

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of March 29 to April 2, 2010

TIME OUT: Expenses Paid by Insured – When Claim Statute Barred

Therese West and Aviva Canada Inc. FSCO A08-000170, March 15th 2010, Arbitrator Robert Bujold

MVC April 4, 2002. Insured applied for and received benefits. Benefits were terminated but Insured did not apply for dispute resolution within the 2 year time line. The Insured applied for arbitration but in a preliminary decision it was determined that arbitration was not available. The issue was whether the Insurer was entitled to its expenses of the preliminary hearing on the time line matter.

Arbitrator Bujold noted that there was some evidence that the Insurer and Insured had attempted to address the issues of expenses. The Insurer requested an expense hearing and filed a Bill of Costs. The Insured did not file responding materials. The Arbitrator noted that the “*Expense Regulation*” sets out the factors to be considered in awarding costs. These factors include the degree of success, prior written offers to settle, whether there are novel issues, the party’s conduct and unnecessary procedural related factors.

Based on these factors the Insurer was awarded legal costs at the *Legal Aid Services Act, 1998* rate of \$87.26 per hour. Total costs were fixed at \$2,300.00. With respect to Disbursements, the Insurer was not permitted to claim a disbursement in relation to the presence of a Court Reporter and also had a photocopying charge reduced. In total, Aviva was entitled to \$2,627.86.

Implications:

Insureds need to be aware of the legislative timelines under the SABS. Those limitation periods will be rigidly enforced from time-to-time.

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 at Legate & Associates: bmurphy@legate.ca.