

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of January 19 - 23, 2009

Meaning of accident: directly caused by use or operation of a motor vehicle

Johnson v. Peel Mutual Insurance Company, FSCO A06-002668 and A08-002218, December 24, 2008, Arbitrator Maggy Murray

MVC July 26, 2005. Nine year old applicant injured by a rolling trailer. The trailer was attached to a pick up truck delivered to a driveway which sloped toward the street. The trailer was then detached from the pickup . The driver started up the pick up and started down the driveway, causing the trailer to move down the driveway.

The 9 year old attempted to stop the trailer but was pushed by the trailer into a large concrete utility pole adjacent to the driveway. The boy sustained injuries including a significant brain injury.

The issue in dispute was whether these events constituted an "accident" within the meaning of s.2(1) of the SABS to entitle the Applicant to accident benefits. The arbitrator held that this was an accident as the injuries arose directly from the use or operation of a motor vehicle.

Every aspect of this incident involved the direct use and operation of the pickup truck to deliver the trailer to the driveway: the operation of the truck directly caused the trailer to move and diverted the boy from trying to enter the truck; the process for unhitching the trailer was not complete because the trailer was not secured by bricks which were available to do so; the insured was an occupant of the automobile because he was trying to get into the truck and trying to stop the trailer; the insured, his brother and the driver were to continue the trip they started when they dropped off the trailer from a different location.

Factors such as time, proximity, activity and risk are important when considering the connection between the use or operation of an automobile and the injury. In this instance, the accident occurred within 20-30 seconds of the driver turning off the truck, disconnecting the trailer, and getting back into the pickup truck. The Applicant was on or at the edge of the driveway where the pickup truck was parked. The pickup truck was still partly on the driveway when the driver stopped it after the boy was crushed between the trailer and the utility pole. Unhooking a trailer from a pickup truck and driving the pickup truck are "a normal incident of the risk" of motoring.

Implications:

Eligibility for accident benefits is not dependant on the trailer being an automobile for the purposes of the SABS provided that it is under the power and control of a motor vehicle and it is a direct cause of a person's injuries. Despite the fact that there have been many recent judgments on the issue of "use or operation of a motor vehicle" including from the Supreme Court of Canada in *Vytlingam v. Farmer*, [2007] 3 S.C.R. 373 and *Herbison v. Lumbermens Mutual Casualty Co.*, [2007] 3 S.C.R. 393, as well as from the Ontario Court of Appeal in *Copley v. Kerr Farms Limited* (2002), 59 O.R. (3d) 346 (Ont. C.A.), this case suggests that the analysis remains fact specific requiring a careful analysis of the circumstances surrounding the incident that resulted in injuries to an Applicant.