

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

For the week of January 5 to 9, 2009

### The Fund & Benefits: Not So Quick On The Draw - If You're From Texas

#### ***Thanh Nguyen and Motor Vehicle Accident Claims Fund, FSCO A07-001709, Dec. 5, 2008, Arbitrator Robert Bujold***

MVC Aug 22, 2005. Thanh Nguyen ("Nguyen") was injured while bike riding in Ontario in Aug. 2005. He applied for benefits from the Motor Vehicle Accident Claims Fund (the "Fund"). No other similar insurance benefits were available. The Fund refused payment of any benefits.

At Arbitration, the Fund relied on Affidavit evidence which confirmed that Nguyen was living in or was ordinarily resident in Texas. The Fund provides benefits to persons injured in Ontario who reside in states/provinces ("jurisdictions") that have similar legislative regimes. As the driver who collided with Nguyen was an unidentified driver who fled the scene, the legislation governing this particular circumstance was section 25 of the *Motor Vehicle Accident Claims Act*, R.S.O. 1990, c.M. 41 as amended:

#### ***"Payments to non-residents***

***25. (1) The Minister shall not pay out of the Fund any amount in favour of a person who ordinarily resides in a jurisdiction outside Ontario unless that jurisdiction provides persons who ordinarily reside in Ontario with recourse of a substantially similar character to that provided by this Act."***

The Fund had confirmed that Texas did not have a similar legislative scheme. Mr. Nguyen was unsuccessful at Arbitration.

#### **Implications:**

Ordinarily 'uninsured' visitors to and from other jurisdictions may be caught off guard by differing legislative regimes in differing jurisdictions. While the fact pattern in this case may appear unusual, highly mobile populations make this scenario common enough that it had been contemplated by legislators (and one that will likely recur in the future). Health Care providers may have to limit their treatments based on the laws of the jurisdiction in which the injured person resided.

### 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.