

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of March 15-19, 2010

Driving without insurance: Insurer must pay despite apparent cancellation

Ersin Aksoy and Markel Insurance Company of Canada, File No. A08-001408, February 25, 2010, per Arbitrator Sampliner.

MVC Dec. 27, 2006. Insurer refused to pay IRB and housekeeping expenses, arguing insured knew or ought to have known he was driving without insurance. Insured purchased policy through a broker in February 2006. Insured agreed to pay premium by automatic payments. Insurer did not receive premiums and sent notice of cancellation by registered mail to insured's last known address.

Insurer did not establish insured knew or ought reasonably to have known he was driving without insurance at the time of the accident. Arbitrator stated issue required an individual inquiry. Insurer did not establish on a balance of probabilities insured received notice of cancellation, or that broker clearly explained policy was cancelled for non-payment.

Implications:

Part IX of the SABS sets out general exclusions whereby an insured is not required to pay certain benefits, namely an income replacement benefit, non-earner benefit, lost educational expenses, expenses of visitors and housekeeping expenses. Section 30(1)(a)¹ exempts an insurer from paying these benefits in respect of a driver who knew or ought reasonably to have known at the time of the accident he or she was operating the automobile while it was not insured under a motor vehicle liability policy.

Importantly, an insurer is required to prove knowledge on a balance of probabilities. If insurers do not meet this burden, they are not exempt from paying these benefits. Further, this section does not apply to occupants, only drivers. Finally, insurers are still required to pay other benefits, including caregiver, medical, rehabilitation, attendant care, death and funeral 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>. 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

¹ Section 30(1)(b)-(d), (2) set out other bases for excluding obligation to pay certain benefits.



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