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The Allstate Insurance Company of Canada (Allstate) is pleased to provide input into the Ontario auto insurance dispute resolution system at the request of the Ministry of Finance. The Financial Services Commission of Ontario (FSCO) dispute resolution process has become a major source of uncertainty for the industry and government, and has negatively impacted the goal of cost savings that were expected as a result of the 2010 reforms. Properly addressing these system related cost pressures are key to the reduction of auto insurance premiums in Ontario. While we respect the mandate of FSCO, we do feel there is much room for improvement in the dispute resolution system and we encourage a thoughtful and comprehensive review in hopes of improving the system for all stakeholders.

The mediation and arbitration system was created for the purpose of helping consumers and insurance companies resolve disputes quickly. Ease of access to the system and the perceptions of high payoffs from success in dispute resolution have led to its extreme overutilization. In addition to increasing claims cost uncertainty, the situation drives up the cost of adjusting claims through the fees charged to insurers and associated legal costs, which are funded from policyholders' premiums.

The failures in the dispute resolution process have generated instability and uncertainty for the industry. Allstate agrees with the Insurance Bureau of Canada's (IBC) comments and submissions made previously on this topic to the ministry. We are all in agreement that it is clear that FSCO's ADR process, as it currently functions, is not adequate to deal with the reality of over-utilization. The process has moved away from being an expeditious and inexpensive method of dispute resolution, dealing only with occasional disputes. It has become the norm to expend a significant amount of time and resources within a process-laden system for any disagreement over injury compensation.

It is our view that the system itself requires an entire overhaul and that other models should be explored by Justice Cunningham as opposed to implementing further stop-gap solutions. Some consideration should be given to how dispute resolution systems work in other countries such as the United States and Europe. With that said, the request from government is for recommendations to the existing system and in keeping with that request we would like to table the following recommendations:

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- Establish a meaningful refundable fee of \$100 for claimants to access mediation, with the refund forfeited when the claimant fails to attend an independent examination or attend the mediation. With this in mind we suggest that there be an increase to the arbitration application fee for people injured in collisions from \$100 to \$300. The \$100 has been in place for many years and considering various factors including the rate of inflation we feel \$300 is a fair fee.
- Require that all parties including claimants attend mediations, except when they are physically incapable of attending as attested to by their primary attending physician. In-person meetings should be mandatory unless waived by both parties.
- Establish a medical panel similar to WSIB or CPP who could deal with disputes after mediation for claims of ongoing treatment or attendant care. This panel would make a decision based on the evidence provided by each party on necessity of ongoing treatment or attendant care. The medical panel should have the opportunity to question the claimant at an assigned time should they feel it is necessary. The decision of the panel would be binding, with an opportunity to appeal in an agreed forum.
- Arbitrations or disputes after mediation should not be dealt with at FSCO. We believe that FSCO should not be in the position of acting as the regulator and the decision maker or trier of fact. It is felt that this would be best handled again by agreeing to appoint a mutual arbitrator to hear the dispute. Through the use of a private vendor there would be improved outcomes relative to timeliness and cost effectiveness for all parties, including getting hearings completed and decisions rendered.

We understand and agree with the government's desire to see auto insurance premiums become more affordable for good drivers in Ontario. In order to achieve this goal in a realistic way we feel that the cost pressures in the existing system, and in this case the ADR process specifically, need to be properly addressed to eliminate the uncertainty in the system.

We appreciate the invitation to provide feedback on the dispute resolution system in Ontario and we look forward to reading the report that will be tabled by Honourable J. Douglas Cunningham in October 2013.

Should you wish to discuss any of these matters in more detail, please feel free to contact me directly at 905-475-4477.

Regards,



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