

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of March 1 to 5, 2010

IRB calculated on Unreported Income - later reported through Re-filing.

Uribe v. Wawanesa Mutual Insurance Company, FSCO Appeal P09-00021
February 5, 2010, per Director's Delegate Evans.

MVC of December 11, 2006. Insured worked for a numbered company from June to October of 2006 but after the collision was unable to obtain a T-4 slip from the company. On the advice of a tax preparation service he did not include that income earned when he filed his 2006 tax return in 2007. Insured later re-filed and included the income from he earned from that company.

The calculation of IRB's depends on pre-collision income and s. 64.1(1) of the SABS provides that the person's pre-collision income shall be determined without reference to any income the person has failed to "**report**" contrary to the *Income Tax Act*. However, s. 64.1(2) provides a saving provision in that notwithstanding a determination under s. 64.1(1), the amount of the income may be adjusted to reflect any change in the amount of the person's income "**reported**" or determined in accordance with the *Income Tax Act*.

Insurer argued that s. 64.1(2) does not apply to circumstances where the insured re-files the tax return. Insured appealed the Arbitrator's finding that s.64.1(2) only deals with reassessments by taxing authorities such as the CCRA and not reassessments based on the insured's failure to fully disclose his or her income in the original return.

Director's Delegate Evans allowed this re-filed income earned from the company between June and October 2006 to be included in the calculation of the insured's IRB and found that the Arbitrator erred in not taking into account the use of the verb "**report**" in both s. 64.1(1) and (2) which can only refer to actions by the person and not simply reassessments at the discretion of the taxing authority. Director's Delegate Evans also noted that this interpretation accorded with the FSCO Bulletin No. A-01/04:

... income that is not reported for income tax purposes will not be included in calculating income replacement benefits. The income replacement benefit can be adjusted to reflect any income that may be subsequently reported for income tax purposes.

Comment:

Although an insured that has not reported income for the period prior to the collision will not have their IRB calculated on any such unreported income, it is



not too late to report the income through re-filing an income tax return to properly account for all pre-collision income and to potentially increase the payable IRB. However, an insurer would not be responsible for interest on any further IRB owing as a result of income subsequently reported so it would be important not to delay in re-filing and submitting the proof of subsequently reported income to the insurer.

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 Sean Mackintosh at Legate & Associates: smackintosh@legate.ca.