



## FSCO: Man Injured while Repairing Vehicle not in "Accident"

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A FSCO arbitrator has ruled that a man who fell off a truck while repairing it was not involved in a motor vehicle accident for the purpose of receiving accident benefits.

In *Olesiuk v. Kingsway*, John Earl Olesiuk was injured in an incident on October 24, 2008. The evidence regarding the incident was sparse, but it appeared that his injuries were sustained when he fell off the hood of a truck, which he was repairing. It also appeared that his reason for being on the hood was to effect repairs to the truck.

As a result of the incident, Olesiuk sustained serious injuries. He applied to his insurer for accident benefits. His claims were denied on the basis that he was not involved in an "accident", as that term is defined in the SABS:

**"accident" means an incident in which the use or operation of an automobile directly causes an impairment . . . [emphasis added]**

At arbitration, neither party argued that Olesiuk's injuries resulted from the operation of a vehicle. The dispute was over whether repairs to a vehicle can be included in the term "use" of the vehicle.

The arbitrator found that repairing a vehicle is not the same as using a vehicle. He stated:

**Vehicles are used primarily to transport people and things from one place to another. They can also be used to store goods. They can be used to tow another vehicle or a trailer. Some vehicles are intended to be used as a temporary place in which to sleep. As vehicles and technologies change, the types of uses to which vehicles may be put will no doubt expand.**

**When one is repairing a vehicle, however, he or she is not actually using the vehicle. While repairs and maintenance may be integral to one's ability to safely use and operate a vehicle, such activities are not, in and of themselves, a use of the vehicle.**

**Counsel for the Applicant submits that he was using this truck's hood as a platform upon which to stand. While this is true, it does not answer the question that must be addressed by the purpose test. Why was Mr. Olesiuk standing on the truck? If he were standing on the vehicle so that he could dive into a pool, that would not be "use" of the vehicle within the meaning of the Schedule. Mr. Olesiuk was standing on the vehicle in order to repair the vehicle. Applying the purpose test as enunciated in Amos, [See note 10 below] repairing a vehicle is something that is done to an automobile, not an activity to which an automobile is put. I find that repairing a vehicle, in general, will not constitute a use of the vehicle and cannot be converted into a "use" merely by standing upon the vehicle while effecting those repairs.**

Accordingly, the claimant was not entitled to accident benefits.

Among other things, the Olesiuk decision should help limit the number of incoming claims arising from injuries sustained from repairing (or doing similar activities to) motor vehicles.