IN THE MATTER of a dispute between State Farm Mutual Automobile Insurance Company and her Majesty the Queen in Right of Ontario as Represented by the Minister of Finance and Gordon Greig pursuant to Regulation 283/95 under the *Insurance Act,* R.S.O. 1990, c.1.8 as amended.

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

BETWEEN:

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Applicant

and

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

Respondent

and

GORDON GREIG

Person Claiming Benefits

DECISION

COUNSEL:

Boyd Critoph, for the Applicant

John Friendly, for the Respondent

ISSUES:

Did State Farm, the insurer of the motor vehicle owned by the father of the injured party, Gordon Greig, comply with the notice provisions of section 3 of Regulation 283/95, and if not, is State Farm relieved from non-compliance?

ORDER:

State farm did comply with the notice provisions of section 3 of Regulation 283/95.

HEARING:

The arbitration hearing was held in the City of Toronto, in the Province of Ontario, on June 23, 2000, before me, M. Guy Jones, pursuant to the provisions of the *Arbitration Act,* 1991.

EVIDENCE:

The basic facts of this case are not in dispute and may be summarized as follows:

Gordon Greig was injured in a single vehicle accident on June 13, 1997. The motor vehicle involved in the accident was uninsured. At the time of the accident,

Gordon Greig's father, Mr. William Greig, held a valid policy of insurance with State Farm Insurance Company.

On July 29, 1997, the Greig family lawyer, Mr. Vincent Genova, wrote to State Farm, stating:

> "Please except this as notice that a claim will be made against State Farm for medical and rehabilitation expenses, among other things, under the dependency provisions of the [William's] insurance policy".

Mr. Geoffrey Kope, an adjuster with State Farm, assumed carriage of this matter and by early August 1997 was actively attempting to determine if Gordon Greig was a "dependent" of William Greig for the purposes of coverage by State Farm for medical and rehabilitation benefits pursuant to the Statutory Accident Benefit Schedule.

While Mr. Kope was investigating the question of dependency, on October 21, 1997, State Farm received an application for accident benefits from Mr. Gordon Greig.

On or about November 6, 1997, Mr. Kope met with Mr. Greig's lawyer, Mr. Genova, on another matter. At that time Mr. Kope and Mr. Genova discussed the dependency issue, and whether State Farm or the Motor Vehicle Accident Claim Fund was responsible for payment of Mr. Greig's accident benefits. If Gordon Greig was a dependent of William Greig, then State Farm was the insurer ultimately responsible for payment of the benefits, but if he was not a dependent, then the Fund would ultimately be responsible for payment of the benefits.

While Mr. Kope and Mr. Genova discussed the issue of priority between State Farm and the Fund, Mr. Kope asked Mr. Genova to notify the Fund of the possible claim, and Mr. Genova agreed to do so.

On November 12, 1997, Mr. Genova wrote a letter to the Fund, in which he stated, among other things:

> "Unfortunately, Mr. Greig was not insured at the time of this loss…. We have placed his father's auto insurer, State Farm, on notice of a claim for medical and rehabilitation expenses although it has not yet been conceded by the Insurer that Gordon Greig was a dependent at the time of this loss.
>
> We ask that you contact the writer as soon as the file has been opened in order to discuss this matter further. Please accept this as notice that a claim will likely be made against the Fund for medical and rehabilitation expenses or benefits if it is determined that Mr. Genova was not a dependent".

On November 15 or 25, 1997, Mr. Genova spoke to Ms. Maria Gradanis, an adjuster from the Fund, who had been assigned to this matter. According to Mr. Genova, Ms. Gradanis advised that the Fund was simply keeping their file in abeyance pending a decision by State Farm regarding the dependency issue. According to Ms. Gradanis' note of the conversation, Mr. Genova advised that he was negotiating with State Farm and if State Farm determined that the claimant is not dependent on his father, he would contact the Fund and forward an accident benefit package to them.

While this was transpiring, Mr. Kope continued to investigate the dependency issue. Between August and December 21, 1997, Mr. Kope, among other things, did the following:

-obtained a police report;

-met with Mr. Genova and Gordon Greig and took a statement from Mr. Greig;

-requested and obtained various records of employment and UIC information regarding Mr. Greig;

-retained an investigation company to obtain information regarding Mr. Greig's pre-accident residence and the general dependency issue.

It would appear, based on all the evidence before me, that Mr. Kope had compiled a great deal of the information with regard to the dependency issue by the end of December 1997. Indeed, by that time, Mr. Kope had expressed the opinion, in written reports to his supervisor, that Gordon Greig was not a dependent of his father. Mr. Kope and his supervisor believed, however, that company policy required that a decision on the dependency issue be made by the State Farm Claims Committee, and this decision would then be reviewed by the State Farm corporate office in Bloomington, Illinois. It is important to note that State Farm now agrees that Mr. Kope and his supervisor were incorrect in their assumptions and that they could have made a decision on this issue on their own.

On March 4, 1998, Mr. Kope wrote Mr. Genova advising that the information that they had gathered regarding the issue of dependency had been forwarded to their counsel for an opinion. On April 9, 1998, Mr. Kope again wrote Mr. Genova and advised him that they had consulted counsel and that State Farm would pay the accident benefits and dispute the issue of priority with the Fund.

On June 2, 1998, counsel for State Farm wrote to the Fund, enclosing a Notice of Application of Dispute Between Insurers as well as Notification of Commencement of Arbitration to resolve the priority dispute.

POSITIONS OF THE PARTIES:

This dispute involves the applicability of the notice provisions of section 3 of Regulation 283/95 (the "Regulation") as it relates to the question of priority of payment of accident benefits between insurers.

Section 3 reads as follows:

> (1.) No insurer may dispute its obligation to pay benefits under section 268 of the Act unless it gives written notice within 90 days of receipt of a completed application for benefits to every insurer who it claims is required to pay under that section.
>
> (2.) An insurer may give notice after the 90-day period if,
>
> (a) 90-days was not a sufficient period of time to make a determination that another insurer or insurers is liable under section 268 of the Act; and
> (b) the insurer made the reasonable investigations necessary to determine if another insurer was liable within the 90-day period.
>
> (3.) The issue of whether an insurer who has not given notice within 90-days has complied with subsection (2) shall be resolved in an arbitration under section 7.

State Farm's position may be summarised as follows:

1. The required notice was given by way of Mr. Genova's letter of November 12, 1997;

2. If that was not sufficient notice, then the notice of June 2, 1998 constituted good notice and the provisions of section 3(2) should be invoked to allow notice beyond the 90-day period;

3. If it is concluded that section 3(2) does not apply then relief from forfeiture should be granted in accordance with section 31 of the *Arbitration Act.*

The Fund on the other hand, submits that:

1. The letter of November 12, 1997 did not constitute the required notice as set out in section 3(1) of the Regulation;

2. The relief provisions as set out in section 3(2) should not be invoked as the requirements for its use have not been met;

3. The arbitrator has no power to grant relief from forfeiture in light of section 3(2), but even if he did, this is not an appropriate case in which to exercise that equitable remedy.

ANALYSIS:

In order to make a determination with regard to issues in dispute in this matter, it is necessary to analyze the regulation, its purpose, and the case law in the area of relief from forfeiture.

In determining whether section 3(1) has been complied with, it is useful to first examine the purpose of that particular section as it relates to the Regulation as a whole. In doing so, it is important to note that section 3(1) is a notice provision, rather then a limitation period, which is set out later, in section 7 of the Regulation.

Regulation 283/95 was created to govern the disposition of priority disputes between insurers in accident benefit cases in the Province of Ontario. Prior to that time, when a person was injured in a motor vehicle accident in Ontario and a dispute arose as to what insurer was to pay the accident benefits, the injured party was often shuffled between the various insurers while those insurers sorted out who was to pay. Often the injured party received no benefits until the dispute between insurers was resolved.

Regulation 283 set up a system whereby the first insurer to receive an Application for Accident Benefits is required to pay the benefits, and the question of which insurer should ultimately pay is to be determined by a subsequent private arbitration between the potential insurers.

The notice provision, whereby one insurer advises another insurer of a priority dispute is set out in section 3, as quoted above. As Arbitrator Malach stated in Guardian Insurance Company of Canada and Wawanesa Mutual Insurance Company, August 5, 1999:

> "Having put the system into effect, the Legislators chose a 90-day period as the appropriate period of time in which the insurer paying benefits has to put another insurer or insurers on notice, if the paying insurer takes the position that another insured is ultimately responsible to pay the benefits in a given case.
>
> It appears that the time limit of 90 days was chosen so that the insurer that ultimately has to pay can take over management of the claim at an early time, since claims can amount to substantial amounts of money. If

an insurer has to ultimately pay the benefit, that insurer will want to manage the claim in the way that the insurer manages all claims".

Counsel for State Farm argues that Mr. Genova, counsel for Mr. Greig, notified the Fund of the claim by way of a letter of November 12, 1997 which was then elaborated upon by way of a telephone conversation between Mr. Genova and Ms. Gradanis of the Fund on November 15 or 25, 1997.

Counsel for State Farm rightly points out that the requirements regarding the notice, as set out in section 3(1), are quite vague. It simply states that the notice must be given in writing, be made by the insurer, be within 90 days of receiving a completed application for benefits, and be sent to every insurer who it claims is required to pay under that section. It does not, as do other sections of Regulation 283/95 or sections of the Accident Benefits Schedule itself, require a specific form to be filled out, with additional information.

While conceding that the November 12, 1997 notice may not have been in strict compliance with the provisions of section 3(1), State Farm relies on section 28 of the *Interpretation Act,* R.S.O. 1990, c.111, which states:

In every Act, unless the contrary attention appears, …

(d) where a form is prescribed, deviations therefrom not effecting the substance or calculated to mislead do not vitiate it.

It is important to note that while the notice requirements set out in section 3(1) are fairly vague, there are other notices that the insurer is required to give to the insured at the same time that it gives the section 3(1) notice to the other insurers. These are set out in sections 4 and 5 of the Regulation and deal primarily with the right of the insured to object to the transfer of the claim to another insurer. It is agreed that State Farm did

not do this until June 2, 1998, when its counsel gave further notice to the Fund of its intention to dispute its obligation to pay benefits. While I agree that State Farm failed to comply with sections 4 and 5 of the Regulation, I do not believe that this is, in itself, fatal to their claim regarding compliance with section 3(1). While the notices are to be given simultaneously, failure to comply with sections 4 and 5 does not mean that section 3 was not complied with. I also note that after receiving the June 2 Notice to the Insured, Mr. Greig did challenge State Farm's decision to transfer the claim, but eventually withdrew that objection.

I am prepared to accept that section 28 of *The Interpretation Act* applies to this situation, to the extent that section 3 requires a certain form. It then remains then to determine to what extent the letter of November 12, 1997 deviated from the requirements of section 3(1) and whether it affected the substance of the notice or was calculated to mislead or vitiate from it.

The primary failings of the letter of November 12, 1997, in my view, were that it was not sent from the insurer (State Farm) and that it did not say with absolute certainty that the Fund was required to pay. Having said that, it is important to analyze what the letter did say, and what the Fund could or should have reasonably taken from that letter, as it relates to the purpose of section 3.

The letter of November 12, 1997 undoubtedly let the Fund know that there was a dependency issue being raised and that State Farm was not conceding that Gordon Greig was a dependent of William Greig. It also let the Fund know that a claim would likely be made against the Fund for accident benefits if it was determined that Gordon Greig was not a dependent.

Much was made during submissions of the fact that the notice was given by Mr. Greig's lawyer rather then by State Farm. I find that the letter of November 12, 1997 was written by Mr. Genova after a meeting with Mr. Kope of State Farm, and as a result

of Mr. Kope's request of Mr. Genova that he put the Fund on notice regarding the dependency issue. As such, I find that the sending of the letter by Mr. Genova rather then State Farm is not, of itself, fatal to State Farm's position.

I am more troubled by the fact that the letter does not state categorically that State Farm is disputing its obligation to pay benefits, and is invoking the provisions of Regulation 283/95. The reasons for this may be threefold: -first of all, as I indicated above, the requirements of section 3(1) are somewhat vague; secondly, the known facts, on the issue of dependency were still somewhat unclear at this point in time. Finally, all the parties involved, to varying degrees, seem to have been operating, at least partially, in accordance with the pre, rather than the post, Regulation 283/95 approach to priorities. Mr. Kope, on behalf of State Farm, was examined by the Fund in preparation for this arbitration and admitted that at the time of this occurrence, he had only a very general knowledge, at best, of Regulation 283, and was not aware of the notice requirements. Mr. Genova, on behalf of Mr. Greig, seems to have been content, in the short term, to advise both State Farm and the Fund of the dependency issue and let them fight it out, rather then simply invoking Regulation 283. Strictly speaking, because of Regulation 283, there was no need for Mr. Genova to even contact the Fund.

In the case of the Fund, Ms. Gradanis was clearly aware that there was a dependency issue and that the Fund was potentially liable for payment. Based on her conversation with Mr. Genova on November 15 or 25, 1997, she was prepared to allow him to negotiate with State Farm and if State Farm determined Gordon Greig was not a dependent, Mr. Genova would forward the accident benefit package to the Fund.

Much was made of the fact that the Fund was apparently not specifically notified that the Application for Accident Benefits had been forwarded to State Farm on or about October 21, 1997 and that had this been known, it would have somehow changed the situation. I disagree. The Fund was aware, at least by the time of the conversation

between Mr. Genova and Ms. Gradanis of November 15 or 25, that Mr. Greig had been involved in an extremely serious accident and had been severely injured. It would not be realistic to believe that the Application for Accident Benefits had not or was not in the process of being delivered. In my view, the Fund was well aware of the accident, and that Mr. Greig had been severely injured. It is logical to presume that it also knew that accident benefits were being claimed, that State Farm had put the issue of dependency in question and that a claim would likely be made against the Fund. This, in my view, fulfills the basic requirements of section 3(1) of the Regulation and as such I find that State Farm may proceed with the arbitration.

EFFECT OF SECTION 3(2) OF THE REGULATION:

Despite the fact that I have found that State Farm complied with section 3(1), as the parties have put forward additional alternative positions, I will deal with them at this time.

State Farm has suggested that if section 3(1) was not complied with, they can rely upon the "saving provisions" of section 3(2) of the Regulation, which state:

> "An insurer may give notice after the 90 day period, if
>
> (a) 90-days was not a sufficient period of time to make a determination that another insurer or insurers is liable under section 268 of the Act; and
>
> (b) the insurer made the reasonable investigations necessary to determine if another insurer was liable within the 90-day period".

The Honourable P.T. Galligan, in Canadian General Insurance Company vs. Axa Insurance Company, December 19, 1996, in my view correctly set out what the insurer must show in order to rely upon the provisions of section 3(2). He stated:

> "In order for an insurer to escape the rigours of subsection (1) it must comply with the provisions of subsection (2). The plain words of subsection (2) lead me to the view that the insurer must establish both of two things:
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> 1. That 90-days was not a sufficient time to make a determination that another insurer was liable, and
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> 2. That it made reasonable investigations within the 90-day period to determine if another insurer was liable…."
>
> It is my view that in order to obtain the benefit of subsection (2) the insurer must establish that, because of the peculiar circumstances of an individual case, the 90-day period was not sufficiently long for a determination of that issue".

In this case, the Application for Accident Benefits was received by State Farm on or about October 21, 1997. Pursuant to section 3(1) of the Regulation, State Farm then would normally have had until January 21, 1998 to investigate and put the Fund on notice. Counsel for State Farm presented a very well reasoned and well-argued case for the proposition that the meaning of the term "is liable" in section 3(2) of the Regulation is not clear. It concedes that it knew early on that the Fund was "possibly liable", but that it was not until a much later date that it knew with any certainty that that might be the case.

Indeed, it can be argued that until an arbitrator finally determines the issue, State Farm cannot be certain that the Fund is liable.

Counsel for State Farm then argues that given the uncertainty in the law as to the meaning of the term “is liable”, it was not unreasonable for State Farm to take more than 90-days to put the Fund on notice. In support of this position it relies on the decision of Arbitrator Malach in West Wawanosh and Kingsway General Insurance Company, April 6, 2000. In that case, the arbitrator allowed an extension of the 90-day period because the law was unclear at the time of the accident.

While this argument has some initial attractiveness, I do not think that it applies to the particular facts of this case. It is clear that by the end of December, 1997, Mr. Kope had come to the conclusion that Mr. Greig was not a dependent of his father for the purposes of the SABS. He then chose to forward his views to the Company Claims Committee for approval, despite the fact that this was not required by the company claims handling procedures.

While I am prepared to accept that the mere fact that the adjuster came to a conclusion on the issue is not determinative of the point, and that it may be reasonable and necessary to obtain a legal opinion on the issue of dependency, I am not convinced that State Farm could not have obtained the opinion within the required 90-day period. There may be some question as to what level of certainty should exist before a notice is sent to another insurer, and as such each case must be considered on its particular fact situation. What is not required, however, is absolute certainty. In any event, I do not find, in this particular fact situation that it is appropriate to invoke the provisions of section 3(2).

EQUITABLE RELIEF:

Counsel for State Farm argued, in the alternative, that in the event that section 3(2) is not applicable, that I should apply the equitable doctrine of relief from forfeiture to excuse the deficiencies of the November 12, 1997 notice or any lack of timeliness of the notice.

The first question to be answered in this regard is whether I have the power to grant such equitable relief. Section 31 of the *Arbitration Act,* 1991 states:

> "An arbitral tribunal shall decide a dispute in accordance with law, including equity, and may order specific performance, injunctions and other equitable remedies".

Counsel for State Farm also points to section 98 of the Courts of Justice Act, R.S.O. 1990, c.43, which states:

> "A Court may grant relief against penalties and forfeiture, on such terms as to compensation or otherwise as are considered just".

State Farm's argument, as I understand it, is that section 31 of the Act gives the arbitrator essentially the same powers as a court exercises by means of section 98 of the Courts of Justice Act.

Counsel for the Fund, while conceding that an arbitrator may have equitable jurisdiction in some instances, argues that this is not appropriate in this case for the following reasons:

1. By enacting section 3(2) the legislature has in essence, "occupied the field" and left no room for an arbitrator to extend the 90-day period beyond what is given in section 3(2).

2. Equitable relief may not be granted to overrule a statutory requirement.

3. State Farm has not demonstrated that it meets the test established by the courts for invoking the equitable relief sought in this case.

I will deal with each argument individually.

While I am prepared to accept that I do have the right to grant equitable relief, including relief from forfeiture, I do have some concerns as to whether the legislature, by enacting section 3(2) has in essence "occupied the field", thereby precluding me from granting any further relief than that set out in that section. In support of its position, the Fund has referred me to Re Fair and Toronto [1930] 3 D.L..R. 76, a decision of the Ontario Court of Appeal. In that case, the court found that the *Arbitration Act* supplemented the *Municipal Arbitration's Act* only so far as the provisions of the former were not inconsistent with those of the latter Act.

In attempting to apply that decision to this case, I first note that there is a distinction between the Fair case and this one. In Fair, the legislation spoke of any "inconsistency" between the two applicable pieces of legislation. In our case, one must look at the wording of section 2(3) of the *Arbitration Act* 1991, which states:

> "This Act applies,… to any arbitration conducted in accordance with another Act,… however, in the event of a conflict between this Act and the other Act, or regulations made under the other Act, the other Act, or regulations prevail".

The Fund's position, as I understand it, is that by creating the specific "saving clause" as set out in section 3(2) of Regulation 283/95 all other possible reasons for remedying any non-compliance or imperfect compliance with section 3(1) are excluded.

Despite the able argument of counsel for the Fund, and his drawing my attention to numerous cases on the point, I am not convinced that by enacting section 3(2), the legislature has absolutely and completely precluded all other relief. Certainly if the relief is in conflict (as opposed to "inconsistent"), with the Regulation, then the Regulation rules. In this particular case, section 3(2) sets out a relief provision when the 90-day requirement is not complied with. While it may be, without deciding the point, that section 3(2) has been set up in such a way as to preclude any other relief from a 90-day provision, I do not believe that it precludes relief in this particular case. Here I am relieving against any shortcomings in the original notice rather then extending the 90-day notice. While an argument can be made that section 3(2) would be in conflict with an extension of the 90 period, it is not, in my view, in conflict with granting relief with regard to the deficiencies of the original notice.

I now turn to the argument put forward by the Fund that the power granted by section 31 of the *Arbitration Act* does not allow an arbitrator to set aside the clear requirements of a statute or regulation. In support of this position it relies upon Rex vs. CNR Company [1923] 3 DLR 719 (J.C.P.C.), McBride vs. Comfort Living Housing Co-operative Inc. 7 O.R. (3rd) 394 (C.A.) and Liscum vs. Provenzano Estate (1985), 51, O.R. (2nd) (HCJ).

In analyzing whether or not this principle applies to the present case, it is important to recall what possible failure we are dealing with. It is not with regard to the question of extending the 90-days, as set out in section 3(2), but rather whether there were any defects in the original notice of November 12, 1997.

Turning to the case law, the Judicial Committee of the Privy Council, in Rex vs. C.N.R. Co. [1923] 3 D.L.R. 719 set out the general proposition that the equitable relief

provisions cannot be used by the courts to override a statute. In that decision, Lord Parmoor stated:

> "…If the power given to the Court to relieve against penalties applied to statutory penalties, this would, in effect be giving an authority to enable the Court to repeal statutes".

The limitation of the right to relieve against was further commented upon by the Ontario Court of Appeal in McBride vs. Comfort Living Housing Cooperative Inc. 7 O.R. (3d) 394, wherein Finlayson, J.A. at page 399 stated:

> "…By the *Judicature Act…* Ontario enacted a general provision giving the courts power to relieve against all penalties and forfeitures… Section 111 (now s. 98) of the CJA now sets out the equitable power of the court in much the same fashion… This section apparently does not empower a court to relieve against penalties and forfeitures imposed by statute".

There have been a number of cases where the courts have applied relief from forfeiture in cases of statutory conditions or other statutory provisions. In Minto Construction Ltd. vs. Gerling Global General Insurance Co., (1978), 19 0.R. (2d) 617, the Ontario Court of Appeal held that relief from forfeiture could be granted for both statutory and contractual notice periods. It is important to note, however, that in that case the Court of Appeal relied on section 103 (now s. 129) of the *Insurance Act,* which states:

> "Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured… the court may relieve against forfeiture…"

Counsel for State Farm, quite rightly, in my view, conceded that s. 129 applies only to proof of loss given by the insured. This is significantly different than in our case, where the notice is given by the insurer. As the Court in Minto, and in subsequent cases, relied on section 129 to allow for relief in cases of statutory conditions, I am drawn to the conclusion that such relief is not available in this case. Even though we are dealing with a condition set out in a policy of insurance, it is legislated by statute, and since s. 129 of the *Insurance Act* does not apply, the general rule against allowing equitable relief to overrule a legislative condition applies.

In the event that I am incorrect regarding the issue of equitable relief not being available when dealing with a statutory condition, the question then turns to whether this is an appropriate case, based on its particular facts, to invoke the equitable relief requested. The factors to be considered in doing so are as set out in Saskatchewan River Bungalows Ltd. et al. vs. Maritime Life Assurance Company, 115 DLR (4th) 478 (S.C.C.) in which Justice Majors stated:

> "The power to grant relief against forfeiture is an equitable remedy and is purely discretionary. The factors to be considered by the court in the exercise of its jurisdiction are the conduct of the applicant, the gravity of the breaches, and the disparity between the value of the property forfeited and the damage caused by the breach".

In applying this principle, it is important to remember once again that the relief being considered is in relation to the shortcomings of the original notice rather then any possible extension of the 90-day period. In this regard, I note that Mr. Kope, on behalf of State Farm, did make early efforts to ensure that the Fund was notified. He asked Mr.

Genova to notify the Fund, which Mr. Genova did. The fact that the notice was given by Mr. Genova rather then State Farm directly, was, in my view, relatively unimportant. The important point is that the Fund was notified. I also note that Mr. Kope went to some lengths to confirm with Mr. Genova that the Fund had been notified. In considering the behaviour of the Applicant, counsel for the Fund urged me to conclude that State Farm was attempting to "deflect" the claim from State Farm to the Fund, and thereby delay the payments properly owing to the injured party. I am not convinced, on the evidence before me, that this was in fact the case.

In turning to the second part of the test, the gravity of the breaches, I have already noted that the breaches were relatively minor. The key point here is that the notice was received by the Fund and they would clearly have been able to investigate further if they had chosen to do so.

I must then look at the disparity between the value of the property forfeited and the damage caused by the breach. The value of the property forfeited is, in this case, the accident benefits paid to the severely injured party. It is my understanding that this amounts to a significant expenditure. When attempting to evaluate the damage caused by the breach, this is somewhat difficult. We are dealing with a notice, rather then a limitation. Pursuant to the Regulation the applicant had one year from giving notice under section 3 to commence the arbitration. Notice of Start of Arbitration was sent on June 2, 1998, well short of the fifteen months from the date of Application for Accident Benefits which was the maximum allowable period if there had been perfect compliance with the Regulation.

I also note that when considering the potential damage done by the breach that the Fund was well aware of the dependency issue as early as November 12, 1997 and certainly by late November 1997. It could have investigated the issue thoroughly at that time but chose not to. I also note that there is nothing before me at this time to suggest

that the Fund has been in any way prejudiced or hurt in terms of gathering information regarding the dependency issue and that it will be able to have the issue fully aired at the arbitration hearing.

In light of the above, had I decided that I had the jurisdiction to invoke relief from forfeiture, I would have done so.

Having decided that I cannot invoke my equitable powers to override the statutory condition, this does not alter the fact that I have found that s. 3(1) was infact complied with, and accordingly State Farm may proceed with a hearing on the merits of their case.

COSTS:

I may be spoken to with regard to the issue of the costs to be awarded.

Dated at Toronto this 11th day of August, 2000.

M.Guy Jones
Arbitrator