IN THE MATTER OF the *Insurance Act,* R.S.O. 1990,
c. I.8, as amended

AND IN THE MATTER of the *Arbitration Act*, S.O. 1991, c.17, as amended

AND IN THE MATTER of an Arbitration

BETWEEN:

CHUBB INSURANCE COMPANY OF CANADA

Applicant

- and -

ALLSTATE INSURANCE COMPANY OF CANADA AND AIG INSURANCE COMPANY OF CANADA

Respondent

AWARD WITH RESPECT TO PRELIMINARY ISSUE

Counsel Appearing:

D'Arcy McGoey: Counsel for Chubb Insurance Company of Canada (hereinafter called Chubb)

Kevin D.H. Mitchell: Counsel for Allstate Insurance Company of Canada (hereinafter called Allstate)

Michael L. Kennedy: Counsel for AIG Insurance Company of Canada (Hereinafter called AIG)

Introduction:

This matter comes before me pursuant to the *Insurance Act* R.S.O. 1990, c. I.8, as amended and specifically Ontario Regulation 283/95. Chubb commenced an Application for Arbitration before me to determine who is the priority insurer pursuant to Section 268 of the *Insurance Act* with respect to a claim for Statutory Accident Benefits arising out of a motor vehicle accident that occurred on January 8, 2018 in which BT sustained various injuries.

BT was an occupant of the vehicle insured by Chubb and through his paralegal forwarded an OCF-1 to Chubb. Chubb insures Enterprise Rent-A-Car Canada Company which owned the

vehicle that BT was driving on the date of loss. At that time, BT was working for Amazon as a delivery driver.

Allstate insures TK who is BT's mother. It is alleged BT is a listed driver on that policy. BT through his paralegal also sent an OCF-1 to Allstate.

AIG insures T-Force Direct Canada Inc. (hereinafter called T-Force) who was alleged to be the employer of BT on the date of loss. T-Force rented the Chubb/Enterprise vehicle allegedly between January 1 and January 31, 2018.

In a broader sense this priority dispute could involve issues related to regular use or dependency. However, this preliminary issue hearing has been brought to determine whether Allstate who received a completed Application for Accident Benefits from BT on January 29, 2018 is a first tier insurer and therefore bound by the 90 day notice requirement set out under Section 3 (1) of Ontario Regulation 283/95 or, to state the issue as per Chubb's position, is Allstate entitled to give notice to the respondent, AIG, under Section 10 of Ontario Regulation 283/95.

This issue arises due to the fact that the claimant, BT, sent an OCF-1 to both Chubb and to Allstate. Also, there is evidence that for at least short period of time Allstate did adjust the file. Chubb agrees its notice to AIG was outside the 90 days. Allstate's notice to AIG was also outside the 90 days but Allstate claims it is entitled to access Section 10 of the Regulation and that it is not bound by the notice period set out under Section 3 (1) of the Regulation.

Proceedings:

This matter proceeded as a written hearing. Counsel submitted Factums, an Arbitration Record which contained various OCF-1's, letters and Notices of Dispute as well as submitting Books of Authority. Counsel submitted an Arbitration Agreement dated April 18, 2020. There were no oral submissions counsel being satisfied that the matter could proceed by way of a written hearing only.

Facts:

The claimant was involved in an accident on January 8, 2018. The self-reporting collision report indicates that the vehicle that he was driving was owned by Enterprise Rent-A-Car and insured by Chubb.

By letter dated January 15, 2018 the claimant's paralegal forwarded on an OCF-1 to Chubb Insurance. The OCF-1 indicated under Part 4 that the claim was being made on the Chubb policy on the basis that it was the claimant's employer's policy and he was an occupant of the car at the time of the accident. He describes himself as employed and working at T-Force since October of 2017. The Application was signed by the claimant and dated January 15, 2018.

Chubb retained an independent adjuster, ClaimsPro, to handle the matter on their behalf.

In the meantime, by letter dated January 29, 2018 the claimant's same paralegal sent an OCF-1 to Allstate. The OCF-1 was also dated January 29, 2018. The document appears to be a duplicate of the earlier OCF-1 other than Part 4 it identifies that the claim is being made under the Allstate policy on the basis that BT is a listed driver on the policy of TK: the policyholder. He also indicates that he was an occupant of the Allstate vehicle at the time of the accident. No other insurance information is provided. The claimant did not identify to Chubb that Allstate was a possible insurer and nor did he identify to Allstate the possibility that there was a claim on a policy with Chubb.

By letter dated February 2, 2018 ClaimsPro, on behalf of Chubb, sent the claimant a letter confirming that they were "the first insurer to receive your completed Application for Accident Benefits" and therefore they will continue to pay benefits. However, they enclosed at that time a Notice to Applicant of Dispute Between Insurers. This Notice of Dispute is dated February 2, 2018 and indicated that Chubb's investigation revealed that the claimant was a listed driver under the Allstate policy and in accordance with the priority rules Allstate's policy would take precedence.

By letter dated February 2, 2018 ClaimsPro on behalf of Chubb wrote to Allstate advising them that BT had submitted a claim under the SABS for the January 8, 2018 accident but that they were taking the position that Allstate had priority for the reasons noted above. The Notice to Applicant of Dispute was attached to and referenced in the letter with a request for Allstate to advise as to their position with respect to priority.

Before Allstate would have received the letter from Chubb, an OCF-23 was submitted through HCAI to Allstate on January 31, 2018. This was approved on February 5, 2018. By letter dated February 6, 2018, Allstate confirmed to the claimant that they had received the Treatment Plan/OCF-23 and that they had fully approved all of the goods and services contemplated in that plan.

February 6, 2018, ClaimsPro on behalf of Chubb sent the claimant a further letter confirming that they had received the OCF-1, requesting a Disability Certificate and providing a description of the benefits available under the policy. They also enclosed an OCF-5 (Permission to Disclose Health Information) to have the claimant forward on to his family doctor for completion. This letter was accompanied by an Explanation of Benefits/OCF-9.

By letter dated February 8, 2018, Allstate wrote to the claimant acknowledging that they had received his OCF-1 and enclosing an Explanation of Benefits that in addition to the letter detailed what benefits he may be eligible for. The Explanation of Benefits requested an OCF-3, an OCF-2 to advance a claim for Income Replacement Benefits but did not include an OCF-5.

The OCF-23 that Allstate approved was for $2,200.00 from Alexmuir Wellness Centre Inc. Allstate issued payment of $990.00 with respect to this on February 26, 2018. All of the treatment rendered up to the amount of $990.00 was incurred prior to February 6, 2018. (See Auto Insurance Standard Invoice OCF-21 forwarded to Allstate).

By letter dated March 2, 2018 Allstate wrote ClaimsPro to confirm they had received Chubb's Notice to Applicant of Dispute Between Insurers. Allstate advised:

> "At this time, we are not prepared to accept priority of this claim. We are requesting at this time a copy of the rental agreement between BT and Enterprise Rent-A-Car. Once investigations are complete we will advise you of our decision."

A copy of this was sent to both the claimant and his paralegal.

By this time, Allstate had received an OCF-3 (Disability Certificate) dated January 9, 2018 and signed by a physiotherapist at Alexmuir Wellness Centre.

By letter dated March 3, 2018 Allstate wrote to ClaimsPro advising that Allstate had not accepted priority and enclosing the OCF-23 and OCF-3 that had been submitted to them by Alexmuir Wellness requesting that Chubb deal with it.

In March of 2018 Allstate retained counsel with a view to conducting an Examination Under Oath of the claimant. The counsel in an email dated March 2nd questioned as to whether Allstate was adjusting the claim or whether Chubb who appeared to receive the first Application was doing so. Counsel noted that this could affect who has the right to ask for an Examination Under Oath. He also queried as to whether or not Chubb had been put on notice. No Examination Under Oath was ever completed on behalf of Allstate.

In March Allstate received a copy of the rental invoice from ClaimsPro. Allstate followed up with a letter on March 13, 2018 to ClaimsPro requesting a copy of the OCF-1 that Chubb had received, a copy of Chubb's response to the OCF-1 or Explanation of Benefit, a copy of any statement taken of the claimant and a copy of the Police Report.

As a result of the receipt of the rental invoice, various questions were raised with respect to possible other coverage. Allstate wrote ClaimsPro on March 28, 2018 noting that the renter was T-Force Direct and not the claimant. In addition, T-Force was the party to be billed. A request was made for the actual rental contract to see who was the signatory and noting that no one had been provided with any particulars of an automobile insurance policy with T-Force and suggesting that investigation should be done in that area. This letter also confirmed that Allstate was not accepting priority.

Allstate faxed a Notice to Applicant of Dispute Between Insurers to Chubb on March 28, 2018 noting that their investigation revealed that the claimant may be eligible under his employer's policy with Chubb. A similar Notice was sent to the claimant himself.

By letter dated March 29, 2018, Alexmuir Wellness submitted a Minor Injury Treatment Discharge Report (OCF-24) to Allstate. Allstate responded by forwarding an Explanation of Benefits with respect to the Treatment Plan that it had been denied and noting that priority was in dispute and that the applicant and/or treatment provider should contact ClaimsPro with respect to that issue.

On December 12, 2018 ClaimsPro on behalf of Chubb forwarded on another Notice to Applicant of Dispute Between Insurers directed to AIG and the claimant. The covering letter noted:

> "As we were the first insurer to receive your completed Application for Accident Benefits we will continue to handle the claim".

The Notice of Dispute indicated that the basis of the dispute was that BT might be eligible under the AIG policy bearing number 16411271 which was the employer's, T-Force, policy.

AIG wrote ClaimsPro on January 3, 2019 noting that the Notice of Dispute Between Insurers was outside the 90 day timeline as the OCF-1 had been received by Chubb on January 18, 2018 and the Notice was dated December 12 and had been received on December 15.

By letter dated January 30, 2019 Mr. D'Arcy McGoey notified both AIG and Allstate that he had been retained by Chubb to pursue a priority dispute as against both insurers. A Notice of Initiation and Commencement of Arbitration was attached dated January 30, 2019 naming Allstate and AIG as Respondents.

By letter dated March 13, 2018 Allstate served AIG with a Notice to Applicant of Dispute between Insurers dated March 13, 2019. Chubb was shown as the insurer who was applied to for Accident Benefits under Part 1. Allstate was shown under Part 2 as an insurer notified to pay benefits by the insurer listed in Part 1. AIG was shown as a second company name under Part 2. The basis for the priority dispute was that the claimant was a regular user of the AIG car and therefore ranked higher than Allstate.

Applicable Legislation:

Section 2 of Regulation 283/95 provides that the first insurer to receive a completed Application for benefits is responsible for paying those benefits pending the resolution of any dispute as to which insurer may be primarily liable. There is no indication in this case that either Allstate or Chubb took the positon that the OCF-1 each received was not a "completed" Application.

Section 3 (1) provides 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.

Section 10 (1) of the Regulation states as follows:

(1) If an insurer who receives notice under section 3 disputes its obligation to pay benefits on the basis that other insurers, excluding the insurer giving notice, have equal or higher priority under section 268 of the Act, it shall give notice to the other insurers.
(2) 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.

Primarily as a result of a decision from Arbitrator Samis in the case of Wawanesa Mutual Insurance Company and Peel Mutual Insurance Company and Economical Insurance Company (Arbitrator Samis June 21, 2011) the various insurers that are referenced in Sections 3 and 10 have become known as first tier insurers with respect to those bound by Section 3 (1) and second or third tier insurers for those who have access to Section 10 for the purposes of Notice.

Of some relevance and worth noting is also section 2.1 of Regulation 283/95. To paraphrase that Section 2 sets out a procedure for an insurer and claimant to deal with the initial Application process. An insurer is required to promptly provide an Application and other appropriate forms to an Applicant who notifies the insurer that he or she wants to apply for benefits. The insured is then to use the Application provided and is to only to send the completed Application to **one insurer**. That insurer, once it receives the completed Application for Benefits from the applicant, is required to pay benefits to the insured in accordance with the SABS pending any resolution of any dispute that may arise with respect to priority.

This section contemplates that if followed only one Application will be sent by a claimant and that there will be only be one first insurer.

Position of the Parties:

AIG brings this preliminary issue hearing. They take the position that under Regulation 283/95 there can be two first tier insurers for the purposes of Section 3 (1). AIG takes the position that both Chubb and Allstate received a completed Application and both commenced an adjustment and payment of benefits on the file. Both sent out Notices of Dispute albeit to each other. AIG submits that under section 3 (1) one must note the words "no insurer" may dispute its obligation. AIG submits that that does not read "no first insurer" may dispute its obligation but rather it states no insurer who has received a completed Application for Benefits can dispute its obligation unless it gives written Notice within 90 days. AIG submits that this applies to any insurer who receives a completed Application for Benefits and who claims it is entitled to claim benefits against another insurer under Section 268 of the *Insurance Act*. AIG submits that both

Chubb and Allstate falls within Section 3 (1) and as Allstate did not put AIG on Notice within 90 days of receipt of its Application for Accident Benefits from the claimant it is therefore prohibited from proceeding with this priority dispute.

AIG submits that that is a plain reading of Section 3 (1). AIG submits that such a reading is consistent with the decision of the Court of Appeal in Kingsway General Insurance Co. vs. West Wawanosh Insurance Co. [2002] O.J. No.528 where the court states as follows:

> "The Regulation sets out in precise and specific terms a scheme for resolving disputes between insurers. Insurers are entitled to assume and rely upon the requirement for compliance with those provisions…clarity and certainty of application or primary concern. Insurers need to make appropriate decisions with respect to conducting investigations, establishing reserves and maintaining records…there is little room for creative interpretation or for carving out judicial exceptions designed to deal with the equity of particular cases."

AIG submits that Section 10 of the Regulation only applies to an insurer who receives Notice under Section 3 (1) and an insurer who has not received an completed Application for Benefits.

In essence AIG argues that there can be more than one first tier insurer and that the criteria is simply whether you received a completed Application for benefits and that only those insurers who did not receive a completed Application and who were put on Notice by the first insurer under Section 3 (1) can have the benefit of Section 10. AIG submits that the fact that one of the first tier insurers may not be paying benefits is irrelevant as that often occurs in deflection cases in any event.

AIG relies heavily on the decision of Arbitrator Samis in the Wawanesa and Peel Mutual case. In particular, AIG relies on the supplementary decision of Arbitrator Samis in which he clarified his original conclusions. AIG points out that in that case one insurer received a completed Application from the claimant. The other insurer received a completed Application but it was from the first insurer. In other words Wawanesa received completed OCF-1 from the claimant and then Wawanesa provided Peel with that Application. AIG points to the fact that Arbitrator Samis noted that Peel was not in receipt of a completed Application based on the following:

1. The document was not addressed to Peel;
2. The document was a copy;
3. The document hadn't been provided to Peel by the claimant; and,
4. The document was not submitted by the claimant with the intention of starting a claims handling process.

Arbitrator Samis therefore held in that case that Peel did not receive a true completed Application for benefits and therefore Peel did not fall within the 3 (1) provisions but rather Section 10. AIG suggests that Arbitrator Samis' decision therefore stands for the proposition

that any insurer who receives a properly completed Application for Benefits directly from a claimant would therefore be a "first tier" insurer for the purposes of Section 3 (1).

Not surprisingly Chubb and Allstate do not agree with AIG's position. Chubb and Allstate argue that there can only be one first tier insurer under Section 3 (1) as otherwise it would result in greater confusion and make the present scheme unworkable and not in fact as interpreted by the Court of Appeal in Kingsway and West Wawanosh (supra). Allstate and Chubb submit that once one insurer receives a completed Application then the other Applications the claimant sends out contrary to the requirements to the Regulation are essentially redundant. They submit that this is consistent with other terms of Regulation 283/95. For example they argue that Section 6 (2) of the priority Regulation only allows the first insurer that received the Application to submit to an Examination Under Oath. If an insurer who receives the second Application are also entitled to an Examination Under Oath but one had already been scheduled by the first insurer than the second party insurer would lose that right. Further, it would cause confusion with respect to the entire process both for insurers and applicants.

Allstate and Chubb point to a line of cases that stress the importance of distinguishing between the first tier insurer and its Notice obligations vs the second tier insurer. The first tier insurer is given the requirement to put others on Notice in a timely fashion because as the recipient of the completed Application they have access to information and investigative tools that other insurers may not. With those tools it is reasonable to require that Notice be given within 90 days of receipt of the completed Application. Absent those tools (which an insurer who received a second Application will not have access to those tools) they will have a more difficult time within 90 days to determine whether there was any other policy that might respond.

Allstate submits that the scheme is clear and well established as to the process between first, second and third tier insurers. They submit that only one insurer (the first to receive the application is bound by Section 3 (1)). Insurers who receive notice from the first insurer then fall under Section 10 (1). The second tier insurer is not bound by any time requirement for notice. Nor is the third tier insurer. Allstate and Chubb point to numerous cases where it has been confirmed that in order for the priority Regulation to work in a fair manner and to insure that all parties are included that Section 10 was deliberately drafted with a view to having no limitation as to when another insurer would have to be put on Notice.

Allstate and Chubb also point to the Wawanesa and Peel decision of Arbitrator Samis. They note the following comment:

> The procedural question which this raises in this instance is whether or not the second tier insurer, must meet the same procedural hurdles as the first tier insurer must meet when initially giving notice to other insurer… I conclude that the second tier insurer does not have that obligation.

> In my view the provisions of Regulation 283/95 do not unequivocally apply those procedural provisions to second tier insurers. At the outset I observe that the Notice provisions apply to the insurer who has received a "completed Application" and implicitly applies to the insurer who was actually paying the benefits to the claimant. This is not the positon of the second tier insurer.

Finally, Chubb and Allstate point to the fact that in that case Arbitrator Samis noted that a second tier insurer does not necessarily have a completed Application and it is not a condition precedent to its liability as contemplated by first tier insurers. He concludes that it is impossible for the Regulation to apply to second tier insurers as it does in the same way that it would apply to the first tier insurer.

Allstate and Chubb therefore submit that Allstate is to be considered a second tier insurer and falls within Section 10 and is not required to put AIG on Notice within 90 days of receiving a completed Application. In fact Chubb and Allstate would go as far to say that the fact that Allstate received the second completed Application would be considered irrelevant in light of the fact that Chubb received the first Application.

Decision and Analysis:

I have carefully reviewed the Factums, the case law and in particular the overall scheme of Regulation 283/95 with respect to the process and notice provisions and as will be outlined further, I conclude that Allstate is not a "first tier insurer" falling within Section 3 (1). I find Allstate is entitled to access the provisions of Section 10 of the Regulation and is not therefore bound by the 90 day Notice period.

The first step in my analysis was to revisit and consider the Court of Appeal's decision in Kingsway and West Wawanosh (supra). I have already set out the key portion of that decision. It is important to note that Justice Sharpe's words are frequently used by Arbitrators to explain how they interpret the provisions of Regulation 283/95. We are dealing with sophisticated litigants. We are dealing with insurers who need to have a clear and precise scheme that is well understood in order to resolve priority disputes. As Justice Sharpe points out, this is not a regulation where there is room for creative interpretation or to carve out judicial exceptions. I find that the analysis by AIG and its submissions on the facts of this case do just that.

The scheme of this Regulation is to ensure firstly that an applicant gets access to accident benefits in a prompt fashion and without having to become embroiled in a priority dispute. For that reason the Regulation provides (although the original Regulation did not) that an applicant is to submit one application only to one insurer. Unfortunately we know that that is not always followed as indeed with the case here.

It flows therefore, that in drafting the Regulation it was assumed the applicant would follow those directions and only one completed Application would be provided to one insurer. That

insurer is the one who is referred to in Section 3 (1). While I appreciate AIG argues that the words of that Regulation do not refer to the first insurer, in my view, it cannot be intended to refer to any other insurer as otherwise it would thwart the whole scheme of an orderly manner to deal with priority disputes. Section 3 (1) refers to an insurer who receives a completed Application for Benefits. Again, the regulatory process assumes that its provisions will be complied with and accordingly there would only be one insurer to receive that completed Application.

This in my view is consistent with the wording under Section 2 (1) of the Regulation which makes reference to the "first insurer" that receives the completed Application being responsible for paying benefits to the insured pending a resolution of the dispute. This suggests that in circumstances that where an applicant does not comply with the Regulation and there are two or more Applications for Accident Benefits sent out that only the first insurer is the one obliged to respond. This is designed to prevent further confusion or insurers refusing to pay accident benefits on the grounds that other insurers have received an Application.

I find that Section 3 (1) must therefore refer to the insurer who receives the first Application and is who obliged pursuant to Section 2 (1) to be responsible for paying benefits to the insured. It is that insurer who has access to the investigative tools outlined by Arbitrator Samis in the Wawanesa and Peel case. The first insurer that receives the Application and is paying benefits is, for example, entitled to conduct an Examination Under Oath.

In this particular case Chubb received the first Application. Chubb commenced paying Statutory Accident Benefits and continued to do so. Chubb initiated a priority dispute both by way of appropriate notice and by way of an Arbitration being commenced.

Allstate on the other hand received the second Application for Accident Benefits. While I appreciate Allstate not being aware that Chubb had also received an Application did commence to adjust the file. The fact is, they only dealt with an OCF-23 and as soon as they became aware of Chubb's involvement and that Chubb received the first Application, Allstate stopped adjusting the file and referred all other matters back to Chubb. In my view, this was the way the Regulation was intended to work.

If Section 3 (1) were to be interpreted as AIG suggested the result would import some considerable confusion, duplication of effort and potentially multiple notices of dispute and Examination Under Oaths. If for example three insurers received an Application and all three insurers were deemed to be the insurer under Section 3 (1) then each of those insurers would have to get independent investigation completed within 90 days and each would have to issue a separate Notice to Applicant of Dispute in order to meet the 90 day timeline. I do not believe that Regulation 283/95 intended that interpretation. Rather it is my view that the Regulation was set up to work in an orderly fashion allowing the first insurer to receive the Application to be the one responsible for administering the accident benefit file and to be responsible for the preliminary priority investigations to identify any other insurers by using the investigative tools

available to it under the Regulation. It is that first insurer who is bound by the 90 day rule and not any other insurers irrespective of whether or not they received a completed Application for Benefits. This interpretation, with respect, is more consistent with Justice Sharpe's comments concerning this Regulation than AIG's interpretation. This allows for clarity and certainty of application so insurers can be aware of their respective obligations and timelines.

It is also consistent in my view with the decision of Arbitrator Samis in Wawanesa and Peel. I do not believe Arbitrator Samis intended to suggest that if two or more completed Applications were received by an Insurer that the second or third tier insurers would be bound by Section 3 (1). Arbitrator Samis states that in his view a second tier insurer does not have the same obligation and procedural hurdles as does the first tier insurer in terms of giving notice to others. This is consistent with the Regulation that places the onus of administering the file and setting out initial notices to the first insurer that receives the Application. Arbitrator Samis points out that Section 3 (2) applies to the insurer who has received a completed Application and implicitly therefore applies to the insurer who is actually paying the benefits to the claimant. In this case Allstate made one payment to the claimant's treatment provider in the belief that it was the first insurer to receive the Application. It made no further payments and made its position clear that the file would be adjusted by Chubb. This in my view puts Allstate in the position of the second tier insurer irrespective of receipt of the completed Accident Benefits form.

As Arbitrator Samis pointed out and I quote:

> The first tier insurer is entitled to receive a completed Application. The second tier insurer does not necessarily have a completed Application and certainly it is not a condition precedent its liability as contemplated re first tier insurers. In short it is impossible for the Regulation to apply to second tier insurers "in the same way" that it applies to the original (first tier) insurer.

Finally, I agree with Arbitrator Samis where he says and I quote:

> I conclude that blindly applying the Section 3 procedural provisions to a second tier insurer's actions is not consistent with the wording of the Regulation and is insensitive to the context. To apply the Section 3 provision to second tier insurers would give rise to an injustice, ultimately resulting in the payment of benefits by the wrong insurer.

I find that there can only be one <u>first tier insurer</u> and that is the one who receives the first Application for Accident Benefits. Any other insurer even if they receive a completed Application and even if they make some preliminary payments on the file is considered to be a second tier insurer with rights to access section 10 and the expanded notice provisions of the priority Regulation.

It is also relevant to note that in Arbitrator Samis' supplementary award in Wawanesa and Peel he addressed the argument of AIG as to whether Section 3 (1) should be interpreted as not being limited to the first insurer by virtue use of the words "no insurer". Arbitrator Samis did not accept that argument. He indicated that the absence of the term first insurer in subsection 3 (1) means that therefore it must apply to second tier insurers. He further notes that such an advocated interpretation would require second tier insurers to devote substantial resources to conducting an investigation within 90 days. This diversion of precious resources would make the system inefficient and increase the likelihood of an unintended outcome. I agree with Arbitrator Samis.

Arbitrator Samis' conclusions in Wawanesa and Peel have been followed and agreed with by Arbitrator Scott Denson in Economical Mutual Insurance Company and Motor Vehicle Accident Benefits Claims Fund and the North Waterloo Farmers Mutual Insurance Company (decision dated January 7, 2015 (see page 34)) I also reviewed the decision of Justice Diamond in Northbridge General Insurance Co. and Intact (November 30, 2018). Justice Diamond found that in that case the Arbitrator's interpretation of the interplay of Section 3 and 10 of the Regulation was consistent and reasonable in terms of existing jurisprudence. The Arbitrator had found that the drafters of Regulation 283/95 had intended that priority investigation and disputes may require taking a few steps. The Arbitrator noted that Section 3 was designed to "get the party started". Getting the party started meant that the first insurer would be the one to provide notice under 3 (1). Section 10 allows that once the fun begins (in the words of the Arbitrator) "others may join in and it doesn't really matter who arrived with whom and what time." Justice Diamond's analysis of the Regulation is consistent with the interpretation I have offered.

Therefore I conclude that Allstate is entitled to give notice to the respondent AIG pursuant to Section 10 of Ontario Regulation 283/95 and accordingly AIG is a proper party to this Arbitration appropriate notice having been provided.

Costs:

The Arbitration Agreement provides that Costs of the Arbitrator and legal costs of the Arbitration are to be paid by the unsuccessful party. Although the agreement does not specify it I am interpreting that as to applying to a preliminary issue hearing as well. Accordingly, I find that the Arbitrator's Account should be paid by AIG. The costs of Chubb and Allstate will also be payable by AIG. If there is any dispute with respect to the quantum of costs then a costs hearing can be arranged. Otherwise I will be in touch with counsel to schedule a further pre-hearing on the main priority dispute.

DATED THIS 26th day of June, 2020 at Toronto.

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Arbitrator Philippa G. Samworth
DUTTON BROCK LLP