

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of Nov. 9 - 13, 2009

Not-So-Fishy Employment Losses Leads to Order for Interim Benefits.

Sivakumaru Sinnapu and Economical Mutual Insurance Company, FSCO A09-000900 John Wilson

MVC June 22, 2006. Insured applied for and received benefits. At 2 year mark, Insurer terminated benefits. Insured claimed to be in financial difficulty and that he remained unemployable for any occupation for which he was suited for by reason of education, training or experience. A motion for Interim Benefits was brought by the Insured.

Insured worked as a fishmonger. He received shipments of fish, sorted fish, stacked fish and cleaned fish. Following the June 2006 MVC, he attempted a return to work, but was unable to continue at his job. As a result of his inability to work as a fishmonger and non-payment of benefits, the Insured was now on welfare.

Arbitrator Wilson noted that the *Insurance Act* made provision for discretionary interim orders. Decisions dealing with interim orders were considered within a flexible framework. That framework did not require that the entire dispute be resolved. But it did require each party to put 'their best foot forward' to allow the arbitrator to exercise his or her discretion. The arbitrator characterized the interim order as a judgment call based on relevant factors and reasonability. After reviewing a considerable quantity of evidence at the motion, payment of Interim Benefits was ordered – subject to repayment, if the Insured was not successful at arbitration.

Comment:

The SABS provides for a relatively expeditious benefit procedure for Insurers and Insureds. There will be circumstances where that general procedure is insufficient to protect the interests of innocent Insureds. Those circumstances are rightfully dealt with by an interim order to prevent further losses by an Insured. For the insured in this case, his injury-related financial status was protected by the catch of the day by the Legate SABS Update at FSCO this week – an interim order for 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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