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CASE SUMMARY: BCSC EXERCISES ITS DISCRETION TO AWARD COSTS ON A FULL INDEMNITY BASIS IN LTD INSURANCE DISPUTE

Insurance law – Disability insurance – Long term disability – Terms of policy – Rights and duties of insured; Costs – Special or increased costs; Third party action

Tanious v. Empire Life Insurance Co.

The plaintiff insured was awarded solicitor-client costs against the defendant disability insurer.

[2017] B.C.J. No. 85

2017 BCSC 85

British Columbia Supreme Court

January 19, 2017

N. Brown J.

The plaintiff, who suffered from multiple sclerosis, obtained an order requiring the defendant insurer to pay her long-term disability benefits pursuant to the terms of a disability policy. At trial, the Court accepted that the plaintiff suffered a disability and had been unable to work since 2011. The plaintiff then brought an application seeking solicitor-client costs for the action. In allowing the costs award, the Court chose to exercise its discretion and allowed the plaintiff full indemnification of its legal fees. The Court noted that disability insurance claims have unique characteristics that distinguish them from other personal harm cases. The legal costs the plaintiff incurred in obtaining her contractual benefits under the policy substantially deprived her of the full benefit of the disability insurance contract. The Court also concluded that the coverage issue in the case at bar was not fundamentally different in principle than the coverage issues in third party proceeding cases where courts have awarded special or solicitor and client costs in addition to the insurance benefits payable under the terms of the policy.

This case was digested by [Kora V. Paciorek](#) 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 kpaciorek@harpergrey.com or dpilley@harpergrey.com or review their biographies at <http://www.harpergrey.com>.