

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of September 29 to October 3, 2008

An unchallenged payment of a quantum of benefits is not a clear refusal over quantum and does not trigger a limitation period

***Hellinger v. Royal & SunAlliance Insurance Company of Canada*, FSCO A07-002359, August 19, 2008, Arbitrator Suesan Alves**

MVC August 27, 2003. Insurer made lump sum payment of income replacement benefit on March 9, 2005 from the date of the collision until December 21, 2005. In July 2005 and September 2005, the Insured submitted further information showing additional money earned in the year before the MVC. The IRB was terminated March 24, 2006. Mediation of the issue occurred June 5, 2007 and application for arbitration was made October 2007. Insurer argued that the two year limitation period was triggered by a March 2005 denial since that was when lump sum payment of the benefit was paid and so the limitation period expired March 2007.

The limitation period was not triggered by the lump sum payment made in 2005. If there was a refusal over quantum then it occurred at the mediation in June 2007 which was after the lump sum payment made in 2005 and after termination of the benefit in 2006.

If disputing a calculation of an Income Replacement Benefit then the limitation period is not triggered until the Insured raises the issue of quantum and it is clearly refused. An Insurer cannot be said to refuse quantum of an income replacement benefit simply by paying an amount for it. If the Insured subsequently disputes quantum then the Insurer must clearly refuse it in order to trigger a limitation period.

Implications & Commentary:

Some counsel may be tempted to lessen their clients' costs by allowing the Insured to calculate the amount of the benefit and then review the Insurer's calculations. The Insured can receive payment of the benefit in the amount determined by the Insurer without triggering a limitation period over quantum of the benefit. While this seems to buy the Insured more time for disputing an amount of a benefit *it not to an Insured's benefit to proceed in this manner*. It remains best for any dispute about quantum to be addressed as soon as possible once the Application for Benefits is submitted. An Insured who is eligible for an IRB is receiving less money from the benefit than she did from employment income prior to the MVC. It is important to determine quantum of your client's IRB at the earliest time possible to alleviate the financial strain

experienced while she is unable to work. Interest is only calculated on amounts from the date on which the refusal is made. So while that can factor into a decision about when an application for mediation is made, it is not a factor to determine when the issue of amount of IRB payable is raised with the Insurer.

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.