

## WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of May 3 to 7, 2010

### Runaway trailer is an automobile for purpose of accidents benefits claim

***Peel Mutual Insurance Company v. Johnston*; FSCO P09-0003; April 8, 2010; Director's Delegate D. Evans**

July 26, 2005 collision. The insureds were 2 boys ages 9 and 11 years. They travelled with their uncle in a pick-up truck towing a trailer. The uncle delivered the trailer to a residence, and backed it into the driveway. After everyone got out of the truck, the uncle unhooked the trailer from the truck and set it in the driveway. He did not put any blocks in front of the wheels to prevent it from rolling. As the uncle started to drive the truck down the driveway, the boys ran behind the truck. The trailer started to roll down the driveway and struck one of the boys causing serious injury. The other boy suffered psychological injuries.

At issue was whether the trailer was an automobile such that the insurer was liable to pay accident benefits. The Director's Delegate agreed with the arbitrator that it was. The OAP 1 provided that a trailer is an automobile for the purpose of accident benefits when it was used in connection with the automobile. The phrase "in connection with" was broader than "connected to". Though the trailer had been lifted off the truck, it rolled very shortly after it had been disconnected, created serious risk, and was still very close to the truck which was still partly in the driveway when the trailer struck the boy. It was essentially one continuous action.

#### **Implications:**

Not every runaway trailer would be characterized as an automobile under the OAP 1. The Director's Delegate noted that a common sense approach must be taken in each case. Evaluation of the connection between the use or operation of the automobile (the truck in this case) and the trailer requires an examination of the timing, proximity, activity and degree of risk. Had the trailer remained stationary for a period of time after the truck had driven away, it may not have met the definition in this case. The best course of action in such cases.....block the wheels.

#### **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 Joni Dobson at Legate & Associates: [jdobson@legate.ca](mailto:jdobson@legate.ca).