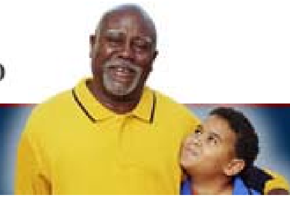

Property and Casualty - Auto Bulletins

Pension Bulletins

Monitoring and Enforcement Bulletins

Licensing Changes Bulletins

Bulletins by Sector

Bulletin

No. G-02/08
General

Monitoring and Enforcement Report - Including Prosecution and Hearing Decisions - October 1 to December 31, 2007

FSCO's Monitoring and Enforcement Online

FSCO's Monitoring and Enforcement Bulletin is now available as Monitoring and Enforcement Online, at www.fsco.gov.on.ca. This is the last Monitoring and Enforcement Bulletin in paper format.

Monitoring and Enforcement Online replaces the paper-based Monitoring and Enforcement Bulletin that was distributed on a quarterly basis. Content is now posted online in a more timely fashion.

The switch to online publication of the Monitoring and Enforcement Bulletin is in keeping with FSCO's commitment to being a forward-looking regulatory agency that delivers quality service.

The Financial Services Commission of Ontario's (FSCO) Monitoring and Enforcement Bulletin reports on its prosecution activities, the decisions arising out of the hearings under FSCO legislation and other regulatory activities that help ensure consumer confidence in the financial services sectors regulated by FSCO - insurance, credit unions/caisses populaires, loan and trusts, co-operative corporations and mortgage brokers. FSCO also regulates pensions; its monitoring and enforcement report on this sector appears separately in FSCO's Pension Bulletins.

The Financial Services Tribunal (FST), an independent adjudicative body, hears appeals or reviews proposed or intended decisions of the Superintendent of Financial Services (Superintendent), who makes the majority of first line regulatory decisions. These appeals or reviews are conducted at the request of an affected party. In its hearings, the FST determines all questions of fact or law. As well, the FST has authority to make rules for the practice and procedure to be observed in a proceeding before it, and to order a party to a proceeding before it to pay the costs of another party or the FST's costs of the proceeding.

The Superintendent administers and enforces the Financial Services Commission of Ontario Act, 1997 (FSCO Act), and other Acts that confer powers or assign duties to the Superintendent.

Under the FSCO Act, the Superintendent may delegate the exercise of any power or the performance of any duty conferred on or assigned to the Superintendent. The Executive Director of the Licensing and Market Conduct Division (the Director) has been delegated the authority by the Superintendent to render licensing decisions.

The Dispute Resolution Services Branch of the Automobile Insurance Division provides mediation, neutral evaluation, arbitration and appeal services as fair, cost-effective and timely alternatives to the court system. An arbitrator may decide at the conclusion of an arbitration hearing involving insurers and statutory accident benefits claimants, to impose penalties under the Insurance Act.

The Insurance Act authorizes arbitrators and appeal adjudicators to make two types of enforcement orders that are reported in this Bulletin. First, under section 282(10), a special award may be made against an insurer that has unreasonably withheld or delayed the payment of benefits. Second, under section 282(11.2) a representative may be ordered to pay expenses personally in certain situations.

ACTIONS OF THE FINANCIAL SERVICES COMMISSION OF ONTARIO AND THE FINANCIAL SERVICES TRIBUNAL

Monitoring Activities

FSCO undertakes a number of monitoring activities as part of its regulatory functions. It conducts police background checks on prospective agents and paralegals and reviews complaints against agents, paralegals, health care providers, insurance companies, and other financial services sectors. In addition, FSCO audits life agent renewal applications to ensure they meet continuing education (CE) and errors & omissions insurance (E&O) requirements. Paralegals are also subject to E&O audits.

These checks, reviews and audits are the first step in the enforcement process. A significant number of matters are resolved at this first step.

Police Checks

During the period, a total of 2,144 police checks on the background of existing and prospective agents and paralegals were made with the Canadian Police Information Centre.

Complaints and Reviews

COMPLAINTS				
	Complaints in progress from Sept. 30, 2007	Plus complaints received during the period	Less complaints in progress at end of Dec. 31, 2007	Total number of complaint reviews completed during the period
Agent	45	47	54	38
Paralegal	2	10	4	8
Health Care Provider	4	1	4	1

DISPOSITIONS				
	Total cases concluded	Cases resolved	Cases closed	Cases forwarded for (potential) enforcement
Agent	38	16	8	14

Cases may be closed for a variety of reasons. The most common are: the issue raised is outside FSCO's jurisdiction; there is insufficient evidence to substantiate a complaint; or the complaint is unfounded.

Audits

FSCO initiated 352 audits of life agents during the fourth quarter to ensure they met their errors and omissions (E&O) insurance requirements.

Investigation Activities

As a follow up to its regular monitoring activities - police background checks, the reviews of complaints received and audits of compliance with CE requirements and E&O compliance - FSCO may decide that some matters need to be investigated. An investigation is the second step in the enforcement process. It is used where prosecution or administrative action may be contemplated.

Investigations Initiated

Agents	
Complaints about agent conduct	7
Suitability	1
Grand Total	**8**

Outcome of investigations	
A total of 15 cases were completed:	
○ Charges laid in Provincial Offences court	1
○ Minutes of Settlement and Superintendent's Orders issued	2
○ Cease & Desist Orders issued	1
○ Letters of Censure issued	0
○ Closed files (no enforcement action warranted)	11
Total	**15**

Cases may be closed if there is insufficient evidence to support the allegations, or if the allegations are unfounded. The results of the individual court cases and hearings are reported in the period when the decisions are rendered. The names of individuals subject to Superintendent's Orders or who have surrendered their licences are recorded on the date they occur.

Administrative Sanctions

Letters of Warning

During the period 42 Letters of Warning were issued to life agents, all of whom were late in applying for licence renewal.

Letters of Censure

There were five Letters of Censure issued in the fourth quarter.

Minutes of Settlement and Superintendent's Orders

De Belchior, Richelle	By an order dated October 23, 2007, pursuant to the Minutes of Settlement, this agent’s general insurance licence renewal application has been refused. Ms. De Belchior cannot apply for an insurance agent’s licence for a period of three years. Ms. Belchior received information from policyholders and intentionally entered it incorrectly. This resulted in lower premiums being charged, and more business being generated for the agent.
Coatsworth, Matt	By an order issued and effective November 14, 2007, pursuant to the Minutes of Settlement, this life insurance agent’s licence was revoked. Mr. Coatsworth misappropriated funds from his client.

Prosecutions

Insurance Act

Charge:	**Failing to respond fully to the Superintendent's request for information pursuant to section 31 of the Insurance Act**
Against:	**State Farm Mutual Automobile Insurance Company**
Verdict:	**Guilty**

State Farm Mutual Automobile Insurance Company was convicted on October 25, 2007, in Toronto on a charge of failing to respond fully to the Superintendent's request for information, pursuant to section 31 of the Insurance Act. The conviction was based on a plea of guilty. State Farm was fined $17,500. The fine was based on a joint submission.

Hearings

An Advisory Board established under the Insurance Act assists in determining the granting or refusal of a new licence, or the possible revocation or suspension of an existing licence for insurance agents and adjusters. The Board considers evidence presented by the applicant or agent, as well as that put forward by counsel for FSCO, and then makes a recommendation to the Superintendent.

There were no Advisory Board hearings for life agents and adjusters for the fourth quarter.

Regulatory Actions and Related Hearings

Under the Insurance Act, if the Superintendent intends to make an Order, a notice must first be given to those who may be affected and an opportunity for a hearing must be provided. Where there is a request for a hearing, the FST will hear the matter and decide whether or not the proposed Order should be made. Where there is no request for a hearing, the Superintendent may make the Order set out in the notice.

Where the Superintendent is of the opinion that the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim or temporary order which shall take effect immediately on its making, and which shall become permanent on the 15th day after its making unless within that time the person requests a hearing before the FST.

Action: Cease and Desist Order
Against: Ideal Therapy Inc. and Osman Abukar
Date: October 11, 2007

On October 11, 2007, the Superintendent issued a Cease and Desist Order against Ideal Therapy Inc. and Osman Abukar for committing an unfair or deceptive act or practice.

Under the Consent Order, the Superintendent ordered Ideal Therapy Inc. and Osman Abukar to cease operating a rehabilitation clinic that provides services to Ontario residents who suffered injuries in motor vehicle collisions, and to cease providing any services related to claims for statutory accident benefits, whether or not a fee is charged for such services. The Consent Order also requires them to cease advertising, or holding out to the public any services relating to claims for statutory accident benefits, whether or not a fee is charged for such services.

Ideal Therapy Inc. and Osman Abukar must immediately notify all of their clients in writing, to inform them that Ideal Therapy Inc. and Osman Abukar, and any of their agents or representatives, can no longer act for clients that have claims for statutory accident benefits. Ideal Therapy Inc. and Osman Abukar must also provide all of their clients with a copy of the Cease and Desist Order. A copy of each client’s notification must also be provided to the Superintendent.

Action: Cease and Desist Order
Against: State Farm Mutual Automobile Insurance Company
Date: December 20, 2007

On December 20, 2007, the Superintendent issued a Cease and Desist Order on consent against State Farm Mutual Automobile Insurance Company for committing an unfair or deceptive act or practice by charging rates for coverages or categories of automobile insurance that were not approved by the Superintendent.

Under the Consent Order, State Farm will reimburse affected policyholders in a manner acceptable to the Superintendent, and confirm to the Superintendent that deficiencies in the company’s internal control procedures have been addressed.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months, FSCO took 220 enforcement actions. The following chart details the types of activities taken.

Type of Enforcement Action	Number of Cases
Letters of censure	137
Licence conditions via Minutes of Settlement	0
Paralegals via Minutes of Settlement	0
Provincial Offences Court convictions and fines	3
Revocation of sponsorship	1
Licence suspensions	6

Licence surrenders	51
Licence revocations	13
Cease & Desist orders	6
Paralegal terminations	0
Application denied	3
Total	**220**

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been **9,390** instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Continuing education audits	20
Police criminal record checks for life agents/applicants/paralegals	7,458
Complaint reviews	218
Errors & Omissions insurance audits - insurance agents	1,694
Errors & Omissions insurance audits - paralegals	0
Total	**9,390**

Dispute Resolution Decisions

The Dispute Resolution Services Branch provides mediation, neutral evaluation, arbitration and appeal services as fair, cost-effective and timely alternatives to the court system. An arbitrator may decide, at the conclusion of an arbitration hearing involving insurers and statutory accident benefits claimants, to impose penalties under the Insurance Act. Under section 282(10), a special award may be made against an insurer that has unreasonably withheld or delayed the payment of benefits. Under section 282(11.2), a representative can be ordered to pay expenses personally in certain situations. Appeals are to the Director of Arbitrations, and can be heard by the Director or his Delegate.

Type of Decision	Arbitration
Date of Decision	October 1, 2007
File Number	A06-001216
Legislation	SABS-1996
Appeal Status	Under appeal
Applicant	Roman Luskin
Insurer	Personal Insurance Company of Canada
Type of Award	Expense award against the applicant and his counsel
Amount of Award	$2,551.83
Issue	Expenses against counsel
Findings	In an earlier decision, dated May 25, 2007, the arbitrator found both the applicant and his counsel jointly liable for costs thrown away due to abortive pre-hearings. They did not then appear at a motion to dismiss the arbitration, thus the motion was granted. The arbitrator found that counsel had failed to comply with the order to pay the expenses. In addition, his unexplained and unjustified conduct in this matter was relevant to the dismissal of the arbitration, and that caused expenses to be incurred without reasonable cause.
Order	Mr. Roman Luskin (the insured person) and Mr. Alexander Mazin (the representative) shall

	pay a further $1,751.83 as the balance of fixed expenses in this matter forthwith. In addition, the existing order for $800 remains payable by both Mr. Luskin and Mr. Mazin.

Type of Decision	Appeal
Date of Decision	October 17, 2007
File Number	P06-00040
Legislation	SABS-1996
Appeal Status	No further proceedings
Applicant/Respondent	Suzanne Hill
Insurer/Appellant	Coseco Insurance Co./HB Group/Direct Protect
Type of Award	Special award
Amount of Award	$25,000
Issue	In a decision dated November 10, 2006, the arbitrator ordered Coseco to pay a special award of $25,000 for unreasonably refusing to pay for the cost of a new home. Coseco appealed the arbitrator's order.
Findings	The Director's Delegate found no error in the award made by the arbitrator.
Order	The appeal is dismissed and the arbitrator's order for November 10, 2006 is confirmed.

Type of Decision	Appeal
Date of Decision	October 26, 2007
File Number	P06-00017
Legislation	SABS – 1996
Appeal Status	No further proceedings
Applicant/Appellant	Lourdes Urgiles
Insurer/Respondent	Allstate Insurance Company of Canada
Type of Award	Appeal expenses against the representative
Amount of Award	$3,000
Issue	Reasons for bringing the appeal
Findings	The Director's Delegate found that based on the submissions made by the representative, the representative was seeking to use the dispute resolution system to validate an assessment method in which he had a personal interest.
Order	Richard Gordon was ordered to personally pay appeal expenses of $3,000.

Type of Decision	Arbitration
Date of Decision	October 29, 2007

File Number	A06-001637
Legislation	SABS-1996
Appeal Status	No appeal
Applicant	Vladimir Chek
Insurer	ING Insurance Company of Canada
Type of Award	Expenses against counsel
Amount of Award	$350
Issue	Failure to comply with undertakings
Findings	The arbitrator found that counsel failed to comply with undertakings for the production of certain documents. Due to his failure and lack of effort, the proceeding was hindered by delaying the adjustment of the claim. As a result, the insurer was put to unnecessary expense in bringing the motion, and a possible resolution of the dispute is highly unlikely. The arbitrator found that fault lies with counsel and not his client.
Order	ING Insurance Company of Canada is entitled to its expenses of the motion, fixed at $350. Mr. Gary Mazin, of the law firm of Mazin Rooz Mazin, shall pay those expenses.

Type of Decision	Variation (arbitration)
Date of Decision	November 8, 2007
File Number	FSCO A06-001439
Legislation	SABS-1996
Appeal Status	No appeal
Applicant	Tausif Ahmed Siddiqui
Insurer	TTC Insurance Company Limited
Type of Award	Special award – rescinded
Amount of Award	$0
Issue	Should the special award amount be changed?
Findings	In a decision dated April 20, 2007, the arbitrator ordered the insurer to pay a special award of $200 for failing to pay certain benefits relating to treatment. In the variation decision, the arbitrator found that the benefits upon which he had ordered a special award, had in fact been paid. Consequently, he revoked the special award.
Order	Mr. Siddiqui is not entitled to a special award.

Type of Decision	Arbitration
Date of Decision	November 28, 2007
File Number	FSCO A06-000408
Legislation	SABS-1996
Appeal Status	Decision on entitlement is under appeal
Applicant	Sophia Sun
Insurer	Wawanesa Mutual Insurance Company
Type of Award	Special award

Amount of Award	$25,000
Issue	What is the amount of the special award to be granted to Ms. Sun?
Findings	In a decision dated August 16, 2007, the arbitrator concluded that Wawanesa should be ordered to pay a special award, but did not determine the amount. In her subsequent decision dated November 28, 2007, the arbitrator found that if Wawanesa adjusted in good faith, instead of looking to thwart Ms. Sun in every way it could, she would probably not have deteriorated to the point that she cannot return to work. Wawanesa's conduct was "excessive" with no mitigating factors.
Order	Wawanesa shall pay Ms. Sun a special award of $25,000 inclusive of interest.

Type of Decision	Arbitration
Date of Decision	December 5, 2007
File Number	A06-000125
Legislation	SABS-1996
Appeal Status	No appeal
Applicant	Clement Chigozie Ogbuke
Insurer	Kingsway General Insurance Company
Type of Award	Expense award against the applicant and his representative
Amount of Award	$2,095.65
Issue	Failure to attend the hearing
Findings	Neither the applicant nor his representative attended the hearing. The arbitrator granted an award for expenses thrown away, payable regardless of any further proceedings. He required a notice to be published. This included notice to the representative, that the insurer was also seeking its expenses against him personally, on the basis that his failure to appear and carry out his obligations as the applicant's representative had led to the expenditure of further costs. The representative never responded. (Although the applicant did respond, he took no further steps. This lead to a further expense award solely against him.) The arbitrator found that the first expense award should be jointly paid.
Order	The first expense order in the amount of $2,095.65 shall be payable forthwith by either or both of Mr. Alan Leibovitch (the representative) or Mr. Clement Ogbuke (the insured person), jointly and severally.

Type of Decision	Appeal
Date of Decision	December 12, 2007
File Number	P06-00026
Legislation	SABS – 1996
Appeal Status	No further proceedings
Applicant/Respondent	Mauro Tarantino
Insurer/Appellant	Aviva Canada Inc.
Type of Award	Special Award
Amount of Award	$2,000

Issue	Income replacement benefits (entitlement and amount) housekeeping, cost of examination, expenses, special award
Findings	On appeal from an arbitration decision dated June 28, 2006, the Director's Delegate upheld the arbitrator's order that Aviva pay a special award of $2,000 based on the finding that the insurer's notice of termination was faulty and represented a "rush to judgment" that reflected a failure to give full and fair consideration to the claim.
Order	The special award was upheld along with the substantive awards; only the paragraphs relating to arbitration expenses were revoked because the arbitrator inadvertently made the expense order in the absence of submissions.

Financial Services Tribunal (FST) Decisions

Name	Roland Spiegel
Sector	Insurance Act
Date of Decision	November 7, 2007
Disposition	The parties consented to an Order of the Tribunal that the Interim Cease and Desist Order dated August 16, 2007 be vacated, and the Superintendent refrain from carrying out the Notice of Proposed Cease and Desist Order dated August 16, 2007.

Name	Walter Muroff and Company Limited
Sector	Mortgage Brokers Act
Date of Decision	October 12, 2007
Disposition	Tribunal's Order dated August 10, 2007 stayed pending the disposition of the Applicant's appeal of the Tribunal's Order to the Divisional Court, and such stay to be subject to certain terms and conditions.

For the full text of previous Decisions/Orders, please visit FSCO's website at www.fsco.gov.on.ca, or visit the FST's website at www.fstontario.ca.

John Solursh
Chair
Financial Services Commission of Ontario
Financial Services Tribunal

Bob Christie
Chief Executive Officer and
Superintendent of Financial Services
Financial Services Commission of Ontario

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Financial Services Commission of Ontario
5160 Yonge Street
Toronto, ON M2N 6L9
1-800-668-0128
(416) 250-7250