IN THE MATTER of a dispute between State Farm Automobile Insurance Company and Lloyd's of London Insurance Company, The Toronto Transit Insurance Company Ltd., and Economical Mutual Insurance Company pursuant to Regulation 283/95 under the *Insurance* Act, R.S.O. 1990, 1.8 as amended.

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

BETWEEN:

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Applicant

-and-

**LLOYD'S OF LONDON INSURANCE COMPANY,
THE TORONTO TRANSIT COMMISSION INSURANCE COMPANY LTD.,
AND ECONOMICAL MUTUAL INSURANCE COMPANY**

Respondent

AWARD

COUNSEL:

Jennifer Griffiths for the applicant, State Farm Mutual Automobile Insurance Company

Kevin S. Adams for the respondent, Lloyd's of London Insurance Company

Michael Atlas for the respondent, Toronto Transit Commission Insurance Company Ltd.

Lee Samis for the respondent, Economical Insurance Company

ISSUES:

1.) Is State Farm Mutual Automobile Insurance Company entitled to proceed with an arbitration against Lloyd's of London, the Toronto Transit Commission Insurance Company Ltd. and Economical Mutual Insurance Company, pursuant to Ontario Regulation 283/95?

2.) If not, is State Farm obligated to pay accident benefits to Ms. Maria DeMedeiros?

ORDER:

1.) State Farm is not entitled to proceed with an arbitration against Lloyd's of London, the Toronto Transit Commission Insurance Company Ltd., and Economical Insurance Company.

2.) I have no jurisdiction to answer issue number 2.

HEARING:

This preliminary hearing was held in the city of Toronto, in the province of Ontario, on November 26, 2001 before me, M. Guy Jones, pursuant to the provisions of the Arbitration Act S.O. 1991, as required by Ontario Regulation 283/95.

EVIDENCE:

This matter proceeded by way of an agreed statement of facts. No evidence was called.

THE FACTS:

On June 11, 1999, Ms. Maria DeMedeiros was injured in a pedestrian-motor vehicle accident. Mrs. DeMedeiros had just disembarked from a TTC streetcar when she was struck by a 1996

Chevrolet Lumina, which was passing the stationary streetcar in the right hand lane. The Chevrolet was owned by U-Save Auto Rental and operated by Mr. Kyle Pereira. As a result of the accident, Ms. DeMedeiros became entitled to various accident benefits pursuant to the statutory accident benefit schedule and she has advanced a claim for such benefits.

At the time of the accident the streetcar was insured by the Toronto Transit Commission Insurance Company. The 1996 Chevrolet was insured pursuant to a fleet policy issued to U-Save Auto Rental by Lloyd's of London Non-Marine Underwriters ("Lloyd's") under a standard fleet policy being RENT D049. The Chevrolet was under the care and control of a repair shop called Custom Auto Collision Inc. ("Custom Auto"), which was Kyle Pereira's employer. Custom Auto had a garage policy issued by Economical Mutual Insurance Company ("Economical") which policy provided third party liability and accident benefit coverage.

At the time of the accident Ms. DeMedeiros owned no motor vehicle and had no automobile insurance policy. Ms. DeMedeiros lived with her son, Francisco DeMedeiros, who was insured under a standard automobile policy issued by State Farm.

While the detailed chronology of events subsequent to the accident is set out in the agreed statement of facts, the key events, for the purposes of this matter are as follows.

On June 21, 1999, State Farm received notice that its' insured, Francisco DeMedeiros', mother, Maria who lived with him, had been injured in a motor vehicle accident on June 11, 1999. On June 22, 1999, State Farm forwarded an accident benefits application form to Ms. DeMedeiros.

Subsequent to that date, State Farm undertook various investigations with regard to Ms. DeMedeiros' injuries and the dependency issue as it related to her possible accident benefit coverage, pursuant to her son Francisco's policy of insurance with State Farm. On August 16, 1999, State Farm received the completed application for accident benefits from Mrs. DeMedeiros.

Some time prior to November 17, 1999, State Farm forwarded by ordinary mail a Notice of Dispute Between Insurers to the TTC. This form was received by the TTC on November 17, 1999 and alleges that the TTC and/or Moore, Brown, Barnes Ltd. was a higher priority insurer in respect that Ms. DeMedeiros' claim. It is relevant to note that Moore, Brown, Barnes is the brokerage firm in London, England which issues policies through Lloyd's of London and the firm Baird, McGregor is the Toronto brokerage firm for the syndicate holding coverage with Lloyds' in respect of the fleet policy insuring the Chevrolet.

On December 17, 1999, McAdam Insurance Adjusters who were acting as insurance adjusters on behalf of Lloyd's of London, received a Notice of Dispute Between Insurers.

A "Notice to Submit to Arbitration" was served by State Farm on the Toronto Transit Commission and Lloyd's by regular mail on August 8, 2000. Finally, on October 1, 2000 State Farm forwarded a Notice of Dispute Between Insurers to Economical Insurance.

DOES STATE FARM HAVE TO PAY ACCIDENT BENEFITS TO MS. DEMEDEIROS?

Upon receiving the completed application for accident benefits, State Farm began paying accident benefits to Ms. DeMedeiros and continues to pay her to this day. However, for the purposes of this preliminary hearing, the parties have agreed that Mrs. DeMedeiros was not a dependent of their insured, Francisco DeMedeiros, for the purposes of receiving accident benefits pursuant to the provisions of the Statutory Accident Benefit Schedule.

State Farm argues that since there is agreement for the purposes of this preliminary hearing that Mrs. DeMedeiros is not a dependent of Francisco within the meaning of Section 2 (6) of Bill 59, she is not an "insured" within the meaning of Section 268 (2) of the Insurance Act, which sets out the priority rules for accident benefit purposes. That Section states:

Liability to pay

(2.) The following rules apply for determining who is liable to pay statutory accident benefits: In respect of non-occupants:

i.) The non-occupant has recourse against the insurer of an automobile in respect that which the non-occupant is an insured,

ii.) If recovery is unavailable under sub paragraph (i) the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,

iii.) If recovery is unavailable under sub paragraph (i) or (ii), the non-occupant has recourse against the insurer of any automobile involved in the incident from which the entitlement to no-fault benefits arose.

iv.) If recovery is unavailable under sub paragraph (i), (ii), or (iii), the non-occupant has recourse against the Motor Vehicle Accident Claims Fund.

The essence of State Farm's position, as I understand it, is that pursuant to Section 2 of Regulation 283/95, the first insurer that receives a completed application for benefits is responsible for paying benefits to an **insured** , pending dispute as to which insurer is required to pay benefits under Section 268 of the Act. State Farm argues that since Ms. DeMedeiros is not a dependant and therefore not an insured, for the purposed of Section 268 of the Insurance Act, she should not receive accident benefits and that I should make an order stating that she is not entitled to such benefits. In support of this position, State Farm points out that Ms. DeMedeiros would obtain her rights to benefits from certain insurers pursuant to the Insurance Act and that Regulation 283/95 cannot undo or add to the provisions of 268 of the Insurance Act. It further submits that Regulation 283/95 is procedural in nature, and does not govern the parties' rights and obligations in that Ms. DeMedeiros is not an "insured person". The first difficulty that I have with regard to State Farm's position is whether or not I have the jurisdiction to make an order that Ms. DeMedeiros is not entitled to accident benefits from State Farm.

Section 1 of Regulation 283/95 states that all disputes as to which insurer is required to pay benefits under Section 268 of the Insurance Act shall be settled in accordance with this Regulation. As such, I am empowered to decide which insurer is to pay accident benefits. This is an entirely different question than deciding whether Mrs. DeMedeiros is entitled to accident benefits at all. As such, I am of view that I have no such jurisdiction to make the order requested by State Farm.

In the event that I am incorrect and I do have such jurisdiction in this regard, I would decline to make the order requested by State Farm. Section 224 of the Insurance Act provides that an insured includes anyone who is entitled to statutory accident benefits under the contract, whether or not described therein as an insured person. Ms. DeMedeiros, while not a named insured, and by agreement of the parties for the purposes of this preliminary hearing, not a "dependant" and therefore not an "insured" in accordance with Section 2 (6) of Bill 59, is still entitled to accident benefits in the province of Ontario. In accordance with the priority provisions of Section 268 (2) of the Insurance Act, she might only have a claim against the Motor Vehicle Accident Claims Fund, in effect the "insurer of last resort", but she nonetheless has entitlement to accident benefits and therefore is an insured. As such, she can then make a claim against an automobile insurer in the province of Ontario and the provisions of Section 268 (2) apply and the priority situation between insurers must then be determined by way of a private arbitration in accordance with provisions of Regulation 283/95.

The Divisional Court in Brown vs. Allstate (1998) 40 O.R. (3rd) 610 dealt with a somewhat similar situation. In that case the plaintiff was injured in a motor vehicle accident and applied unsuccessfully for accident benefits to three separate insurers. The matter came before Arbitrator Rotter of the Ontario Insurance Commission who held that she did have the jurisdiction to order interim benefits to be paid by Allstate, despite the fact that no determination had yet been made that Allstate was in fact an insurer of the plaintiff. The arbitrator's decision was upheld on judicial review by the Divisional Court which held that there was a sufficient nexus between the plaintiff and Allstate to allow the arbitrator to award interim benefits. In that

case, Arbitrator Rotter found that Allstate had provided coverage up to four months before the accident and that was sufficient to create an obligation on the part of Allstate to respond to the application. While I accept that the Brown decision is not identical to this case, I find that its reasoning is helpful and its review of the purpose of no fault accident benefits in the province of Ontario useful. As the arbitrator and the Court pointed out, the intent behind no fault accident benefits and more specifically, Regulation 283/95, is to allow the injured party to receive benefits promptly and not end up being shuffled between insurers and thereby being denied benefits. Regulation 283/95 is in effect, a portal to allow the injured party into the accident benefits system in Ontario. It does not require the injured person to select the correct insurer. What it does is to allow the injured party to receive accident benefits and leave it to the insurers to determine which is the correct insurer.

In our case, State Farm commenced paying benefits in August of 1999. They now ask for an order that they have no obligation to pay Ms. DeMedeiros even if it is found that other insurance companies have no such obligation because of State Farm's failure to put those insurers on notice within the time required by Section 283/95. To make such an order could potentially result in Ms. DeMedeiros receiving no accident benefits through no fault of her own. I find that even if I had the jurisdiction to make such an order, I would decline to do so, and would hold that State Farm by their actions, is estopped from so doing.

THE APPLICATION FOR ACCIDENT BENEFITS

State Farm received the application for accident benefits on August 16, 1999. It did not put the TTC on notice until November 17, 1999, two days after the required 90 days pursuant to Section

3 (1) of Regulation 283/95. It did not put Lloyd's on notice until December 17, 1999. State Farm argues, however, that the application for accident benefits that it received was not filled in completely and that accordingly the application should not be considered to have been received on August 16, 1999 but on some later date when it received further information. A review of the completed application reveals that the box containing the words "Give a description of the accident. If you suffered any injuries as a result of the accident describe the cause and effect of the injuries". Also, under Part 4, "Details of Automobile Insurance", the applicant is asked to answer a number of questions regarding coverage pursuant to various possible insurance policies. Mrs. DeMedeiros did not fill in the box as to whether she was an occupant of the State Farm motor vehicle at the time of the accident, and she did not fill in Part "B" which asks questions about other possible insurers.

The question of what constitutes a completed application for accident benefits has been addressed by numerous arbitrators at the Financial Services Commission of Ontario. It has normally been addressed in the context of deciding whether the application has been of sufficient clarity to allow the insurer to know that certain accident benefits are being claimed from it.

In Lopez vs. Canadian General Insurance [1997] O.I.C.D. No. 3, Arbitrator Seife held that an application for accident benefits meets the requirements of the legislation if it provides sufficient particulars to reasonably assist the insurer to process the application and claim fairly and expeditiously. In H'ng vs. Allstate Insurance Company [1997] O.I.C.D. No. 34, Arbitrator Friendly held that "an application for benefits, if it is to be useful and meet the requirements of Section 59, must provide sufficient particulars to assist the insurer to identify the benefits that

any applicant may be entitled to. The application is not limited to a particular form. It may include additional information contained in a covering letter and documentation enclosed or appended".

I think that the same principals can be applied to this case. The application was largely completed. It is not even clear from a reading of Part 4, section "B" that this section was to be filled out by the applicant in this particular fact situation. In any event, State Farm was aware of the involvement of the Toronto Transit Commission's streetcar well before the application for accident benefits was actually received by State Farm. It was also aware of the existence of another motor vehicle and as early as June 29,1999, when a State Farm adjuster had discussions with Ms. DeMedeiros' legal consultant, in which the involvement of the striking motor vehicle was discussed, and the State Farm adjuster suggested that the plaintiff pursue the accident benefit claim through the TTC or striking vehicle's insurance policy. I note that this was almost two months before the application for accident benefits was received. I also note that State Farm, when it received the application, did not contact the plaintiff or her legal consultant and request additional information. Accordingly, I am satisfied that the application form, as received on August 16, 1999 constituted a completed application form.

SERVICE OF THE NOTICE OF INTENTION TO DISPUTE

Pursuant to Section 3 (1) of Regulation 283/95, no insurer may dispute its' obligation to pay accident benefits 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. There is some uncertainty as to when State Farm sent the Notice of Dispute to the TTC. It was stamped by the

TTC mail office as being received on November 17, 1999 which would be two days beyond the 90 day notice period as set out in Section 3 of Regulation 283/95. The Notice is signed and dated by the State Farm adjuster assigned to the file on September 16, 1999. In addition, the Notice has the date "November 9, 1999" handwritten on the top left corner. State Farm then takes the position that the onus is upon the party receiving the Notice to show that it did not receive the document within the required time. It cites the case of Ordon Estate vs. Grail [1998] 3 S. C .R. 437, a decision of the Supreme Court of Canada, in support of this proposition. Accepting this to be so, I find on the evidence that the Notice was not received by the TTC until November 17,1999. The document is clearly stamped by the TTC as having been received on that date. Even though it was signed and dated by the State Farm adjuster on September 16, 1999, as noted above, it has a hand written date of November 9, 1999 on the top left corner. Even if this was, as State Farm suggests, written by the adjuster just prior to sending it, in order for the document to be effective, it is the date that it was received that is critical. Even if one were to apply the "five day rule" for service set out in Rule 16.06 of the Ontario Rules of Civil Procedure, given that a week-end intervened, the Notice would be deemed to have been served after the 90 day period had expired. In addition, Rule 16.07 provides that when a party can show that the document was received after the deemed date, the actual date may apply. In this case, the evidence suggests that the Notice was received on November 17, 1999 and accordingly I find that it was not served within the 90 days.

THE APPLICABILITY OF SECTION 3 (2) OF REGULATION 283/95

Having found that the Notice of Dispute was not received within the 90 days required pursuant to section 3 (1) of Regulation 283/95, I now turn to the question of whether the "saving provisions"

of section 3 (2) may be relied upon by State Farm. That subsection allows the insurer to 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;

(b) the insurer made reasonable investigations necessary to determine if another insurer was liable within the 90 day period.

A considerable amount of time was spent during the hearing considering the question of how the two-part test of section 3 (2)(a) and (b) should be interpreted in cases where more than two possible insurers may be responsible for paying accident benefits. That is, where the insurer may have to investigate and determine the possible liability of more than one other insurer.

State Farm submits that it is sufficient, in cases where there are possible multiple insurers, to show that it made reasonable investigations to determine whether another insurer (singular) was responsible, and then show that 90 days was not sufficient to determine that another insurer or insurers (plural) were liable. In other words, as long as the insurer is able to show that it made reasonable investigations to determine that at least one insurer was liable within the 90 days, and that 90 days was not sufficient time to identify the other insurer or insurers, the 90 day notice period may be extended with regard to any of the notices.

With the greatest respect, I do not agree with this interpretation of section 3 (2) of the Regulation. In my view what is required is that the insurer show both that it made a reasonable investigation within the 90 days and that the 90 days was not a sufficient time to determine that other insurers were liable. In other words, simply by having one possible insurer not being reasonably identifiable within the 90 days does not extend the time for serving the other insurers who could have been identified within the 90 days. The rationale behind the 90 day notice requirement was to have a quick and efficient determination of the issues in order to allow the real insurer an opportunity to properly investigate and process the claim. To give section 3 (2) the interpretation that State Farm proposes would not encourage the swiftness and certainty that is desirable in these matters.

In my view what section 3 (2) envisages is that the reasonableness of the investigation, and the sufficiency of the 90 day period, must be looked at with regard to each possible insurer potentially involved in the case. In the other words, depending on the fact situation, the 90 day period may be sufficient with regard to one insurer but potentially not sufficient vis-à-vis another insurer. In my opinion, it does not permit the insurer to identify one possible insurer within the 90 days but not serve them, identify others later, and then serve them all outside the 90 day period.

Turning to the fact situation in this case, we must apply the test as set out in section 3 (2) (a) and (b) to each insurer that State Farm gave notice to. In analysing State Farm's actions, it is important to take into account many factors, including such things as the completeness of the application submitted by the insured party, the co-operation provided by the various parties

concerned, the accuracy of the information provided to the first insurer, and the number of potential insurers involved. This list is by no means exhaustive and may well vary in each particular case. It is also important to take into consideration that the adjusters involved are dealing with many other files at the same time and that what may appear very obvious and straight forward with the benefit of hindsight, was anything but straight forward at the time.

NOTICE TO THE TTC & LLOYD'S:

As mentioned above, State Farm gave notice to the TTC ninety-two days after receiving the application for accident benefits. I will first examine whether ninety days was sufficient to make a determination that another insurer was liable. It is clear that State Farm was aware from very early on in the investigation that the TTC was involved, and indeed it would appear, according to the State Farm adjuster's log, that State Farm was aware as early as June 29, 1999, or well before the application for accident benefits received, that the TTC as well as a third party was involved and that there was a very real priority question.

I accept that it is not desirable to have insurers send Notices of Intention to Dispute immediately in almost every case in order to ensure that the 90-day notice period is complied with. It is obviously desirable to have the insurer conduct a reasonable investigation to determine probable liability before sending out the Notices and this will require more than just learning that another vehicle, such as the TTC, or a striking vehicle, was involved. It may, for example, require an investigation of the dependency issue.

In this particular case, it would appear that the adjuster was investigating the possibility of the insurer of the striking vehicle (the Chevrolet) being liable to pay accident benefits before sending out the Notice to the TTC or the Chevrolet's insurer.

It is necessary to examine what steps were taken by the State Farm adjuster prior to the 90-day time limit expiring. State Farm first became aware of the injuries and likelihood of an accidents benefit claim on June 21, 1999. On June 29, 1999 a State Farm representative spoke with Ms. DeMedeiros' legal consultant and discussed priority issues, including the dependency issue, the TTC and the striking motor vehicle. On July 27, 1999, State Farm wrote to Ms. DeMedeiros' legal consultant suggesting he pursue the striking motor vehicle's insurer for accident benefits. On August 30, 1999 State Farm wrote Ms. DeMedeiros' legal consultant advising that they were proceeding with a priority dispute and requesting third party information so that they could proceed with the priority arbitration. They also advised that they were awaiting a police report.

On September 14, 1999 State Farm obtained the name of the driver of the third party vehicle, Mr. Kyle Pereira, his address and phone number as well as the owner of the motor vehicle, U-Save Auto Rental, their address, as well as it's insurance broker- Moore, Brown, Barnes and their policy number – RENT O49.

At that time the adjuster checked the phone book in order to try to find a phone number for the broker, Moore, Brown, Barnes Ltd. As mentioned above, Moore, Brown, Barnes Ltd. is the brokerage firm in London England who issues policies through Lloyd's of London. Baird

McGregor is the Toronto brokerage firm for the syndicate holding coverage with Lloyd's in respect of the fleet policy insuring the striking third party motor vehicle.

The State Farm adjuster then called the owner of the Chevrolet, U-Save Auto Rental (now Atlas), and spoke to the manger who gave her a telephone number and the name of a person to speak to in order to obtain more information regarding the insurer. She called that person who was then to call her back with more information regarding the insurer.

On September 17, 1999 the police report was ordered. It would appear that State Farm did nothing further with regard to the priority issue until November 22, 1999 when the State Farm adjuster spoke to Ms. Vicki Hughes of the TTC. By that time the 90 day time limit had run and the TTC had subsequently received the Notice of Dispute from State Farm.

While not determinative of the issue, it is instructive to note what Ms. Hughes of the TTC did upon receiving the Notice of Dispute. Within two or three days of receiving the Notice of Dispute Ms. Hughes had determined that Lloyd's of London was the insurer, spoke to Baird McGregor, their Toronto brokerage firm, found out that McAdam Insurance Adjusters had been assigned to the matter and spoke to them. McAdam confirmed the policy number and the date of loss.

Thus, within a very few days the TTC was able to obtain information that State Farm did not obtain over a period of 90 days or more. As stated above, this is not by itself, determinative of the issue but it does suggest that the necessary information may not have been very difficult to

obtain. State Farm has rightly pointed out that the police report names the London broker, Moore, Brown, Barnes Ltd. as the insurer, not Lloyd's. It would appear that Ms. Hughes had access to the TTC occurrence report which listed the Lloyd's as the insurer, which may have assisted her in her investigation. While I accept this is so, there is no suggestion that anyone was being uncooperative with the State Farm adjuster, and by simply calling the TTC this information would probably have been readily available. Furthermore, it would appear that no effort was made to speak to the investigating police officer to see if he had any additional information with regard to the name of the insurer. In addition, there is no evidence of the adjuster performing a license check to determine possible insurance particulars. State Farm did nothing from mid September until mid November with regard to the priority issue. I accept that the adjuster was busy handling the accident benefit claim and many other files, but I am not satisfied that State Farm has satisfied the onus that they made reasonable investigations within the 90 days.

State Farm has also pointed out that it took Lloyd's from late November of 1999 until May 29, 2000 to finally advise that Lloyd's did in fact provide coverage to the vehicle that struck Ms. DeMedeiros. It argues that the lengthy delay by Lloyd's in determining whether it provided coverage should be considered in deciding whether the 90 days was sufficient time to carry out the investigation. I am in agreement that this information is one factor that should be taken into account. I note, however, that by May 29, 2000 Lloyd's took a definitive position. This is not what is required under section 3(2). The insurer receiving the application for accident benefits does not have to wait until the other insurer concedes that it insures the other motor vehicle before it serves a Notice of Dispute. It is sufficient that it has a reasonable belief that the insurer

may be liable. Each case must be determined on it's own particular set of facts. In this case, State Farm did not serve Lloyd's until December 17, 1999, some 123 days after receiving the notice of application. While I accept that State Farm was dealing with a case of multiple insurers and there was some confusion as to what company insured the striking vehicle, based on the information I have already commented upon, I am satisfied that 90 days was a reasonable time frame within which to conduct the investigation and furthermore I am not satisfied that State Farm made reasonable investigations during that time frame.

NOTICE TO THE ECONOMICAL MUTUAL INSURANCE COMPANY:

As mentioned above, at the time of the accident the 1996 Chevrolet Lumina that struck Ms. DeMedeiros was under the care and control of a repair shop called Custom Auto Collision Inc., and driven by Kyle Pereira, an employee of that company. Custom Auto had a garage policy issued by Economical which provided third party liability and accident benefit coverage. State Farm served the Notice of Intent to Dispute on October 3, 2000, or 442 days after receiving the notice of application for benefits.

In determining whether the time frame for State Farm's notice should be extended pursuant to section 3 (2) we must go through the same type of analysis that was applied to the TTC and Lloyd's notices. To begin with, it is apparent that the existence of the Economical "garage policy" would not have been as immediately obvious to the State Farm adjuster, as were the existence of the TTC and Lloyd's policies. State Farm therefore raises a very legitimate question as to whether or not 90 days was sufficient to determine if such an insurer was liable and if they made reasonable investigations within the 90 days.

While the existence of the Economical policy may not have been immediately obvious, a review of the police report would clearly have revealed the fact that Mr. Pereira was the driver. Unfortunately State Farm did not request the police report until September 17, 1999 and did not follow up with the police officer to obtain any further information in this regard. Furthermore State Farm did not contact Mr. Pereira in order to inquire as to any insurance particulars. While it is again not determinative of the issue, it is perhaps instructive to examine what efforts other parties had to go to in order to determine the existence of the Economical policy. It would appear that Lloyd's adjuster at McAdam Insurance Adjusters, after learning of the claim on December 19, 1999, contacted the car owner, U-Save Rental by January 5, 2000. By that time the adjuster was able to determine that the car was in the repair shop on the date of the accident and Mr. Pereira had been an employee of the shop. By January 13, 1999, the adjuster had interviewed Mr. Pereira and knew of the involvement of the auto shop. Certainly by March 3, 2000 the adjuster for Lloyd's was aware of the garage policy.

In analysing the delay I am cognisant of the fact that we are reviewing the event with the benefit of hindsight and that the adjuster should not be held to a standard of perfection. Adjusters have many files to handle and they have to deal with complex factual and legal issues. There are many demands upon their time and just because one adjuster is able to obtain certain information within a period of time does not mean that it was unreasonable that another adjuster did not do so. Nonetheless it is apparent from a review of this matter that the existence of the Economical policy could have reasonably been discovered within the 90 days and that State Farm did not

make the reasonable investigation required within 90 days to determine if another insurer was liable.

NOTICE BY THE SUBSEQUENT INSURERS

Some time was spent at the hearing discussing the notices given by the subsequent insurers once they were notified of a claim against them. This is governed by section 10 (2) of Regulation 283/95 which states: "This Regulation applies to the other insurers given notice in the same way that it applies to the original insurer given notice under section 3". While it is not essential that I make a determination of this issue, given my findings above, I am of the view that section 10 (2) of Regulation 283/95 envisages each insurer, once having receiving notice, has 90 days to give notice to another insurer, or rely upon the saving provision of section 3(2) of the Regulation.

For the reasons given I find that State Farm has not complied with section 3 of Regulation 283/95 and accordingly is not entitled to proceed with the arbitration against Lloyd's, the TTC and Economical. This is subject, however, to the parties appearing before me to address the question of applicability of any claim for relief from forfeiture, which by agreement of the parties, was deferred until a later date.

Dated this day of January, 2002

M. Guy Jones
Arbitrator