

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of May 18 to May 23, 2009

The Mysterious Case of Benjamin and Belair: . . . well, maybe not that mysterious . . .

Rosa Benjamin and Belair Insurance Company Inc., FSCO A07-001740, April 30, 2009, Arbitrator Susan Sapin

MVC June 10, 2004. Insured applied for caregiver and housekeeping benefits. The Insurer denied the application. Mediation was attempted and failed. An arbitration application was made and the Insurer sought to have the application dismissed due to delay. The Insurer sought \$500.00 in costs from the Insured.

The arbitrator heard evidence that the Insured had some difficulty with her original solicitors and with a subsequent family illness. The Insured's original solicitors were permitted to withdraw due to a break down in the solicitor client relationship. She subsequently was unable to retain new counsel. The process stalled as the pre-hearing was adjourned on multiple occasions. Other conditions were imposed on the Insured. Eventually, the Insured retained counsel.

The Insured's new lawyer advised of the circumstances that had intervened following the Arbitration application. It was noted that the Insurer had not been prejudiced by the multiple delays. In the end the Insured was victorious and Insurer's motion to dismiss the Insured's claim was dismissed. But the Insured was required to pay \$250 to the Insurer for costs thrown away. The Arbitrator noted that it was the Insured's duty to pursue her claim, and not the Insurer.

Implications:

The usual result when an Insured is successful in resisting a motion to dismiss a claim is that the Insurer has to pay its own costs and at least some of the Insureds. This case represents an extreme circumstance where multiple delays are solely caused by an Insured's action, inaction and circumstances. Insureds must be made fully aware that Arbitrators will only go so far in forgiving the day-to-day misfortune that adheres to some Insureds.

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. If you have questions or comments about this edition of the newsletter, contact Brian Murphy at Legate & Associates: bmurphy@legate.ca