

NO FAULT BENEFITS- LEGISLATIVE UPDATE (MARCH 2001)

Large Special Award

In **Molly R. Persofsky and Liberty Mutual Insurance Company (FSCO A99-000598)** Arbitrator K. Julaine Palmer found that Liberty Mutual had unreasonably withheld payments claimed by their insured as a consequence of a motor vehicle accident on March 18, 1992. In her decision, she held that Liberty Mutual shall pay Mrs. Persofsky a special award under section 282(10) of the Schedule. This special award was set at 30% to 50% of the amounts to which the insured was entitled, together with interest at 2% per month compounded monthly, from the date the benefits first became payable under the Regulations. At June 23, 2000 (the date of the arbitration decision) the amount of the special award payable by Liberty Mutual amounted to over \$250,000. The decision is currently under appeal.

Definition Of "Income From Employment"

Pursuant to section 6 of Bill 59 (SABS- on or after November 1, 1996), an insured's benefit entitlements are based on 80% of his or her "income from employment." However, Bill 59 does not define the terms "employment" or "income from employment". In **Christopher Shearstone and York Fire & Casualty Insurance Company (FSCO A00-000322)** the Insured was injured in a motor vehicle accident on March 27, 1998. In his decision, Arbitrator John Wilson held that short-term disability payments from the Workplace Safety and Insurance Board constitute "income from employment" for the purposes of determining an insured's entitlement to weekly income replacement benefits.

Deductibility Of Long Term Disability Benefits

In **Economic Mutual Insurance Company and Sandra Wilcox (Appeal P99-00015)**, director's delegate David Draper held that long term disability ("LTD") benefits received by Sandra Wilcox pursuant to a private disability insurance policy were not deductible from her income

replacement and loss of earning capacity benefit entitlements under the SABS- 1994 (from January 1, 1994 to October 31, 1996). His decision was based on the fact that her LTD benefits were primarily related to disability, as opposed to loss of income. This decision followed the Appeal Court decision in *Cugliari v. White* [(1998), 38 O.R. (3d) 641] where the Court held that because entitlement to CPP disability benefits was based on disability, as opposed to proof of pecuniary loss, it could not be considered a payment for loss of income within the meaning of s.267(1) of the Insurance Act.

Snowmobile Accidents

In **Fortin v. Laplante [(2000), 47 O.R. (3d) 443]** the Ontario Appeal Court held that a person injured by a snowmobile, "may be entitled to both no fault benefits and to sue in tort without facing either the threshold or the deductible provisions of s.267 of the Insurance Act", applicable to automobile accidents.

Treatment Of Non Earner Benefits

In **Brownell et al. v. Tannahill et al. [(2000), O.J. No. 4496]** the Ontario Court Of Appeal held that non earner benefits paid pursuant to section 13 of the OMPP Regulations (SABS before January 1, 1994) are akin to damages for loss of income and properly deductible from an award for pecuniary damages, as opposed to general damages. Following its logic in *Bannon v. McNeely* [(1998), 38 O.R. (3d) 659 (C.A.)], the Court held that no-fault benefits deducted pursuant to s. 267(1)(a) "must be deducted from a head of damage or type of loss akin to that for which the no-fault benefits were intended to compensate". The Court held further that if the no-fault deduction exceeds the amount awarded under the specific head of damages to which the no-fault benefits can be attributed, resort cannot be had to another portion of the damage award.

STATISTICS FOR PERSONAL INJURY PRACTITIONERS

Ontario Insurance Commission - SABS Indexation Rates		
	ANNUAL	CUMULATIVE
1994		100.00%
1995	0.2%	100.20%
1996	2.3%	102.50%
1997	1.5%	104.04%
1998	1.6%	105.71%
1999	0.7%	106.45%
2000	2.6%	109.21%
2001	2.7%	112.16%

Average Weekly Earnings For Ontario - Industrial Aggregate	
DATE	RATE
June 30, 1994	\$614.59/week
June 30, 1995	\$611.00/week
June 30, 1996	\$636.93/week
June 30, 1997	\$644.00/week
June 30, 1998	\$650.47/week
June 30, 1999	\$653.67/week
June 30, 2000	\$670.22/week

Ontario Minimum Wage Rates	
EFFECTIVE	RATE
Nov 1, 1992	\$6.35/hour
Jan 1, 1994	\$6.70/hour
Jan 1, 1995	\$6.85/hour

OLD AGE SECURITY BENEFITS		
1999	2000	2001
\$4,960	\$5,078	\$5,149

MAXIMUM CPP CONTRIBUTIONS AND RATES				
CPP	Maximum Pensionable Earnings	Basic Exemption	Rate	Max. Employer & Employee Contribution
1995	\$34,900	\$3,400	2.7%	\$850.50
1996	\$35,400	\$3,500	2.8%	\$893.20
1997	\$35,800	\$3,500	2.925%	\$944.78
1998	\$36,900	\$3,500	3.2%	\$1,068.80
1999	\$37,400	\$3,500	3.5%	\$1,186.50
2000	\$37,600	\$3,500	3.9%	\$1,329.90
2001	\$38,300	\$3,500	4.3%	\$1,496.40

MAXIMUM EI PREMIUMS AND RATES				
EI	EMPLOYEE		EMPLOYER	
	Amount	Rate	Amount	Rate
1995	\$1,271.40	3.0%	\$1,779.96	4.2%
1996	\$1,150.50	2.95%	\$1,610.70	4.13%
1997	\$1,131.00	2.9%	\$1,583.40	4.06%
1998	\$1,053.00	2.7%	\$1,474.20	3.78%
1999	\$994.50	2.55%	\$1,392.30	3.57%
2000	\$936.00	2.4%	\$1,310.40	3.36%
2001	\$877.50	2.25%	\$1,228.50	3.15%

PRE JUDGMENT INTEREST RATES				
	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
1992	7.7%	7.5%	6.3%	5.1%
1993	8.3%	6.1%	5.1%	5.0%
1994	4.3%	4.1%	6.6%	5.6%
1995	6.0%	8.0%	7.6%	6.6%
1996	6.1%	5.6%	5.0%	4.3%
1997	3.3%	3.3%	3.3%	3.5%
1998	4.0%	5.0%	5.0%	6.0%
1999	5.3%	5.3%	4.8%	4.8%
2000	5.0%	5.3%	6.0%	6.0%
2001	6.0%	5.8%		

POST JUDGMENT INTEREST RATES				
	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
2000	6.0%	7.0%	7.0%	7.0%
2001	7.0%	7.0%		

GENERAL DAMAGES UPPER LIMIT			
	Index	% Change	
December 1997	\$257,627	100.0	
December 1998	\$260,048	100.9	0.9
December 1999	\$266,746	103.5	2.6
December 2000	\$275,359	106.9	3.2
February 2001	\$275,598	107.0	0.1

CANADA PENSION PLAN BENEFITS IN 2000	
Pension @ 65	\$762.92/month
Disability	\$917.43/month \$345.24/month
Dependent Child	\$174.07/month

SECTION 53.09 ANNUAL DISCOUNT RATES		
Trial Commencement	2000	2001
Initial 15 Years	3.0%	2.75%
After Initial 15 Years	2.5%	2.5%

CANADA PENSION PLAN BENEFITS IN 2001	
Pension @ 65	\$775.00/month
Disability	\$935.12/month \$353.87/month
Dependent Child	\$178.42/month

COMBINED ONTARIO MARGINAL INCOME TAX RATES FOR EMPLOYMENT INCOME			
	1999	2000	2001
Maximum	48.8%	47.8%	46.4%
Minimum	23.8%	23.3%	22.2%