

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of August 17 - 22, 2009

Production of Relevant Documents from Non-Parties

***Trista Pountney v. Economical Mutual Insurance Company;* FSCO A09-000008, July 29, 2009, Arbitrator John Wilson**

August 17, 2006 MVC. Insured's father killed in MVC. Insured applied for death benefits. Insurer declined on the basis that Insured was not a dependent at the time of MVC. Matter proceeded through mediation to arbitration.

The Insured's brother apparently had taken over control of the deceased's financial matters and was unresponsive to the Insured's requests for documents. A pre-arbitration motion was brought on the issue of whether or not the Insured was entitled to an order requiring her brother to produce the deceased's financial documents. The Insured's brother did not appear at the motion, though was notified of the motion.

Arbitrator Wilson noted that s. 22 of the *Insurance Act* and s. 67.3, 67.4 & 67.7 of the *Dispute Resolution Practice Code* provide the respective statutory authority and procedural steps to be undertaken when documents in the hands of non-parties may be needed as evidence to resolve issues in dispute. As the Insured's submissions were not disputed, the Arbitrator ordered production of the deceased's financial documents from the Insured's brother.

Implications:

The Insured at most times bears the onus of proving his/her claim irrespective of the severity of the circumstances. Sometimes, relatives, employers, collateral Insurers and other non-parties will not cooperate in the process. When this happens, the Insured must exercise his/her remedy under the legislation by seeking a legal order as against a non-party. The failure to do so places any legitimate benefit claim in jeopardy.

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 Dr. Brian Murphy (Lawyer) at Legate & Associates: bmurphy@legate.ca