

What's Hot and What's Not from FSCO - Addendum

The following is an addendum to the paper delivered at the Advocates' Society Tricks of the Trade program on January 14, 2005.

Jiwa and Royal (Appeal P04-00024, January 13, 2005)

Facts - following the full and final settlement of an accident benefits claim, the insurer sent the settlement cheque, payable to the insured, to his paralegal's office. The paralegal endorsed the cheque, deposited it into his account, and never gave all of the settlement funds to the insured.

Issue - did the insurer breach s. 44 of the *S.A.B.S.*, which required payment of a "benefit" to be mailed to the address where the insured person ordinarily resides, such that the insurer could be forced to pay the settlement funds again directly to the insured?

Result - the settlement funds were not a "benefit" under the *S.A.B.S.*, and therefore the provisions of s. 44 were not applicable. The insurer was entitled to send the settlement funds to the insured's representative in accordance with the insured's signed direction. As such, the appeal was allowed and the Arbitration order was revoked.

Adam K. Wagman
Partner
Howie, Sacks & Henry LLP
Personal Injury Law
Advocates' Society - Tricks of the Trade
Addendum - January 18, 2005