

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

For the week of February 2 to 7, 2009

**Apply late for benefits? As long as nobody tells you about application limitation periods and you have a good reason, in the words of Mick Jagger . . . “Ti-i-i-me is on your side, yes it is . . .”**

**Paritosh Bhada and Security National insurance Co./Monnex Insurance Mgmt. Inc., FSCO A07-001972 January 23, 2009, Arbitrator David Leitch**

MVC April 3, 2006. Insured involved in a single vehicle accident. Insurer not advised until late August 2006 and promptly provided insured with an Accident Benefits Application Package. Insured did not return application materials until December 2006. Insurer denied benefits in part on the grounds that the application was outside of the time limit. Mediation was unsuccessful and the matter proceeded to Arbitration.

Part X of the Schedule sets out application procedures and time limits. In his analysis of the time issue, Arbitrator Leitch noted that Part X of the Schedule began by stating under section 31(1), that an insured's failure to comply with a time limit didn't disentitle an insured to a benefit if the insured has a good reason. The arbitrator also noted that the insured had failed to comply with time limits which required application materials to be returned to the insurer within 30 days.

However, Arbitrator Leitch was of the view that if an insurer wanted to rely on time limitations provided by the Schedule, then the insurer must clearly explain to an insured the consequences of failing to respond within the time limit. The insurer must also explain the insured's right to cure any time limitation issue with a reasonable explanation for any delay. In this case, the insurer had not provided the required explanations. While the insured was successful on this time limitation issue, he was largely unsuccessful with respect to his claim for benefits.

### **Implications:**

Insurers wishing to rely on time limitations have an obligation to inform insureds that if limitation periods are ignored, benefits can be denied. Insurers also have an obligation to let insureds know that a reasonable explanation can cure a late application for benefits. If an insurer fulfills its obligations, it is unlikely that health care providers, lawyers or even Mick Jagger can assist in reinstating benefits.

### **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.