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CASE SUMMARY: INSURERS IN ONTARIO ARE NOT REQUIRED TO ADVISE THEIR INSUREDS OF THE APPLICABLE LIMITATION PERIOD WHEN DENYING OR DISCONTINUING INSURANCE BENEFITS

Insurers in Ontario are not required to advise their insureds of the applicable limitation period when denying or discontinuing insurance benefits.

Insurance law – Accident and sickness insurance – Total disability; Policies and insurance contracts – Limitation of actions – Running of limitation period – Statutory provisions – Good faith – Summary judgment; Practice – Appeals

Usanovic v. Capitale Life Insurance Co. (c.o.b. La Capitale Financial Security Insurance Co.), [2017] O.J. No. 2565, 2017 ONCA 395, Ontario Court of Appeal, May 18, 2017, G.R. Strathy C.J.O., J.I. Laskin and G.T. Trotter JJ.A.

The insured was a self employed eavestrough installer. In 1999, the insured purchased an insurance policy that provided coverage against disability arising from accidents. In September 2007, the insured fell from a roof and suffered serious injuries. The insured received disability benefits until November 2011, when the insurer terminated his benefits because the insured no longer had a "total disability" as defined by the policy.

On January 12, 2012, the insurer's lawyer wrote to the insured explaining that since benefits had been paid for 24 months, he was not entitled to receive further benefits unless he was unable to engage in any and every occupation for which he was reasonably fit by reason of his education, training, and experience. The insurer's review of the medical information on the file did not support the conclusion the insured had a total disability. At this time, the insured knew his benefits had been terminated and considered hiring a lawyer, but could not afford to do so.

In early 2015, the insured consulted a lawyer and was advised of the two year limitation period. The insured commenced an action in April 2015, more than two years after the termination of his benefits and receipt of the letter from the insurer's lawyer.

The insurer brought an application for summary judgment to dismiss the action as time barred. The application was granted and the insured's action was dismissed. The insured appealed, arguing the insurer's duty of good faith obliged it to advise the insured of the applicable limitation period when it terminated his benefits.

The Court of Appeal noted that parties to an insurance contract owe each other a duty of utmost good faith; however, the insured was asking the Court to do something more than impose a duty of good faith on insurers to disclose the contents of the insurance policy. The insured was asking the Court to require an insurer to disclose information outside the policy—namely, the existence of a limitation period.

In British Columbia and Alberta, the legislature introduced requirements that insurers provide written notice to insureds of the applicable statutory limitation period when they deny a claim or within a short time thereafter. Ontario has not enacted such legislation. The Court noted the insured's argument would effectively judicially overrule the provisions of the *Limitations Act*, 2002, by making the notice given by the insurer to an insured the trigger for the limitation period, rather than discoverability of the underlying claim. This would defeat the purpose of the statute and bring ambiguity, rather than clarity, to the process. In the result, the Court of Appeal dismissed the insured's appeal.

This case was digested by Aaron D. Atkinson and edited by Steven W. Abramson of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at aatkinson@harpergrey.com or sabramson@harpergrey.com or review their biographies at http://www.harpergrey.com.