

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: STATUTORY BENEFITS TO WHICH THE INSURED IS ELIGIBLE BUT OPTS NOT TO CLAIM ARE DEDUCTIBLE FROM A LONG TERM DISABILITY CLAIM

Statutory benefits to which the insured is eligible but opts not to claim are deductible from a long term disability claim.

Group insurance; Long term disability benefits; Total disability; Statutory provisions; Damages; Tort claims; Summary judgments

Wilken v. Sun Life Assurance Co., [2017] O.J. No. 3019, 2017 ONSC 3609, Ontario Superior Court of Justice, June 12, 2017, I.F. Leach J.

The insurer brought a summary judgment motion to dismiss the insured's claim for long term disability benefits. The insurer relied on its asserted ability to apply an "offset" in respect of benefits said to be available to the insured pursuant to the Workplace Safety and Insurance Act, 1997, S.O. 1997, c.16, ("WSIB benefits"). Such WSIB benefits were said, in turn, to eliminate the possibility of the insured being owed anything by the insurer, even if the insured was found to be "totally disabled" within the meaning of the relevant underlying policy of group disability insurance. At issue was whether the insured was "eligible" for WSIB benefits in light of having elected to decline them in favour of pursuing a civil remedy.

The policy stated that if the insured was eligible for benefits but did not apply for them, the insurer would still consider them in calculating the insured's long term disability payments. The Court emphasized that an insurer's obligation under a disability policy should not be varied adversely to its interest after the happening of the event insured against by the independent act of the insured. A deduction or "deemed offset" was applied in relation to the amount of WSIB benefits the insured could have received had he exercised his entitlement to them, and not the amount of WSIB benefits actually received and retained in the wake of the insured's retroactive election to proceed with his tort claim. The court dismissed the insured's claim for long term disability benefits in relation to two specific time periods but was unable to summarily decide for the remaining period.

This case was digested by [Laura E. Miller](mailto:lmiller@harpergrey.com) and edited by [Steven W. Abramson](mailto:sabramson@harpergrey.com) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at lmiller@harpergrey.com or sabramson@harpergrey.com or review their biographies at <http://www.harpergrey.com>.