

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of March 30 to April 3, 2009

Procedure: insurer can't delay arbitration for IME when it delayed acting on knowledge of change in insured's condition.

***Basil Martin v. Optimum Insurance Company Inc.*, FSCO A06-001313, February 20, 2009, Arbitrator Lloyd Richards**

MVC July 21, 2001. Insurer terminated insured's IRB's in December 2003. Insured applied for mediation in November 2005 and at the same time submitted to the insurer a report from a psychologist which indicated a change in the insured's physical condition in addition to new psychological diagnoses. The insurer ultimately approved funding for treatment with this psychologist. IRB issue proceeded to Arbitration, application having been made in June 2006.

IME request made February 23, 2007. The insured refused to attend. On a preliminary issue in advance of the arbitration scheduled for March 2009, the insurer requested an order adjourning the arbitration until the insured attends these insurer examinations.

In this case, the insured argued that the insurer made the examination requests in 2007 only after mediation failed, an application for arbitration was filed and the insurer responded. Insured also argued that the insurer had the new information about the insured's condition since 2005 and only made its request for examinations in 2007 at a time when it was copying all correspondence to its counsel.

Arbitrator concluded that the insurer requested the examination where circumstances indicate that its only apparent purpose was to acquire medical evidence to bolster its case at arbitration and, in the totality of the circumstances, the insurer's requests for examinations were not reasonable.

Implications:

In order to avoid requests to adjourn an arbitration for insurer examinations, after a benefit is terminated counsel for insureds should make sure that the insurer is provided with medical reports to make the insurer aware of any changes or any updates in the insured's condition. This way, the insurer will have no excuse for any delay in requesting examinations.

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.