

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of August 10 - 14, 2009

Fund is not insurer of convenience – failure to comply with Fund requirements means no benefits

***Tariq v. Motor Vehicle Accident Claims Fund*; FSCO A07-002733, July 22, 2009, Arbitrator Elizabeth Nastasi**

May 6, 2006 collision. At issue was whether or not the Motor Vehicle Accident Claims Fund (the “Fund”) was first insurer (such that it was required to pay benefits pending resolution of priority disputes). The insured was driving a rental car that collided with another rental car. When police attended at the collision they were only provided with a copy of the insured’s rental agreement.

The insured claimed benefits from the Fund approximately 5 months post-collision. The Fund immediately advised the insured that it was not able to consider the claim because both vehicles in the collision were rental cars which would have been insured. The Fund requested that the insured comply with the *Motor Vehicle Accident Claims Act*, and provide a completed Form 3 and copy of the police report. The insured delayed for 2 years in providing the Form 3, which then indicated that the name of insurer was “unknown/TBD”. The insured also made no request to the police for the police report until more than 2 years post-collision, but ultimately provided the police report 2½ years post-collision.

The Fund took the position that there was no sufficient nexus between it and the insured. It argued that in order to establish a nexus, the insured must have a reasonable belief that there is no insurance available from any other source. The insured argued that reasonable efforts were made to obtain information about the insurer of the rental car, and that the Fund also has an obligation to make efforts to obtain the information.

The insured acknowledged that a rental car would have insurance coverage. Noting that the insured made no effort to obtain the police report until over 2 years post-collision, the Arbitrator held that the insured’s decision to apply to the Fund was arbitrary given the limited efforts to determine the insurer of the rental car. The insured did not meet the threshold to establish the required nexus. No benefits were payable by the Fund.

Implications:

The Fund is an insurer of last resort where no other insurance coverage is available. The detailed information required to obtain benefits from the Fund must not be taken to be optional or unimportant. Because there is no contractual relationship between an insured and the Fund, the information requested in the



application form is crucial information the insured must provide to establish a nexus and receive benefits. In every case, an insured should immediately request the police report. Where the police report does not indicate the name of insurer, other efforts must be made to obtain that information. The onus is on the insured, not the Fund, to prove that it made reasonable efforts to determine if there is another insurer available to pay the 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>.

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