

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

SUPPLEMENTARY REASONS

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

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

In written reasons released in January 2002 I found that State Farm had not complied with the 90 day notice requirement, and on the facts of this particular case, they were not able to rely upon the "saving provisions" of section 3 (2) of Regulation 283/95.

In addition to arguing that section 3 (2) should apply, State Farm also argued that this was an appropriate situation for the equitable relief of "relief from forfeiture" to apply. At the time of the hearing the Ontario Court of Appeal was scheduled to hear a case involving the right to such relief in Regulation 283/95 priority disputes, in the near future and the parties agreed that I should defer my decision until after the Court of Appeal had rendered its' decision. The Court of Appeal has now delivered its' decision in Kingsway General Insurance Company vs. West Wawanosh Insurance Company (unreported decision release February 15, 2002). The parties to this action, by letter from State Farm's counsel dated June 20, 2002 have advised me that they are content to have me rule on the relief from forfeiture issue based on submissions previously made.

As the facts of this case have already been set out in my earlier decision, I will not repeat them here. The first issue to be decided is whether in fact an arbitrator has the jurisdiction to grant equitable relief. Pursuant to section 31 of the Arbitration Act, I do not think that there is any doubt but that I do possess that general power. That section states:

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

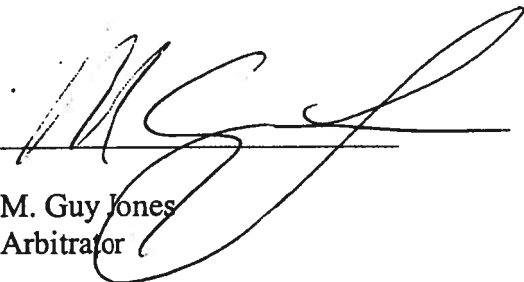
any jurisdiction to relieve from forfeiture had been ousted by the provisions of section 3 (2) of the Regulation. He held that the Legislature had, in essence, "occupied the field" by creating the relief provisions in section 3 (2) of the Regulation.

The Court of Appeal stated:

I agree with the conclusion of the Superior Court judge that the Regulation provides a scheme that contemplates extension of the 90 day notice in certain circumstances, and that, by implication, any general discretion a court might have to grant extensions in other circumstances is excluded.

I am in agreement with the Court of Appeal's decision and find that it is applicable to the facts of this case. Accordingly, I can not invoke relief from forfeiture in this case. Accordingly, State Farm Mutual Automobile Insurance Company can not proceed with the arbitration.

Dated at Toronto this 10th day of July, 2002.



M. Guy Jones
Arbitrator