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CASE SUMMARY: ONTARIO COURT DISMISSES INSURER'S APPLICATION FOR ORDER COMPELLING INSURED TO UNDERGO NEUROPSYCHOLOGICAL TESTING

Insurance law – Practice – Examination for discovery; Disability insurance – Medical examination; Policies and insurance contracts – Coverage

[Woolsey v. Industrial Alliance Insurance and Financial Services Inc.](#)

The insurer's application for an order compelling the insured to undergo neuropsychological testing was dismissed as neuropsychological or cognitive function had not been put at issue and no treatment providers or experts had recommended it.

[2016] O.J. No. 6497

2016 ONSC 7617

Ontario Superior Court of Justice

December 16, 2016

H.A. Rady J.

This judgment concerned an application by the insurer for an order compelling the insured to undergo neuropsychological testing. The insured was a disabled employee who alleged that he was unable to work as an engineering analyst due to neuropathic chest pain which interfered with his ability to focus and concentrate at work. The insured received short term and long term benefits that were later terminated. After a lengthy appeal process, the insured brought an action for coverage. The insured plead that he was unable to work due to his pain condition and that the denial had caused him stress which contributed to the severity and duration of his physical, cognitive and emotional illness. The insurer brought the application following the insured's examination for discovery.

In support of its application, the insurer relied on the affidavit of one of its technical advisors. The affidavit appended portions of the insured's examination for discovery transcript where he had explained that while he could concentrate on video games for up to nine hours a day, his work required a different kind of concentration that was intolerable with his injuries. The affidavit also appended portions of a medical journal that commented on the value of neuropsychological testing whenever there was a doubt about a patient's cognitive functioning or competency. In response, the insured noted that he had not sought neuropsychological testing and that no treatment providers or experts had recommended it.

The court dismissed the application for the following reasons: the insured had not put his neuropsychological or cognitive function at issue (in particular, the fact that the insured had plead stress was insufficient and the reference to a cognitive illness was likely boiler plate); the insured had not sought neuropsychological testing and none had been recommended, including by the defence experts; and no treatment provider had expressed doubt about the insured's cognitive function or capacity.

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>.