CITATION: 2327209 Ontario Inc. o/a The Gardener Landscape & Maintenance v. Chubb Insurance Company of Canada, 2025 ONSC 4915
COURT FILE NO.: CV-21-0669304-0000
DATE: 20250827

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
2327209 ONTARIO INC. O/A THE GARDENER LANDSCAPE & MAINTENANCE	)	*Kevin Luciano Fernandes*, for the Plaintiff
Plaintiff	)	
	)	
– and –	)	
	)	
CHUBB INSURANCE COMPANY OF CANADA	)	*Farid Mahdi*, for the Defendant
	)	
Defendant	)	
	)	
	)	**HEARD:** July 21, 2025

REASONS FOR JUDGMENT

PAPAGEORGIOU

Overview

[1] The plaintiff, Gardener Landscape & Maintenance ("Gardener"), moves for an order that the decision of the Umpire, rendered under the Umpire Process consented to by the parties pursuant to s. 128 of the *Insurance Act*, R.S.O. 1990, c. I.8 ("*Insurance Act*") be enforced and that judgment be awarded accordingly.

[2] The amount at issue is $23,767.66.

Uncontradicted Facts

[3] Gardener is a landscaping and maintenance company carrying on business in Ontario.

[4] Gardener leased four trucks from NewRoads Automotive Group Ltd. (“NewRoads”) for 36 months. As part of this agreement, it purchased the "Ford Protect, Premium Care Extended Service Plan" warranty on each truck for 48 months for the amount of $3,945.62 per truck.

[5] The defendant, Chubb Insurance of Canada (“Chubb”), insured the four trucks (the “Trucks”).

[6] On or about June 30, 2020, someone vandalized the Trucks.

[7] Chubb retained Paragon Appraisals, who prepared valuations for three of the Trucks in the amount of $24,134, $32,846 and $32,364, respectively. The appraisals noted that Gardener was the insured.

[8] NewRoads submitted Proofs of Loss which were dated September 17, 2020. The Proofs of Loss were in line with the appraisals prepared by Chubb minus the $1,000 deductible. A representative of NewRoads signed these Proofs of Loss. Gardener did not execute them.

[9] Also, Chubb pleads that it received these Proofs of Loss from NewRoads. It does not plead that it received them from Gardener.

[10] NewRoads emailed the Proofs of Loss to Gardener on October 7, 2020.

[11] Gardener then commissioned its own valuations that were dated October 15, 2020, and which were greater than the Proofs of Loss submitted by NewRoads.

[12] Chubb then issued payments to NewRoads in the amounts of $31,846, $31,364, and $23,134, totaling $86,344 for three of the four Trucks. This was in line with the valuations that it had prepared minus the $1,000 deductible.

[13] In turn, NewRoads issued three cheques to Gardener in the amounts of $26,235.64, $26,717.64, and $18,005.64, totaling $70,958.92 for three of the four Trucks. The amounts paid by NewRoads to Gardener included a deduction of $5,128.36 for each Truck, representing payment by Gardener to NewRoads for the remainder of each leasing contract.

[14] Gardener produced its appraisal to Chubb who refused to pay the difference.

[15] Gardener issued a Statement of Claim against Chubb on September 27, 2021.

[16] Chubb delivered its Statement of Defence on May 27, 2022. Chubb did not issue a third-party claim against NewRoads or make any allegations against NewRoads.

[17] In its Statement of Defence, Chubb admitted that under the insurance policy it is obligated to pay the cost of replacing an automobile with a new automobile of the same make and model, similarly equipped, for vehicles to NewRoads and Gardener jointly. It also pleaded that the valuation reports it received were representative of the value of replacing the Trucks with new

trucks of the same make and model, similarly equipped. It also admitted that Gardener may have an equitable interest in the Trucks but denied that the equitable interest increased the value of the Trucks or resulted in standing to dispute the value of the Trucks.

[18] Chubb denied that it owed any more than it had already remitted.

[19] In addition, in its Statement of Defence, Chubb made an alternate argument that the Ontario Superior Court of Justice is not the proper forum for the dispute between the parties and that the Umpire Process under the *Insurance Act* is how the matter should be addressed.

[20] On September 1, 2023, counsel for Chubb advised Gardner's counsel of Chubb's position that the parties must proceed to an Umpire Process, failing which Chubb would bring a motion to stay the action and proceed with the Umpire Process:

> As I mentioned, with regard to resolution, I do not have authority at this time and my present instructions are to proceed with the umpire process, as set out in section 128 of the Insurance Act and OAP section 8, subsection 9. I am looking for your position on whether you will agree to proceed with this process, otherwise we will need to bring a motion to stay the action and proceed with the umpire process. Broadly, our position will be that the umpire process should have been completed in the first place, before this action was brought, and that, per the statue, the umpire process is the designated method for resolving such disputes. **Whether or not the lessee is entitled to dispute the amount (as opposed to the owner/lessor) is a separate question**. There will be a further process to agree to the individual umpire themselves, but I believe we can cross that bridge later. [Emphasis added.]

[21] On October 10, 2023, the parties consented to a timetable endorsed by Associate Justice Jolley, which provided for dates for various stages of the Umpire Process and deadlines for the exchange of the Affidavits of Documents and oral discoveries between the parties.

[22] The parties exchanged unsworn Affidavits of Documents which were subsequently sent to the Umpire as a tool for the Umpire to render his report.

[23] On February 21, 2024, the Umpire, Maurice Bramhall, rendered his report setting the appraised loss for the three Trucks at $38,165.21, 37,620.55 and $37,325.90 (all-inclusive of HST) ("Appraised Values").

[24] In accordance with the reports, counsel for Gardener requested payment of the difference of the Chubb Appraisals and of the Appraised Values amounting to $23,767.66 ("Umpire Proceeds").

[25] Chubb refused to pay the Umpire Proceeds. In an email dated February 5, 2025, it stated:

> As I have communicated: if you believe that the umpire's decision is determinative of this entire action, then this action was improperly issued in the Superior Court. If this is your

> position (which it appears to be given the motion you intend to bring), then this matter should have been brought via the umpire process in the first place, and no action should ever have been issued, because the Superior Court is not the proper jurisdiction. This would mean that the defendant has incurred significant defence costs needlessly, and your client should pay those costs.
>
> Also, as I have mentioned before, we do not believe the umpire's determination was determinative of the action as a whole because **whether or not the lessee is entitled to dispute the amount payable (as opposed to the owner/lessor) is a separate question**. **The umpire's decision gives us insight into damages, but not this legal question**. [Emphasis added.]

[26] The plaintiff filed a motion record containing evidence dated April 25, 2025. Chubb did not file any evidence, only the pleadings in a motion record which it filed ten days before the hearing.

[27] Chubb argues that this matter should proceed to trial as there are issues regarding Gardener's standing to challenge the valuation, whether the claim is statutorily barred, the methodology used by the Umpire, and whether the valuation should have been done using Replacement Value as opposed to Actual Cash Value. It also argues that the procedure herein is defective because Gardener did not reference r. 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg.194 ("the *Rules*").

[28] Most of the issues raised by Chubb have never been pleaded or raised by Chubb previously, who focused on the legal standing issue throughout including in the Requisition filed to schedule this motion. It raised the bulk of these issues for the first time in its factum ten days before trial. There was no motion to amend and no evidence supporting these issues that it says require a trial.

Decision

[29] For the reasons that follow, I grant the motion brought by Gardener.

Issues

- Issue 1: Is the decision of the Umpire as to Actual Cash Value of the Trucks enforceable against Chubb in terms of the value of the loss, assuming Gardener has standing?
- Issue 2: Does Gardener have standing to challenge Chubb's valuations in this proceeding?
- Issue 3: Is there a limitation period issue that must proceed to trial?
- Issue 4: Is there an issue as to whether the payment to NewRoads constituted a settlement that is binding on Gardener which must proceed to trial?

- Issue 5: Is this motion procedurally defective because Gardener sought an order enforcing the order of the Umpire citing r. 37, without relying upon r. 20?

Analysis

Issue 1: Is the decision of the Umpire as to Actual Cash Value of the Trucks enforceable against Chubb in terms of the value of the loss, assuming Gardener has standing?

[30] Section 128 of the *Insurance Act* provides as follows:

> Contracts providing for appraisals
>
> 128 (1) This section applies to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.
>
> Appraisers, appointment
>
> (2) **The insured and the insurer** shall each appoint an appraiser, and the two appraisers so appointed shall appoint an umpire. [Emphasis added]
>
> Appraisers, duties
>
> (3) The appraisers **shall determine the matters in disagreement** and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters. [Emphasis added]

[31] In the Umpire's report dated February 21, 2024, he stated:

> It is our understanding that both parties have chosen to resolve an ACV disagreement under Section 128 of the Insurance Act…

[32] The report also stated:

> As per the terms of the Umpire agreement, our valuation is binding on both parties and the dispute is therefore resolved.

[33] The Umpire indicted that the parties agreed that the valuation issue related to the Actual Cash Value because and Chubb sought no judicial review.

[34] Thus, I reject the argument that Chubb can raise any issue regarding whether the appropriate valuation of the loss should be based upon the Replacement Cost as opposed to the Actual Cash Value and that this issue should proceed to trial.

[35] Chubb relies upon the case *Aviva Insurance v. Cunningham et al.*, 2022 ONSC 6331, 30 C.C.L.I. (6th) 150 ("*Aviva*"), at para. 81, for the proposition that the Umpire is not entitled to determine the meaning or method by which the Actual Cash Value or Replacement Value is to be determined because that is a legal issue within the exclusive jurisdiction of the court. However, this case is not the same because there was a disagreement prior to the appraisal, and the insured sought an order that the Umpire could not determine the Actual Cash Value unless there was an agreement on the method of depreciation and what costs were to be depreciated.

[36] Prior to the appraisal in this case Chubb raised no issue as to the method the Umpire could take and based upon the Umpire's decision, which was not judicially reviewed, agreed to the Umpire determining the loss based upon the Actual Cash Value.

[37] If parties could seek to challenge an umpire's decision after-the-fact based on methodology, despite failing to raise the issue prior to the appraisal, and without judicially reviewing it, then the appraisal process set out in the *Insurance Act* would be gutted.

[38] The time to raise issues regarding methodology or the issue of whether the appraisal should be based upon Replacement Cost or Actual Cash Value is prior to the appraisal or afterwards through judicial review, both of which Chubb failed to do.

[39] I add that it appears that a valuation based upon Replacement Value would actually be higher since Replacement Value typically does not take into account depreciation.

Issue 2: Does Gardener have standing to challenge Chubb's valuations in this proceeding?

[40] It is well established that the purpose of the appraisal scheme under the *Insurance Act* is to provide an easy, expeditious and cost-effective means for settlement of claims for indemnity under insurance policies: *Aviva*, at para. 15.

[41] The appraisal process is not an arbitration but a property valuation. It is designed to provide the parties with a valuation of the loss and not a determination of legal rights. Umpires and appraisers do not determine legal questions. They are valuators who are to use their expertise in assessing the loss: *Campbell v. Desjardins*, 2020 ONSC 6630, at para. 74, citing *Madhani v. Wawanesa Mutual Insurance Company*, 2018 ONSC 4282 at para. 40.

[42] The process does not address entitlement to indemnity: *Desjardins General Insurance Group v. Campbell*, 2022 ONCA 128, 467 D.L.R. (4th) 480. All it does is quantify the loss: *Northbridge General Insurance Corp. v. Ashcroft Homes-Capital Hall Inc.*, 2021 ONSC 1684, at para. 28.

[43] In *854965 Ontario Ltd. v. Dominion of Canada General Insurance Co.*, 64 O.R. (3d) 234 at para. 25, the Court described the process as follows:

> The appraisal process is contemplated, by the terms of statutory condition #11, to take place prior to any recovery under the contract, whether there is any dispute as to the ability to

> recover on the contract, and independently of all other questions. The appraisal process commonly determines value but leaves question[s] of entitlement and defences to recovery under that contract to a lawsuit under the contract of insurance. The appraisal process can take place concurrently with a lawsuit dealing with the insured's claim to recover under the contract and an insurer's defences to payment.

[44] Therefore, it is clear that the Umpire's decision cannot address issues of liability.

[45] Chubb argues that only the owner, NewRoads, had standing to pursue a claim and challenge the value of the loss.

[46] I disagree because Gardener is a named insured and thus has the contractual right to make a claim.

[47] Chubb gave NewRoads permission to lease the Trucks to Gardener. The "Permission to Rent or Lease Automobiles and Extending Coverage" document, which was issued by Chubb, provides as follows:

> This change is part of your policy.
>
> Lessor.
>
> It permits the lessor to rent or lease automobile(s) to the lessee who has completed the Ontario Application for Automobile Insurance - Owner's Form (OAF 1). For the purposes of s. 267.12 (1) (a) of the Insurance Act (Ontario), the policy shall be deemed to have been issued only to the lessee of the automobile, and not to the lessor. [Emphasis added]
>
> Lessee.
>
> **It provides coverage to the lessee as if the lessee were the named insured,** and to every other person who uses or operates the automobile with the lessee's consent. The coverage will not exceed the limits and amounts shown on the Certificate of Automobile Insurance. [Emphasis added].

[48] The "Certificate of Automobile Insurance" document also notes that Gardener is the **named insured** and sets out its address.

[49] The appraisal that Chubb commissioned from Paragon Appraisals notes that Gardener is the insured. It does not mention NewRoads. I infer that this information must have been given to Paragon Appraisals from Chubb.

[50] Even the Proofs of Loss, which Chubb specifically pleads it received from NewRoads, notes that Gardener is the insured.

[51] Further, an insurable interest does not require that a party own the item. Where a person leases a motor vehicle and the lease agreement requires the lessee to obtain insurance, the lessee has an insurable interest for which insurance can be purchased: *R v. Villasenor*, 2022 ONCJ 578, at para. 46; and *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 S.C.R. 2, at pp. 29-30.

[52] Chubb provided no authority for the proposition that a party who is a lessee and to whom it has sold insurance (and who therefore has an insurable interest) cannot dispute valuations that the insurer made. If Chubb is correct, then in any case where the party has an insurable interest but does not own the property, the insurer could make any appraisals or valuations that it wants, and these could not be challenged by the very party to whom it sold insurance. This is also inconsistent with the insurance policy entered into by Gardener and Chubb.

[53] Chubb also argues that this issue should not be determined because it only received the plaintiff's factum setting out the law on insurable interests ten days before the motion in the factum. It argues that it was surprised by this argument which it views as an implicit request for declaratory relief. However, in my view ten days was sufficient time to brief this issue which is the response to Chubb's standing argument set out in its defence and in the Requisition scheduling this motion.

[54] The provisions of the *Insurance Act* also support the conclusion that Gardener, as a named insured, has the right to dispute the amount payable.

[55] Section 128 applies to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between **the insured and the insurer**.

[56] Section 148 of the *Insurance Act* sets out a statutory condition in every contract in force in Ontario, which provides that where there is a dispute as to the amount of the loss, the loss shall be determined by way of appraisal:

> Appraisal
>
> 11. In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

[57] Therefore, the appraisal process is contained within the insurance contract between Chubb and Gardner as a result of s. 148.

[58] As well, O. Reg 777/93: Statutory Conditions – Automobile Insurance under the *Insurance Act*, provides for the following:

Resolution of disagreement by appraisal under s. 128 of the Act

(2.1) Section 128 of the Act applies to this contract if,

….

(b) the **insured and the insurer** disagree on,

(i) the nature and extent of repairs, rebuilding and replacements required or their adequacy, or

(ii) the amount payable in respect of the loss or damage; and

(c) a request in writing that an appraisal be carried out in accordance with section 128 of the Act,

(i) is made by the insured, or

(ii) **is made by the insurer and the insured agrees.** [Emphasis added]

[59] The wording of these provisions gives Gardener standing as the named insured to challenge a valuation made by Chubb in an appraisal process and then avail itself of the result because Gardener is the named insured.

[60] It is also inconsistent to argue that Gardener had no standing to the s. 128 proceeding that Chubb insisted upon and that it knew Gardener would be a party to.

Issue 3: Is there a limitation period issue that must proceed to trial?

[61] Sub-Statutory Condition 9(4) provides that every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile or its contents shall be commenced within one year next after the happening of the loss and not afterwards in respect of loss or damage to persons or property. Similarly, s. 259.1 of the *Insurance Act* provides that "a proceeding against an insurer under a contract in respect of loss or damage to an automobile or its contents shall be commenced within one year after the happening of the loss or damage."

[62] The loss occurred on or about June 30, 2020. There was a suspension of the one-year limitation period because of COVID-19, such that the limitation period began to run on September 14, 2020. The claim was commenced on September 27, 2021. Chubb argued before me that the claim is out of time by 13 days and that this issue must proceed to trial.

[63] I agree that a party cannot bring a standalone appraisal proceeding without also bringing an action on the issue of liability because the appraisal process only addresses value and not liability.

[64] Nevertheless, I do not accept that this is a viable defence in this case for the following reasons.

[65] This action has been ongoing since September 27, 2021. Chubb never pleaded a limitation period defence, never sought to amend the defence, and only raised the limitation period for the first time in its factum served ten days before the motion without even bringing a cross motion. It also did not ask to amend the defence during the motion or request an adjournment.

[66] Chubb's failure to plead a limitation defence or at least seek an amendment by the time of this motion is fatal.

[67] In *Singh v. Trump*, 2016 ONCA 747, 408 D.L.R. (4th) 325 at paras. 132-136, the Court of Appeal set out that the expiry of a limitation period is a defence that must be pleaded. The Court overturned the decision of the motions judge who granted summary judgment on the basis that the limitation period was never pleaded. The Court then granted summary judgment to the plaintiff on that claim.

[68] The rationale for this requirement is that a failure to plead a limitation defence undermines the principle that parties are entitled to have their differences resolved on the basis of the pleadings. The failure to plead a limitation defence can cause prejudice. For example, if a party was aware of a limitation defence, it might have settled or even abandoned a claim.

[69] In this case, Chubb candidly admitted before me that the parties had settlement discussions prior to this motion, made offers, and were close to settling.

[70] Had Gardener been aware of any potential limitation defence, it might have settled during these communications and accepted Chubb's offer. Instead, without knowing that Chubb would eventually raise a limitation defence, Gardener spent $12,259.12 on this motion (according to the Bill of Costs it filed). Again, Gardener may not have done so, had it received advance notice of the limitation defence. In the context of a claim worth approximately $23,000, Chubb's failure to provide notice is significant. There is clear prejudice as Gardener both expended resources and lost the opportunity to accept Chubb's offer.

[71] The case *Aviva Insurance et al. v. Sahara Restaurant*, 2024 ONSC 1415, is not the same. In that case, an insured made an application to compel the insurer to participate in an appraisal after the expiry of the limitation period. The insurer took the immediate position that this was not possible because the limitation period had already expired and the Court agreed.

[72] The difference is that the insurer took the immediate position and was not the one who demanded that the appraisal process be followed. As well, the insurer raised the limitation defence immediately unlike in the case before me.

Issue 4: Is there an issue as to whether the payment to NewRoads constituted a settlement that is binding on Gardener which must proceed to trial?

[73] Chubb also argues in its factum that the matter was settled with NewRoads when it issued cheques to NewRoads, who it argues accepted its valuation. But this is not pleaded. All that is pleaded is that Chubb completed its own valuations, received executed Proofs of Loss from NewRoads, and paid NewRoads. It never pleaded that this constituted any settlement which would bind Gardener. It never pleaded that NewRoads had authority to settle Gardener's claim or even that it had the ostensible authority to do so.

[74] It also provided no evidence that supports the conclusions that it considered the claim settled when it paid NewRoads or that NewRoads had any authority or ostensible authority to settle the claim on behalf of Gardener.

[75] Ian Roy of NewRoads signed the Proofs of Loss, and there is no evidence that Gardener had anything to do with the Proofs of Loss submitted by NewRoads. Indeed, it makes no sense that Gardener was involved because it immediately sought its own appraisals upon being sent the Proofs of Loss and then challenged them. If there was any evidence that Gardener had anything to do with the Proofs of Loss, it was open to Chubb to seek to obtain evidence that supported this conclusion but there is no such evidence before me. I conclude that NewRoads submitted these Proofs of Loss without consulting Gardener.

[76] Further, Chubb insisting on the appraisal process is inconsistent with the position that what Chubb had done was settle with NewRoads on behalf of Gardener.

[77] In any event, as noted above, the policy change in favour of NewRoads specifically indicated that Chubb was providing coverage to the lessee as if the lessee were the named insured. As well, the Certificate of Insurance is in favour of Gardener only. Chubb provided no law that supported its argument that NewRoads could settle Gardener's claim on its behalf in these circumstances.

[78] Again, it did not bring a cross motion to amend its claim or ask for an amendment at the motion. There is prejudice to this issue being raised at this time since there were offers that Gardener could have accepted had it known this was Chubb's defence.

Issue 5: Is this motion procedurally defective because Gardener sought an order enforcing the order of the Umpire citing only r. 37, without relying on r. 20?

[79] I disagree that this motion was procedurally defective because it cites only r. 37 and s. 128 of the *Insurance Act*.

[80] An Umpire's decision as to a valuation is final and binding unless it is judicially reviewed.

[81] Section 128 gives the court discretion to curb abuse and to make such procedural orders as are necessary to give effect to the statutory appraisal scheme in the *Insurance Act*: *Campbell v. Desjardins*, 2020 ONSC 6630, at para. 74, citing *Birmingham Business Centre Inc. v. Intact Insurance Company*, 2018 ONSC 6174, and *56 King Inc. v. Aviva Canada Inc.*, 2017 ONCA 408.

[82] As noted, the only defences pleaded by Chubb are the standing issue and its assertion that the payments that it made were sufficient to comply with any indemnity obligation.

[83] Having disposed of the pleaded standing issue, the only pleaded issue left is the issue of the amount that had to be paid. This, in turn, depends upon the valuation, which s. 128 is specifically designed to address and which Chubb invoked.

[84] I also note that Gardener scheduled this matter pursuant to a Requisition to Schedule a short motion dated February 6, 2025. The parties' positions were set out in that request filed with the Court and the parties confirmed to me that the Defendant's Brief Position below was written by Chubb and was set out in red on the form.

> *Plaintiff's brief position: The Parties consented to the Umpire Process under section 128 of the Insurance Act. The Umpire's decision was released on February 21, 2024. The Plaintiff made repeated requests to the Defendant for payment pursuant to the decision of the Umpire, to no avail. The Plaintiff requests an oral hearing to establish its position with respect to the enforcement of the Umpire's decision and also seeks costs of the motion on a substantial indemnity basis.*
>
> *Defendant's Brief Position: If the umpire's decision is determinative of this entire action, then this action was improperly issued in Superior Court. If value of the vehicles is the only issue for determination, then this matter should have been brought via the umpire process in the first place, and no action should ever have been issued, because Superior Court is not the proper jurisdiction. This would mean that the defendant has incurred significant defence costs needlessly. The defendants do not believe the umpire's determination was determinative of the action as a whole* ***because whether or not the lessee is entitled to dispute the amount payable (as opposed to the owner/lessor) is a separate question. The umpire's decision gives us insight into damages, but not this legal question****.* [Emphasis added]

[85] The Requisition cites only r. 37 and s. 128 of the *Insurance Act*, and specifically notes that this is not a motion for summary judgment. Chubb agreed to this process and noted no procedural deficiencies with its only argument being one of standing.

[86] The Requisition, fairly read, showed that the parties agreed to have this matter adjudicated through this motion with the legal issue being the only live issue.

[87] Had Chubb raised the new and multiple issues before me in the Requisition or raised any issues as to the procedure, the Court would not have agreed to schedule this matter as a short motion with 75 minutes booked.

[88] Although I can appreciate that parties wish to win motions and advance all arguments that they think can assist, as well as Chubb's counsel's valiant attempts in that regard, a party cannot wait until the last minute and then raise arguments that a matter must proceed to trial or to a

summary judgment motion without a viable pleading on the issues it raises, a cross motion to amend, or any evidence to support the plausibility of newly asserted arguments.

[89] In my view, where there are no facts in dispute and only a simple legal issue such as the one raised by Chubb in its pleading and the Requisition, a motion for judgment in accordance with the Umpire's report is proper and not defective. In these circumstances, the court does not need the expanded powers set out in r. 20, which include weighing evidence, evaluating credibility or drawing inferences from evidence because there is no contradictory evidence at all.

[90] There is also no prejudice to Chubb since it well understood that the legal issue would be argued based upon the Requisition. Indeed, what was the 75 minutes required for if the legal issue was not going to be addressed?

[91] Based upon the pleadings, the Umpire's report, and the evidence before me, there is no valid issue before me other than the value of the loss which has been determined by the Umpire. Therefore, Gardener is entitled to an order for judgment reflecting the valuation made by the Umpire.

[92] If the parties cannot resolve the issue of costs, which I recommend they do, they may make cost submissions as follows: Gardener within 7 days and Chubb within 7 days thereafter.

Papageorgiou J.

Released: August 27, 2025

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Plaintiff

– and –

CHUBB INSURANCE COMPANY OF CANADA

Defendant

REASONS FOR JUDGEMENT

Papageorgiou J.

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