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 Auto Insurance Policy Unit
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 Financial Services
 Commission of Ontario

June 4th, 2008

Mr. Willie Handler
 Senior Manager,
 Automobile Insurance Policy Unit, FSCO,
 5160 Yonge Street, 15th Floor, Box 85
 Toronto, Ont.
 M2N 6L9

Dear Mr. Handler;

My name is [REDACTED], and I am the [REDACTED] for [REDACTED] Company, Mississauga office.

It has come to my attention that a 5 year review is upcoming and suggestions are being accepted with regards to improving among other issues, the S.A.B.S. As [REDACTED] is strictly a [REDACTED] Insurer, approximately 90% of our claims are Loss Transfer Recoverable. I have consistently encountered 2 specific problems which I would like to discuss with you.

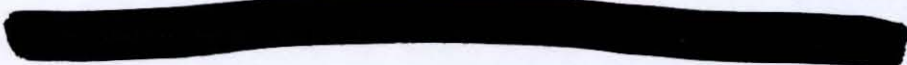
One of the issues that I deal with daily are Sec. 42 Assessments. They are denied by 99% of TPA's as being the responsibility of the First Party Insurer and therefore not covered by the S.A.B.S. However the section on Loss Transfer from the FSCO website states:

Which statutory accident benefits may be the subject of a loss transfer indemnification request?

First party insurers are entitled to be reimbursed for all accident benefit payments made under the *Statutory Accident Benefits Schedule*, subject to the \$2,000 deductible discussed below. Now that the new *Schedule* is in effect, loss transfer is now available for the following kinds of benefits:

- the cost of any assessment conducted under the *Schedule*;
- the cost of services provided by a case manager related to the coordination of medical, rehabilitation and attendant care services; and
- all expenses covered by the *Schedule*

Section 42 Assessments are in fact conducted under the Schedule, and are quite necessary in determining a Claimant's eligibility to certain benefits. Therefore it would be my understanding that they qualify as Loss Transfer Recoverable under S.A.B.S.



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The second issue I encounter, and one that I find particularly frustrating is the length of time it takes for many TPA's to remit payment. Unfortunately there is no set guideline for Indemnification by FSCO except:

What steps should insurers take to ensure smooth operation of the indemnification process?

Once the first party insurer notifies the second party insurer, the insurers should discuss how the loss transfer process should operate with respect to that claim. For example, the insurers should agree on the frequency of the indemnification requests (for example, requests for indemnification may be more frequent if an insured person is catastrophically injured), information to accompany the request, whether the second party is prepared to reimburse the first party insurer for specific claims control expenses, and timing of payments, payment terms, etc. If insurers engage in a regular dialogue, there is a greater likelihood that the loss transfer process will operate smoothly.

Industry representatives have recommended that the Commission develop a form that would be used by all insurers requesting indemnification. The form provides for the basic information that a second party insurer requires to indemnify a first party insurer. The Commission has developed an indemnification request form in consultation with the industry. The *Request for Indemnification* is attached to this Bulletin.

I would estimate that in perhaps 75% of cases there are no issues and payment is received within 30-45 days. There are, however, several claims in which attempts to communicate through letters or phone calls go unanswered and ignored. In these cases after 3 "gentle reminders" a letter will be sent requesting payment by a specific date, (usually 30 days) or the file will be sent to Arbitration. I have in the past received letters stating that "we are under no time frame to Indemnify" or simply "we are very busy, and you are not our only claim" The fact of the matter is, if I sent every file to Arbitration because of belated Indemnification of outstanding requests, the only people who would benefit from that is the Attorneys.

I would respectfully ask that you give consideration to amending the section dealing with Loss Transfer to give clearer guidelines with respect to Section 42 Assessments and the Indemnification timeline. Since most files are diarized every 90 days, (for L/T Requests), perhaps it could be stipulated that remittance of Loss Transfer payments be made within 90 days of receipt of Request. After 90 days interest will then accrue from date of Request. Should no payment be forthcoming within 120 days from date of original Request then Counsel will be put on notice and Arbitration proceeding will begin. (Idle threats fall on deaf ears)

With respect to the Section 42 Assessments, a clear, industry wide precedent needs to be implemented to eliminate the confusion as to whether or not certain Assessments are Loss Transfer recoverable or not. There is no question that Sec. 42 Assessments benefit both the Third Party as well as the First Party Insurers. They are absolutely necessary in determining not only eligibility of benefits (ie: Attendant Care, Housekeeping etc.) but also in ascertaining when said benefits are no longer needed. Since both parties benefit equally from such Assessments, it would not be unreasonable for each Insurer to assume 50% of the costs incurred.

At this time Mr. Handler I would like to thank you for this opportunity to express my concerns regarding Loss Transfer issues. Because I deal with this daily, I feel very strongly that if there were more specific wording to the rules, the Indemnification process would run more smoothly, and everyone involved would benefit from it, including the Claimants.

I look forward to any feedback you would like to offer, and would be more than happy to discuss any concerns you may have regarding the issues I have addressed.

Once again, I thank you for your time,

With Kindest Regards,

[REDACTED]

[REDACTED]