

**THE CO-OPERATORS V. M. J. OPPENHEIM
ENDORSEMENT OF MADAM JUSTICE MESBUR
DATED NOVEMBER 27, 2002**

On an arbitration between the parties, Arbitrator Jones held that Lloyd's of London was responsible for paying the *SABS* benefits for Jonathan Wettlaufer. Lloyd's appeals from that decision. The parties agree the standard of review is one of "correctness".

Wettlaufer was injured in an accident when he, as a licensed taxi driver, was operating a taxicab owned by Mrs. Bolger, a licensed taxicab owner, who by virtue of Waterloo's by-laws was also required to be a member or shareholder of a taxi company. In this case, that is Cambridge City Cab Co (CCC). Lloyd's insured the taxi. The arbitrator found Lloyd's liable on the basis of s. 66(1) of Bill 59, namely that Wettlaufer was deemed to be a named insured under Lloyd's policy because the insured automobile (i.e. the taxi) was made available to him for regular use by "a corporation unincorporated association, partnership, sole proprietorship or other entity".

He found the authority to operate the cab was given through the inter-relationship between Bolger and CCC - i.e. she, as owner of the taxi could give permission to Jonathan to drive it, but he could not operate it as a taxi unless he and Bolger met the requirements of the CCC Shareholders Agreement. He concluded they operated as a joint venture or an "other entity" and thus engaged s. 66(1). In my view, whether a "joint venture" granted the authority or not, Mrs. Bolger was clearly acting in a business capacity and not as an individual in making the taxi available. She purchased the vehicle, shares in CCC and an assignment of the taxi owner's license for a single purchase price. That she did so in her own name is immaterial. She did books, collected revenues, remitted GST quarterly, dealt with CCC to reconcile credit card receipts, paid vehicle and driver expenses and declared net income. Everything to do with the vehicle was in the nature of her operating a business although not registered. She was operating a business as a sole proprietor or sole owner. All the assets belonged to her (the cab, the license and shares) and all of the net income belonged to her. She was a sole proprietor who made the insured vehicle available for Wettlaufer's regular use. By virtue of s. 66(1)(a) he is a deemed owner and Lloyd's must therefore pay his *SABS* benefits.

The arbitration award was correct.

The appeal is dismissed. Costs to The Co-operators fixed on consent at \$3,750.00.

Mesbur, J.

Respondent (Applicant)

Nov 27/02

On an arbitration between the parties Arbitrator Jones held that Hays of London was responsible for paying the SABS benefits for Jonathan Wettlaufer. Hays appealed from that decision. The parties agree the standard of review is one of "correctness".

Wettlaufer was injured in an accident when he, as a licensed taxi driver, was operating a taxi cab owned by Mrs. Pöhlger, a licensed taxi owner, who, by virtue of Pöhlger's deplaw was also required to be a member or shareholder of a taxi company. In this case that is Cambridge City Cab Co Ltd.



M.J. OPPENHEIM IN HIS QUALITY AS ATTORNEY IN FACT IN CANADA FOR UNDERWRITERS, MEMBERS OF ILHSYD'S OF LONDON, ENGLAND

Appellant (Respondent)
Court File No. 02-CU-236779CM1

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
TORONTO, ONTARIO

APPLICATION RECORD

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He found the taxi.
The arbitrator found Chlap's
liability on the basis of 366(i) of
Bill 59, namely, that Westlake
was deemed to be a named
member under Chlap's plan,
because the insured
automobile, ^(the taxi) was made
available to him for
regular use by "a corporation,
unincorporated association,
partnership, sole proprietor-
ship or other entity".

He found the authority
to operate the cab was given
through the interrelationship
between Bolger + Coe - i.e.
she, as owner of the taxi,
called give permission
to Jonathan to drive it
but he could not
operate as a taxi unless
the ~~taxi~~ + Bolger met
the requirements of the Coe

Marchader's agreement. He
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 entity" & thus evaded S.
 66(c). In my view, whether
 a "joint venture" granted the
 authority or not, Mrs. Folger
 was clearly acting in a
 business capacity, & not
 as an individual ~~entity~~ in
~~effect~~ making the tax
 available. She purchased
 the vehicle, shares in CCC
 & an assignment of the taxi
 owner's license for a single
 purchase price. That she did
 so in her own name is
 immaterial. She did books,
 collected revenues, remitted
 GST quarterly, dealt with CCC
 to reconcile, credit card
 receipts, ^{paid vehicle driver expenses} & declared ^{income} below.
 Everything to do with the
 vehicle was in the nature
 of her operating a business.

although not registered,
she was operating a business
as a sole proprietor or
sole owner. All the assets
belonged to her (the car,
the licence & shares) & all
the net income belonged
to her. She was a sole
proprietor who made the
vehicle available for Mettampur's
regular use. By virtue
of s 66(1)(a) he is a deemed
owner & should meet &
therefore pay his SASS benefits.

The arbitration award
was correct.

The appeal is dismissed.
Costs to the Cooperators,
fixed on consent at \$3,750.

Mexner J.