

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of April 28 to May 2, 2008

SABS Settlement not enforceable where Release signed by Insured's representative with authority

Rahman v. TD General Insurance Company, FSCO Appeal P07-00005, March 30, 2008, Director's Delegate Blackman

November 15, 2002 collision. Insured applied for arbitration to the FSCO regarding benefits under the SABS. Insurer argued that the insured settled his accident benefits claim on a full and final basis in March 2003 and was, therefore, precluded from accessing arbitration. Insured maintained that he only entered into a partial settlement and ultimately that he did not personally sign the release. It was not disputed that he did not sign the release personally but that his paralegal representative did. The insurer argued that the paralegal had full authority to enter into the settlement agreement and execute any and all documents.

The Arbitrator held that the insured had entered into a binding full and final settlement of all accident benefits claims. On the appeal of the Arbitrator's decision, the key question was whether the insured was required to sign a release as part of the settlement. The insurer argued that the Arbitrator correctly followed a line of decisions that provide that the refusal of the resiling party to sign the release cannot be relied upon as invalidating the settlement. Director's Delegate noted however that the applicable legislation to the settlement in this case was the *Settlement Regulation for Settlements Made on or After March 1, 2002* and the case law relied upon by the Arbitrator pertained to settlements made Prior to March 1, 2002.

Director's Delegate noted the change in language between the legislation applicable to settlements after March 1, 2002 which provided that an "insured may rescind the settlement within two business days after the later of the day **the insured person** signs the disclosure notice and the day the **insured person** signs the release. The applicable legislation for settlements made before March 1, 2002 permits a settlement to be rescinded by the insured person within two business days after the settlement is entered into, without reference to the insured person signing anything. Director's Delegate found that "insured person" means the "insured person" personally.

The insurer further submitted that the change in wording of the legislation did not affect the continued applicability of the arbitration decisions which held that a release need not be signed by the insured to effect settlement and that the Arbitrator was correct when he stated that the release is designed primarily to

protect the insurer and is merely an extra document which can be relied on by an insurer in defence of any attempt to make further claims in the matter. Director's Delegate disagreed because the legislation for settlements made after March 1, 2002 is clear and unambiguous that an insured person may rescind the settlement within two business days after the later of the day the insured person signs the disclosure notice and the day that the insured person signs the release. Since the insured in this case had not signed the release, the cooling-off period had never begun to run and the insured was still free to rescind the settlement agreement.

Implications:

A settlement of accident benefits after March 1, 2002 requires the signature of the insured person personally. An accident benefits settlement can be rescinded at any time by the insured person even though the settlement documents are executed with the authority of the insured's representative. Consistent with the goal of the settlement legislation, the insured person must review and sign the settlement documents personally to ensure that the insured understands the nature of settlement and to protect against uncertainty and possible litigation.

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.

