

## WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of April 7 to April 11, 2008

### Arbitration or Trial – Choice of Tribunal

#### ***Teresa Murphy and Certas Direct Insurance Company FSCO A07-000984, January 7, 2008, Arbitrator Edward Lee***

MVC December 5, 2001. Insured started Court action in March 2004 regarding accident benefits payable under the SABS. In May 2007, insured filed for Arbitration to determine Catastrophic Impairment status. In August 2007, insured amended her Court action to include some Catastrophic Impairment specific benefits. On a preliminary issue, the insured sought to have all the issues determined at the Arbitration hearing, provided she was not precluded from proceeding by way of Arbitration. The insurer opposed and wished to have all matters adjudicated in the Court action only.

The insurer argued that the Court proceeding was started first, had progressed to the post-discovery stage, and was broader than the Arbitration. The insured offered to withdraw the Court action, allow the use of discovery transcripts at the Arbitration, waive her right to punitive damages and allow the defence medical examinations to be used at the Arbitration.

Arbitrator Lee reviewed the FSCO law which he characterized as 'case specific'. He concluded that no arbitrator is prepared to allow the same issue(s) to be the subject of both a Court and Arbitration proceeding. He felt that the law identified a need to balance the interests of the parties. In this case, on written notice by the insured that she had moved to withdraw her claim in the Courts, the Arbitration would proceed on the terms outlined by the insured in her submissions. The insured would also be permitted to add to the present Arbitration, subject to any defences that the insurer might also add to additional claims.

### Implications

The process for bringing benefit disputes to a resolution is outlined in the governing legislation. At times, different concerns will lead to a choice of one resolution route over another. Neither the Courts, nor the Arbitration process will permit the same issues to be heard for final resolution before different Tribunals. Insureds need to be mindful of consistency in the approach taken and to avoid overlapping issues. Insurers need to be aware that Arbitrators (and the Courts) are more inclined to take a pragmatic and efficient approach when determining issues relating to an insured's benefits.



## Accessing Arbitration Decisions

If you would like to read the arbitration decisions for yourself, they can be found at <http://www.fSCO.ca/english/insurance/auto/drs/decisions/default.asp>.

Please contact FSCO at 1-800-517-2332 ext. 7202 to obtain a password to gain access to the site.