

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of April 19 to 23, 2010

How to Escape the Initial Accident and Keep the Benefits

Leroy Walton v. Certas Direct Insurance Company, FSCO A-08-001951, March 25, 2010, Arbitrator Anne L. Sone

December 6, 2004 collision. This is a decision on the preliminary issue of whether the insured was injured as a result of an "accident" as defined in section 2(1) of the *Schedule*. The insured was in a van that slid down a hill during an ice storm. He stayed at the bottom of the hill in his vehicle until a salt truck arrived. Unfortunately, the salt truck also began to slide down the hill toward the insured. The insured was injured when he slipped on ice either while exiting his vehicle, or a short distance after exiting his vehicle.

The Schedule defines the term "accident" in subsection 2(1) as follows:

"accident" means an incident in which the use or operation of an automobile directly causes an impairment ...

Analysis of this definition has led to two tests. Firstly, the "purpose test" looks at whether the incident arose from the ordinary and well-known activities to which automobiles are put. Secondly, the "causation test" looks at whether the use or operation of the vehicle was a "direct cause" of the injuries.

The Arbitrator concluded that the insured was exiting his vehicle as it was struck and he fell at that time. It was found that exiting a vehicle is an ordinary use and that the salt truck striking the van as the insured exited caused him to be thrown to the ice and injured. In addition, the Arbitrator stated that if the insured fell while fleeing the oncoming salt truck, the result would be the same. It was found that people may fall getting out of the way of an out of control vehicle and that an injury may arise as a direct result of rushing to get out of the way of an oncoming vehicle.

Implications:

Accidents can take many shapes and forms and it is crucial to have a full understanding of the scope of the protection provided under the *Schedule*. This decision contains a good analysis of the tests to be applied and a summary of similar fact cases applying these tests. Understanding the principles behind determining when an insured is injured as a result of an accident will allow a person to determine when coverage should be available.



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