

From: **FAIR (fair association of victims for accident insurance reform)** <fairautoinsurance@gmail.com>

Date: Wed, Dec 16, 2015 at 2:08 PM

Subject: Information on the Special Award and the quality of evidence at hearings

To: (MAG)" < >

Hi Chris

I've been advised that you will pass on this information to Ms.Lamoureux and Ms. Predko.

Thank you for taking the time to discuss many of FAIR's concerns about the new LAT yesterday. We are certainly pleased that there is now a plaintiff presence on the LAT advisory panel and though the panel has been in place for many months we hope that the result will be a balanced perspective of what victims need in order to get through the claims and hearings process.

We talked about the advantage of publishing the links to all the SABs on the LAT website and we will go through our mail to select the most commonly asked questions from victims that may also be of use to you on the site.

We did talk extensively about the IMEs and the associated problems with the quality of these assessments that are the gateway to the resources and benefits that victims need for recovery. Soon these bogus or biased and often unqualified medical expert evidence will be coming into the LAT. We did express concern about relying on the Colleges for regulatory oversight as there is plenty of evidence through the HPARB decisions that victim complaints about assessors isn't being taken seriously and allowing the abuse of patients who happen to be MVA victims has a negative outcome on the recovery process. The FSCO arbitrators have occasionally put their comments about the quality of the IMEs and expert evidence they see during the course of a hearing into their decisions. Unfortunately these adverse comments are not often adduced at subsequent hearings and considering that the Colleges rarely take action, the abuse of victims and ultimately the volume of cases coming through the system because of that inaction, continues to bog down the courts and it increases the volume of claims.

I've put the Waldock decision below with the excerpt regarding the Special Award in the SABS and legislation we talked about yesterday. It is the only punitive measure to hold insurers accountable that remains now that interest rates on overdue payments has been reduced. I've also included the links to our Adverse Comments page (the tip of the iceberg in respect to how the many assessors who are dependent on insurers for their incomes) and our IME page. FSCO has not lived up to the expectation that they would ensure that the evidence before them isn't tainted by bias by way way of any follow through so the IME provider, without college action, is on a rinse and repeat mode where assessors and the companies they work for are never held accountable for the

damage they do. AND, more importantly that lack of follow through is eroding public confidence in our justice system.

As was said yesterday, you can only operate within the limitation of the ACT and SABs and that the SLASTO has it's own version of Rule 4.1.01 and Form 53. Can I request a copy of the SLASTO regulation please?

Again, thank you for your time and we will be in touch regarding the common questions.

Regards  
Rhona DesRoches  
FAIR, Board Chair

[www.fairassociation.ca](http://www.fairassociation.ca)

**From Waldock and State Farm FSCO 4689 - regarding the Special Award**

Item 4: "Provide written submissions, quoting case law, where the Insurance Act ("the Act") requires that an application for a Special Award must be filed as a part of the Application for Arbitration." Neither party referred me to any section in the Act, the Code (2) or the Schedule that requires that an application for a Special Award must be filed as a part of the Application for Arbitration.

Statutory Framework regarding a Special Award Subsection 282(10) of Part IV of the Act states: Special Award. If the arbitrator finds that an insurer has unreasonably withheld or delayed payments, the arbitrator, in addition to awarding the benefits and interest to which an insured person is entitled under the Statutory Accident Benefits Schedule, shall award a lump sum of up to 50% of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2% per month, compounded monthly, from the time the benefits first became payable under the Schedule.

Ontario Regulation 34/10 (3) states in Section 45(6): If an insured person is determined to have sustained a catastrophic impairment as a result of an accident, the insured person is entitled to payment of all expenses incurred before the date of the determination and to which the insured person would otherwise be entitled to payment under this Regulation by virtue of having sustained a catastrophic impairment.

2 The Dispute Resolution Practice Code (Fourth Edition, Updated January 2014). 3 The Statutory Accident Benefits Schedule -- Effective September 1, 2010, Ontario Regulation 34/10, as amended.

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[Waldock and State Farm Preliminary issue FSCO 4315](#)

"As Dr. Waisman pointed out, Dr. Cashman's assessment was deficient in several areas. As earlier stated, I find that these deficiencies fail to support the position of State Farm in refusing to accept the assessment that Mr. Waldock is catastrophically impaired. During cross-examination of Dr. Waisman, counsel for State Farm, perhaps inadvertently, emphasized that Dr. Cashman's assessments did not follow the requirements of the Schedule and the AMA Guides. Thus, I find I must give a little weight to Dr. Cashman's assessments (as expressed in his written report), for there is no evidence offered by the insurer to contradict Dr. Waisman's evidence. While it is the responsibility of an Applicant to prove his or her case in any proceeding, I find that a Respondent cannot merely rely on untested statements to refute an Applicant's case."

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#### [Waldock and State Farm FSCO 4689](#)

"Mr. Waldock seeks a Special Award of 50% of \$361,520.30, which he claims were benefits that State Farm unreasonably withheld or delayed. In my decision on the preliminary issue, issued on November 10, 2014, I referred to the oral evidence of Dr. Waisman wherein he was critical of the report prepared and submitted by Dr. Cashman to State Farm. State Farm relied upon Dr. Cashman's report to deny that Mr. Waldock had suffered a catastrophic impairment. State Farm did not bring Dr. Cashman as a witness to that Hearing and thus, I found that his report was untested and less credible evidence than that of Dr. Waisman and his colleagues at Multidisciplinary Designated Assessment Centre ("MDAC"), including Dr. Ameis. Upon considering that State Farm refused to accept Mr. Waldock's application for determination of a catastrophic impairment by relying on Dr. Cashman's report, which failed to follow the accepted guidelines to determine whether a person is catastrophically impaired; and, considering that State Farm had ample evidence that Mr. Waldock was very seriously injured and partially incapacitated as a result of the accident, I find that State Farm must be considered responsible for unreasonably withholding or delaying payments to Mr. Waldock, pursuant to the Act."

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**What's in YOUR medical file???** <http://www.fairassociation.ca/wp-content/uploads/2014/12/more....pdf>

<http://www.fairassociation.ca/the-independent-medical-examination-imeie/>

<http://www.fairassociation.ca/ime-providers-adverse-comments/>

<http://www.fairassociation.ca/wp-content/uploads/2015/11/Press-release-Nov-2016-Ontario%E2%80%99s-Shame-and-Scandal-%E2%80%93-how-the-injured-and-disabled-are-punished-by-government-policy.pdf>

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#### **Third party assessment reports need strict code**

Click the thumbnail [here](#) to go to the issue.

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#### **Arbitrator orders rare special award against insurer**

*Kunka says it also points to **flaws in the assessment and training process of evaluators such as those at Independent Rehabilitation Services Inc.**, the company used by State Farm to build its defence that Waldock was not catastrophically impaired.*

*"Because they relied on **a report that was so obviously defective**, and they blindly relied on that and wouldn't change their position on that, that's what the arbitrator took exception*

to — an insured should not have to go through all of this,” he says. <http://www.lawtimesnews.com/201511305093/headline-news/arbitrator-orders-rare-special-award-against-insurer>

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