

July 7, 2006

THE S.C.C. RULES THAT DAMAGES FOR MENTAL DISTRESS FOR BREACH OF CONTRACT ARE RECOVERABLE IN SOME CIRCUMSTANCES



FACTS & BACKGROUND

In *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, Ms. Fidler, through her employer, had a group insurance policy that included long-term disability benefits. As a result of becoming ill, she began receiving long term disability benefits in 1991. Under the terms of the policy, she was only entitled to continued benefits after two years if she was unable to perform any job. In May 1997, as a result of the insurer receiving video surveillance which depicted Ms. Fidler performing light or sedentary activities, the insurer advised Ms. Fidler that her benefits would be terminated. Despite receiving medical evidence from Ms. Fidler's medical professionals that supported her claim that she was incapable of performing any type of work, the insurer relied on its own medical experts and consultants and confirmed its decision to terminate benefits. Ms. Fidler commenced an action and one week before trial the insurer offered to reinstate her benefits and to pay all arrears with interest. The only remaining issue at trial was Ms. Fidler's entitlement to damages. At trial, the judge awarded her \$20,000 in aggravated damages for mental distress, but dismissed her claim for punitive damages. The British Columbia Court of Appeal unanimously upheld the award for mental distress, and a majority of the Court concluded that the trial judge erred in failing to find that the insurer acted in bad faith. As such, the Court of Appeal awarded her \$100,000 in punitive damages.

The issues in the appeal were whether the damages for mental distress arising from a breach of contract are recoverable and whether an insurer that incorrectly denies a claim that is eventually conceded or judicially determined will be assessed punitive damages for the denial.

THE RULING

Damages for Mental Distress as a Result of a Breach of Contract

In considering the issue of whether damages may be awarded for mental distress as a result of a breach of a disability insurance contract, the starting point for the Court was the principle that these damages must be "*such as may fairly and reasonably be considered either arising naturally...from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties*".

Applying the reasonable contemplation principle, the Court concluded that given the nature of disability insurance contracts, it would have been within the reasonable contemplation of the parties at the time the contract was made that mental distress would likely flow from a failure to pay the requisite benefits.

In order to be successful, Ms. Fidler did not have to prove an independent actionable wrong, but had to prove her loss and that the suffering caused by the breach of contract was of such a degree to warrant compensation. The Court determined that Ms. Fidler succeeded in proving this head of damage and affirmed the award of the trial judge.

Punitive Damages

The SCC began its analysis of this issue with the long held principle that punitive damages are designed to address retribution, deterrence and denunciation. In determining whether punitive damages should be assessed, the Court stated that where the breach is a denial of insurance benefits, a breach of the insurer's contractual duty to act in good faith will meet the requirement that the conduct constituted a marked departure from ordinary standards of decency, and is independently actionable.

In analyzing the insurer's conduct, the Court noted that the question in each case is whether the denial was the result of the overwhelmingly inadequate handling of the claim, or of improper considerations in its handling. The Court noted that the trial judge considered how the insurer handled the claim and concluded that its denial of the benefits was a result of a real doubt as to whether Ms. Fidler was incapable of performing any work. The SCC concluded that the insurer's termination of benefits relating to a disability in the absence of any medical evidence indicating an ability to return to work was troubling, but not sufficient to justify interfering with the trial judge's conclusion that the insurer was not acting in bad faith in making its decision.

IMPLICATIONS TO THE INDUSTRY

With respect to the awarding of damages for mental suffering arising from a breach of contract, this case has direct impact on disability and life insurers as well as those insurers offering cancellation insurance for vacations. It is clear that these types of damages are within the contemplation of the parties and so long as the plaintiff proves that the mental suffering was of sufficient gravity then Courts may award these types of damages.

The Court's discussion of whether an insurer's denial of a claim will attract an award of punitive damages is particularly relevant to p&c insurers when faced with theft and/or arson claims. In these types of cases, so long as the insurer carefully assesses the evidence and makes its own investigation and determination independent of conclusions that other bodies, such as the RCMP come to, a Court may not award punitive damages against the insurer as a result of denying the claim.

AUTHOR Barbara J. Murray
Direct Line: 604-891-0355 E-mail: bmurray@dolden.com

EDITOR Alex L. Eged
Direct Line: 604-891-0357 E-mail: aeged@dolden.com