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CASE SUMMARY: DISABLED EMPLOYEE NOT ENTITLED TO PAYMENTS UNTIL AGE 65 DESPITE INSURER'S PREVIOUS AGREEMENT TO CONTINUE PAYING OUTSIDE OF CONTRACT OF INSURANCE

Insurance law – Actions – Disability insurance – Long term disability – Future benefits – Group insurance – Unjust enrichment; Policies and insurance contracts – Breach of policy

Bozek v. Fenchurch General Insurance Co.

The insurer's agreement to continue paying disability benefits to a previously disabled employee did not amount to a contract of insurance obligating the insurer to continue payments until age 65 after the insurer ceased acting as the employer's insurance provider.

[2016] B.C.J. No. 2699

2016 BCSC 2370

British Columbia Supreme Court

November 17, 2016

DeWitt-Van Oosten J.

The insured was a disabled employee who claimed that the insurer had wrongfully stopped paying him long term disability benefits. The insured became disabled in 2004. In 2008, the insurer became the insurance provider for the insured's employer as part of a group benefits plan. Between 2008 and 2014, the insurer paid the insured $1,033 per month. In 2014, the insurer ceased its role as the employer's group benefits insurer and advised the insured that his payments would stop. In the letter to the insured, the insurer suggested that payments had been made on an "ex gratia" basis. The insured brought an action against the insurer, arguing that it was contractually bound to continue payments until he reached age 65 and seeking damages for breach of contract and/or unjust enrichment.

As part of the breach of contract claim, the insured relied on ss. 116(1) and (4) of the Insurance Act, R.S.B.C. 2012, c. 1 (the "Act"), which stipulated that when a contract of insurance is terminated, the insurer continues to be liable for benefits arising from "accident or sickness" that occurred during the contract, including under any replacement contract covering the same insureds. The parties did not dispute that the insurer had agreed to provide payments to the insured. However, they disagreed on the nature of the agreement.

When the insurer became the employer's insurance provider, the terms and conditions for coverage required, amongst other things, that an employee be "actively at work". "Actively at work" was defined to mean an employee who was not disabled. The insured's case was reviewed and agreement was reached whereby the insurer would provide payments to the insured, but the payments would be funded by raising the employer's premiums by 2%. Even when construed broadly, the court agreed with the insurer that this agreement did not meet the definition of an insurance contract under the Act for a number of reasons, including: no medical or other supportive information had been exchanged; the risk purportedly insured had already manifested; and the insured did not meet the criteria for coverage in the first place. As a result, the court concluded that the Act did not apply and the insurer was not obligated to continue payments. The fact that the insurer had referred to the payments as disability payments was "troublesome", but accepted as administrative nomenclature.

The insured's claim in unjust enrichment also failed because: there was no evidence that the insurer had collected the 2% surcharge and become enriched; the insured had not actually paid any monies; and the existence of the agreement provided a "juristic reason" for any enrichment of the insurer.

This case was digested by Michael J. Robinson and edited by David W. Pilley of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at mrobinson@harpergrey.com or dpilley@harpergrey.com or review their biographies at http://www.harpergrey.com.