

## WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of December 15 to 19, 2008

### Slip and Fall while rushing away from approaching emergency vehicle considered Accident for SABS

#### ***Wawanesa Mutual Insurance Company v. Cooper*, FSCO P08-00015, Nov.7, 2008, Director's Delegate Blackman**

Slip and fall of February 22, 2006. Insurer denied insured's claim arguing that her injuries did not result from a motor vehicle accident as the term "accident" is defined in subsection 2(1) of the SABS as "an incident in which the use or operation of an automobile directly causes an impairment ...".

At arbitration, the insured's evidence was that she was a pedestrian crossing on a green light at a normal walking pace when she heard the siren of a fire vehicle and felt petrified. She then saw the fire vehicle approximately ten cars away and decided to quicken her pace to move across the road. She explained that other pedestrians were also hurrying and one person behind her ran past her. A matter of seconds after hearing the siren and while she was hurrying she fell into a steel pole at the curb. Arbitrator held that the injuries were a result of an "accident" as defined in the SABS. Arbitrator noted the arbitration decision in *Petrosoniak and Security National Insurance Company*, (FSCO A98-000198, November 2, 1998), which adopted the definition of "direct cause" in *Black's Law Dictionary* as "...the active, efficient cause that **sets in motion a train of events** which brings about a result without the intervention of any force started and working actively from a new and independent source". Arbitrator held that the injuries were the result of an "accident" as defined in the schedule:

*...[T]he use and operation of the fire vehicle was the dominant feature in this incident and the direct cause of the Respondent's injuries. The use and operation of the vehicle, namely the sound of the siren and the fire vehicle racing down the third lane of the street, set in motion a train of events which forced the Respondent to take evasive action to get out of the way of the oncoming fire vehicle. The action, the quickening of her pace, resulted in her fall.*

The Arbitrator found that there was no evidence of any intervening factor that broke this chain of events and confirmed that it is not necessary to establish direct physical contact with a motor vehicle by the injured person. Arbitrator also cited the Ontario Court of Appeal in *Chisholm v. Liberty Mutual Group*, [2002] 60 O.R. (3d) 776 that a direct cause does not mean the only cause or the most immediate cause and that there could be more than one direct cause of one's

injuries and that one of the direct causes must be the use or operation of a motor vehicle.

Director's Delegate found no error of law in the Arbitrator's findings that the use or operation of the fire vehicle directly caused the Respondent to slip and fall, and that the Respondent was injured as a result of an "accident", as defined in the SABS. Director's Delegate further explained that an emergency vehicle sounding its siren and traveling down the wrong side of a street is an "ordinary and well-known" activity to which such vehicles are put and it is part of the "ordinary course of things" that pedestrians may rush to get out of the way of such an oncoming vehicle in such circumstances that, in one's haste, one may slip and fall causing an impairment.

**Implications:**

Although the factual situation in this case is unique, this decision confirms the need to look further down the chain of events in evaluating access to SABS benefits. The injured person need not have even come in contact with a motor vehicle to access SABS benefits where it can be determined that an ordinary and well-known use of a motor vehicle was a cause of subsequent events which were part of the ordinary course of things and from which injuries resulted.

**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.