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Re: Ontario Automobile Insurance “Dispute Resolution System” Review Interim Report

The Allstate Insurance Company of Canada (Allstate) were pleased to provide input into the Ontario auto insurance dispute resolution system (DRS) at the request of the Ministry of Finance in September. We found the engagement with Justice Cunningham and the panel to be mutually beneficial and worthwhile. We were pleased to see the progress made by Justice Cunningham in his interim report which was tabled on November 8th. We appreciate the time and effort made by Justice Cunningham to receive feedback from stakeholders and we think this research has been reflected in his interim report.

Allstate believes 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, keeping in mind the value of having a fair, balanced and stable auto insurance system. In Allstate’s initial submission to Justice Cunningham we focused on the need for the system to be there to help consumers, that the system should be providing quick access and should be an expeditious and inexpensive process for all involved. We encouraged Justice Cunningham and his panel to look at dispute resolution systems in other jurisdictions to seek best practices and how they may work in Ontario and we believe this research has been reflected in the interim report.

First off, we would like to applaud Justice Cunningham for specifically addressing items such as the need for a refundable fee, the need for claimants to attend mediations, the possibility of establishing a medical panel, and the need for arbitrations to be dealt with outside of FSCO. These are all important steps towards a better process that works better for all involved. Additionally, we think it is very important that Justice Cunningham addressed the need for timeliness in the process as a key factor in his report. We fully agree with his language around decision timing (page 37), fast tracking (page 37) and the appeal process (page 37). All of these would be great improvements over the current state and would lead to an improved experience for the consumer.

Allstate continues to believe that the privatization of the DRS is critical to success. With that, once a new DRS system is in place we think it is reasonable to have the ability to settle disputes within one year of the claim. It is worth noting that with a new DRS process there is going to be the need for more transparency in terms of reporting of volumes, trends and issues which Justice Cunningham spoke to in his interim report but are worthy of further discussion. We at Allstate also believe that Justice Cunningham touched on some other key items that are worth further consideration and exploration; for example, the need for insurers to have the ability to speak to claimants on their disputes.

There are a few specific issues mentioned in the interim report that we would like to address in more detail:

Time of Process (Page 35):

- We agree with the recommendation of a six month process from start to finish and think that a large majority of cases can be done with in this timeframe. We would suggest, however, that consideration be made to a nine month process for catastrophic claims. We question if it is realistic to get all parties lined up to complete a CAT claim in six months.
- We agree that parties should be penalized for non-compliance.
- We would recommend a further expedited process for MIG claims or claims under a certain dollar value with in a time frame such as three months.

Formal Internal Review Process (Page 36):

- We fully support the need to meet or have video/phone discussion with claimant to discuss their dispute and review any new information, recognizing that in person meetings are not always feasible.
- We thinking that the thirty day window could be challenging but is doable with everyone's cooperation.
- Our key point under this aspect is that as an insurer we have access to claimant in the process.

Case Manager/Gate Keeper (page 36):

- We fully support this recommendation and think it would be beneficial to all involved.

Hybrid Mediation/Pre Hearing (Page 36):

- We would suggest that the person who conducts the hybrid session not be the same person who conducts the arbitration hearing, similar to the court system and the present system at FSCO. This is critical, so the trier of fact remains truly independent and unbiased.
- We are in agreement with the 45 day timeframe proposed.

Hearing Type (Page 36):

- There would be a need to clearly define what type of disputes fit into what type of process (paper, expedited...) to avoid the argument of the process becoming a dispute in itself, much like the present day preliminary issue hearings.
- It is important to point out that not only CAT claims are captured in the full process and that expert witness are also needed in complex non CAT cases such as 104 week disability challenges, vocational issues, psychological etc.
- We are in agreement with the timeframes proposed on this subject.

Rules (Page 37):

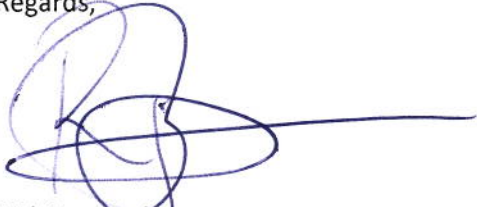
- Generally, we are in agreement with the content proposed on this subject.
- We think that non-compliance should be triaged early on to eliminate participation from process where possible.
- We are in agreement that arbitrators should have the discretion to impose costs but it should be noted that arbitrators already have this and rarely exercise this against claimants.

Finally, Allstate would like Justice Cunningham to give further consideration to his suggestion of prohibiting the settlement of claims within the one year period. We are not convinced that prohibiting resolution on claims which are in dispute prior to the one year anniversary will have the desired effect on the "cash for treatment" mentality. Rather, it will likely create further dispute and increased legal costs.

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 DRS process specifically, need to be properly addressed to eliminate the uncertainty in the system. Again, Allstate appreciates the opportunity to be part of the process and provide feedback to Justice Cunningham.

We trust our comments are of value and should you wish to discuss any of these matters in more detail, please feel free to contact me directly at 905-475-4557

Regards,



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