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Divisional Court Confirms Interest Rate of 2%

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State Farm Mutual Automobile Insurance Company v. Federico, Financial Services Commission of Ontario, 2014 ONSC 109

This decision clarifies the application of the differing interest rates found in the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (“the New Regulation”) and the *Statutory Accident Benefits Schedule – Accidents On or After November 1, 1996* (“the Old Regulation”). This decision is important for disputes featuring accidents that occurred under the Old Regulation but face potential exposure to interest on payments due after the New Regulation was put into force. The Court found that the 2% compound interest rate applied to overdue amounts under the Old Regulation was to be applied to overdue payments after September 1, 2010.

The Respondent, Nicola Federico, was involved in a motor vehicle accident on December 20, 2006. Mr. Federico received accident benefits in relation to this accident until they were terminated by the insurer in 2008. Mr. Federico disputed this decision and was ultimately successful at arbitration in a decision dated March 23, 2012. The insurer was largely unsuccessful on appeal to the Tribunal. The insurer then sought judicial review of the Director’s Delegate’s decision that the interest payable on income replacement benefits overdue after September 1, 2010 was payable at a rate of 2%, while the New Regulation provides that interest is to be paid at a rate of 1%.

The insurer argued that sections 3(1.2) and (1.3) of the Old Regulation provide that amounts payable under the Old Regulation are not to be paid after August 31, 2010, and the interest provisions in the Old Regulation do not apply after that date. The insurer further argued that amounts cannot be overdue until they are due, which is significant in respect of amounts not due until after September 1, 2010. However, the Court found that section 3(1.4) of the Old Regulation and section 2(2)2 of the New Regulation provide that an amount to be paid under the Old Regulation after August 31, 2010, shall be paid under the New Regulation but in the amount determined by the Old Regulation. The Court found that, by virtue of the transitional

provisions considered, amounts payable under the Old Regulation at an interest rate of 2% continue to be payable at that rate under the New Regulation for amounts that become overdue after September 1, 2010.

Discussion

This case establishes that interest on overdue payments in relation to accidents under the Old Regulation continue to be tolled at a rate of 2%, even for payments due after September 1, 2010. The transitional language in both the Old Regulation and the New Regulation provide that amounts due after September 1, 2010 in relate to accidents before August 31, 2010 are to be paid under the New Regulation but in the amount determined by the Old Regulation. This includes the interest to be paid on overdue amounts. If the accident occurred before August 31, 2010, overdue payments will be subject to the 2% rate, regardless whether the payments are due before or after September 1, 2010.

The insurer plans to appeal this decision. We will provide updates as they become available.