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Recent Caselaw

1st Case

This month's first case deals with exceptions and exclusions to the uninsured motorist clause in automobile insurance policies.

2nd Case

The second case this month deals with the duty to defend, and when insurers should and should not act to protect their insured.

3rd Case

Our last case this month deals with a an LTD benefits claim which was deemed by the Court to have been handled unfairly and warranted an award for punitive and aggravated damages.

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Bruinsma v. Cresswell et al., 2013 ONCA 111

1st Case

A driver was involved in a two-car accident while driving his girlfriend's vehicle, which was insured by CAA. The other vehicle implicated in the accident, owned by the brother of that vehicle's driver, was uninsured. CAA denied uninsured-automobile coverage to the first driver for his injuries because he had knowingly breached the CAA insurance policy by driving with a suspended driver's licence, in violation of a statutory condition.

The suspended driver sued the other driver, that driver's brother, and CAA. In turn, CAA cross claimed against the defendant driver and the brother, all the while arguing that the plaintiff's admitted breach of the policy precluded his uninsured automobile coverage claim. The Minister of Finance (administrator of the Motor Vehicle Accident Claim Fund, the government-run insurer of last resort) cross claimed against CAA on the defendant's behalf, seeking a declaration that the plaintiff was entitled to coverage despite his breach of the CAA policy.

CAA applied for summary judgment dismissing the uninsured automobile coverage claim and the Minister's cross claim. The motions judge denied summary judgment, deciding that the plaintiff was covered by the CAA policy. CAA appealed.

The Court of Appeal held that pursuant to subsection 234(3) of the Ontario Insurance Act (equivalent to subsection 231(1) of New Brunswick's Insurance Act), the statutory conditions relied on by CAA to deny coverage did not apply to uninsured automobile coverage unless otherwise provided in the contract. The contract at issue, namely the Ontario Standard Owner's Policy, did not otherwise provide that those statutory conditions applied. Accordingly, CAA could not rely on them to deny coverage to the plaintiff.

The Court of Appeal dismissed CAA's appeal.

General Electric Canada Company v. Aviva Canada, Inc., 2012 ONCA 525

2nd Case

In 2004, the Ontario Environment Ministry requested General Electric Canada Company provide extensive records regarding potential groundwater contamination near a Toronto industrial property formerly used as a GE manufacturing site. GE agreed to co-operate with the Ministry and spent more than $4.5 million over the next 5 years in investigation costs, remedial costs, and legal costs. GE then applied for a declaration that its insurers had a duty to investigate and defend it in connection with the Ministry's request, and were therefore responsible for the costs associated with GE's response, which it argued were "in the nature of defence costs," pursuant to the terms of its insurance policies.

The application judge dismissed GE's application, holding that the Ministry's request was not a "claim" which fell within the insurers' policies and so it did not trigger their duty to defend. Furthermore, the judge concluded that what GE called "defence costs" were not costs of defending the Ministry's request, but rather compliance costs which GE voluntarily incurred. GE appealed the application judge's decision.

The Court of Appeal analysed the Ministry's letter requesting the records. In doing so, it relied on the 'pleadings rule', which the Court used first to determine if the letter amounted to a "claim" that fell within the policies and thereby triggered the duty to defend; or second, whether GE was seeking a defence to the Ministry's "claim" or rather an indemnity for the cost of complying with the Ministry's request.

The Court of Appeal upheld the application judge's findings and noted that as a general rule, for a "claim" to be made there must be some form of communication of a demand for compensation or other form of reparation by a third party. It could not be said that GE suffered any defence or investigation costs recoverable under its insurance policies; the only costs incurred were compliance costs, not defence costs.

In the result, GE's appeal was dismissed.

Fernandes v. Penncorp Life Insurance Co., 2013 ONSC 1637

3rd Case

The plaintiff was injured while at work as a bricklayer for his own business. He sustained back injuries as a result of two falls within a few days from one another in December 2004. Attempts to return to work were unsuccessful. His business ceased operations as he was more of a "lead by example" employer, rather than a manager.

Almost a year later the plaintiff was involved in a motor vehicle accident, injuring his shoulder and neck. He began collecting no-fault benefits. He thereafter began suffering issues of depression and was required to attend psychotherapy. Six years after the initial falls, he suffered a slip and fall which resulted in a knee injury requiring surgery. The plaintiff did not claim the knee injury was the cause of his inability to work.

The plaintiff began collecting disability benefits from his LTD insurer a couple of months following his back injuries. His benefits were however terminated after eight months' time, following which the plaintiff filed an action for reinstatement of benefits, as well as claims of aggravated and punitive damages against the insurer.

Six years after terminating his benefits, the insurer agreed to pay disability benefits up to the two-year mark, conceding that the plaintiff was unable to work at his own occupation. With the belief that his previous employment experience would allow him to do other kind of work, he was sent for re-training, but failed to complete a chef's course. Although his functional assessment revealed a capacity to work, his limited transferable skills, lack of cognitive abilities and limited English-speaking abilities made finding alternate employment difficult.

Surveillance videos of the plaintiff showed him performing activities for brief periods of time. The plaintiff's evidence at trial revealed he could perform labour-type work and household chores in short spans, but was left with increased pain.

The Court held that the plaintiff did not have the intellectual capacity to run another similar type business as he would not be able to perform the work. His physical abilities, as displayed on the surveillance footage, was not of heavy duty labour-type work, as had been his work as a bricklayer.

The plaintiff's best evidence was the fact that he had worked from the age of 13 to the time of his back injury arising from his falls in December 2004. Although he loved working and was embarrassed that he could no longer provide for his family, he had not been able to return to work.

The Court deemed the plaintiff to be totally disabled and being unable to engage in any and every occupation or profession for which he was reasonably fitted by reason of education, training or experience. The insurer was ordered to pay the plaintiff his past disability benefits.

The Court also allowed aggravated damages and punitive damages against the insurer in the amount of $300,000, which was more than the contractual damages. Not only had the plaintiff suffered great mental distress as a result of his benefits being terminated, but the insurer had not been provided with any medical report to suggest that the plaintiff was capable of working as a bricklayer. Further, the claims adjuster had taken an adversarial approach to the plaintiff's benefit claim and had ignored the detailed job description of bricklaying, which had been provided by the plaintiff along with his application for benefits. The Court held the adjuster had not dealt with the plaintiff's claim "fairly" and in a "balanced" way, such that her conduct constituted "an independent actionable wrong".

This case reveals that the wording of a disability contract and a review of all medical documents must be fully contemplated in assessing an insured's claim. A delay in bringing disability benefits to date is also frowned upon by the Courts.