurance Act* and the Regulations thereunder. The onus rests with ING to establish that they complied with the Insurance Act in the cancellation of their policy with Mr. Rosendaal and 1385041 Ontario Limited. If there is no proper notice given then there cannot be a cancellation. It is my finding that ING failed to comply with the termination provisions of the *Insurance Act* and its Regulations. Therefore, I find that the ING policy was in full effect on September 21, 2004.

I find that Nordic/The Nordique Insurance Company of Canada (ING Insurance Company of Canada) did not comply with the termination procedure set forward in Section 11 of the Statutory Conditions in that whatever notices were sent out were not sent to the proper insureds nor at the proper address nor at the proper fax number. As such, the policy issued by Nordic/The Nordique Insurance Company of Canada (ING Insurance Company of Canada) was in effect at the time of the accident on September 12, 2004. As such, Nordic/The Nordique Insurance Company of Canada (ING Insurance Company

of Canada) is required to pay the statutory accident benefits to Shirley Vandenberg, Marcus Vandenberg and Justin Vandenberg, and to reimburse Her Majesty The Queen In The Right Of Ontario for no fault benefits having been paid to Shirley Vandenberg, Marcus Vandenberg and Justin Vandenberg and its costs.

**COSTS:**

The participants to this Arbitration have agreed that costs will follow the event. Nordic/The Nordique Insurance Company of Canada (ING Insurance Company of Canada) will therefore pay to Motors Insurance Corporation and to Her Majesty The Queen In Right of Ontario their costs of the within Arbitration.

**ORDER:**

1. It is ordered that Nordic/The Nordique Insurance Company of Canada (ING Insurance Company of Canada), reimburse Her Majesty The Queen In Right Of Ontario for all payments made to Shirley Vandenberg, Marcus Vandenberg and Justin Vandenberg for no fault benefits paid out as a result of the motor vehicle accident of September 12, 2004.
2. It is ordered that Nordic/The Nordique Insurance Company of Canada (ING Insurance Company of Canada) is responsible for paying no fault statutory accident benefits to Shirley Vandenberg,

Marcus Vandenberg and Justin Vandenberg arising out of the motor vehicle accident of September 12, 2004.

3. It is further ordered that Nordic/The Nordique Insurance Company of Canada (ING Insurance Company of Canada) will pay to Motors Insurance Corporation and to Her Majesty The Queen In Right of Ontario their costs of the Arbitration.

DATED at Toronto, this 28<sup>th</sup> day of February, 2007



Bruce R. Robinson  
Bruce R. Robinson, Arbitrator

**APPENDIX "A"**

- 1.ING Document Brief
- 2.Document Brief, Brokers File
- 3.Document Brief, Pitcher and Doyle
- 4.Document Brief, GMAC Leaseco Corporation
- 5.Document Brief, Initial Broker's File
- 6.Document Brief, ING File
- 7.Case Management Motion Form, Action 06-CV-6356CM
- 8.Letter of Mr. Brown dated January 23, 2007.
- 9.Letter of Robert W. Kerkmann dated April 17, 2006