

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of September 8 to 12, 2008

Dispute Resolution Fairness and Efficiency Results in Disclosure of Personal Contact Information of Non-Claimants: Beware . . . It's Possible!

Natasha Maitland and State Farm Mutual Automobile Insurance Company, FSCO A07-002293, August 27, 2008, Arbitrator Richard Feldman

MVC August 5, 2003. Insured applied for benefits and Insurer denied. Mediation was unsuccessful and Insured applied for Arbitration. At a pre-hearing motion, Insurer sought names and addresses of those who provided attendant care and/or house keeping since April 2005. Insurer also sought production of Defence Medical Reports in the Insured's hands arising from a tort action.

Arbitrator Feldman noted that he was unaware that FSCO routinely ordered Insureds to provide Insurers with the names and addresses of all the service providers. The Insurer was unable to provide an example of any such order. However, Arbitrator Feldman commented that Insured's representatives routinely agree to provide personal contact information of service providers based on the experience of the Arbitrator. No evidence is reported in the decision supporting the Arbitrator's experience.

The Arbitrator noted that the Insured has the right to decide what witnesses to call at the hearing. But the Insured cannot block the Insurer from identifying, communicating with and calling service providers. Arbitrator Feldman ordered the full name and last known address of each individual who provided attendant care and/or housekeeping services after April 2005 be produced. The part of the motion dealing with production of Defence Medical Reports in the hands of the Insured was denied.

Implications & Commentary:

This decision is likely to cause a stir in the Statutory Accident Benefits Community. Arbitrator Feldman has unknowingly stepped into the middle of a hornet's nest. It would also appear that the Insured claimant did not bring to Arbitrator Feldman's attention, privacy legislation which might have alerted Arbitrator Feldman to the growing privacy issue and possible Insurer abuse.

In the field, Insurers are demanding private, confidential, contact, and other information about individuals who are not Statutory Accident Benefit Claimants – in other words, service providers and others. This demand is long before Mediation and Arbitration and sometimes the reason for Mediation. There is no statutory basis for the Insurer's demands for private, confidential and/or contact



information about non-claimant service providers. While the Insured has a contractual duty to cooperate with the Insurer, that contractual duty does not extend to providing private, personal or contact information of non-claimant service providers. There is, on the other hand, a statutory basis for withholding private, personal, contact and other information about non-claimants.

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.