

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of December 8 to 12, 2008

Insurers must adhere to statutory conditions when terminating policies of insurance

***Prior v. Dominion of Canada General Insurance Company*, FSCO A07-001147, November 6, 2008, Arbitrator Eban Bayefsky**

MVC July 24, 2004. Dominion denied entitlement to IRB and other benefits on the basis that the insured *knew or ought reasonably to have known that he operated his vehicle while it was not insured*. At issue was whether the insured knew his coverage had been terminated. If he knew, then Dominion could refuse to pay an IRB under the SABS.

The Arbitrator held there was no clear and straightforward termination of the insurance policy by Primmum as to the timing of the termination, the amount due on the policy and the circumstances under which the insured could avoid termination. The notice was therefore void *ab initio*. As a result, it was not entitled to deny the insured income replacement benefits, non-earner benefits, housekeeping and certain attendant care benefits on that basis.

Implications & Commentary:

It is important to evaluate the circumstances under which the policy was purportedly terminated and the manner it was terminated by the insurer. If the insurer failed to adhere to statutory conditions then it may be possible that the insured reasonably believed that the policy was in place at the time s/he operated the vehicle.

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.