

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For decisions released the week of June 16-20, 2008

Insured with no reported income may qualify for NEB

Berhe v. Security National Insurance Co./Meloche Monnex Insurance Mgmt. Inc., FSCO A06-001646 (May 30, 2008) – Arbitrator Wilson

MVC November 17, 2004. Insured claimed to have two jobs at the time of the collision but did not declare any income on income tax returns. He elected non-earner benefits. Insurer's position was that if insured was entitled to anything, it would be income replacement benefits since by his own admission he was employed, but the quantum of the benefit would be zero.

Arbitrator held that the insured could be entitled to an NEB. The effect of s. 64.1(1) and s. 2(5) is to remove any undocumented wages from consideration, not only with regard to quantum, but also with regard to whether there was qualifying employment. If a person is deemed to have no income, it is difficult to find they are working for "salary, wages, other remuneration or profit" as required by the SABS' definition of employment.

The insurer was criticized for refusing to process insured's application for IRBs on the basis that he had no reported income; if it wanted to rely on entitlement as a bar to an NEB, it should have processed the application and determined the amount was nil.

On the facts of the case, however, the insured did not meet the test for NEBs.

Implications:

Even if an insured was employed at the time of the collision, he or she may be entitled to a non-earner benefit. This may be a way for those earning income "under the table" to qualify for a specified benefit. It is important to remember the higher test for NEBs and merely being entitled does not necessarily get you over the "complete inability" test.

Accessing Arbitration Decisions

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