

## Focus PERSONAL INJURY

# Insurers should be unequivocal when denying claims



**Brian Goldfinger**

If there's one thing which causes plaintiff-side injury lawyers to panic or lose sleep, it's the fear of missing a limitation period. Conversely for defence counsel and their insurer clients, the prospect of getting a clear cut win on summary judgment motion because a plaintiff missed their limitation period is exciting; along with a fast and cost-effective way to close a file.

Determining when a limitation period begins to run has always been a challenge in certain types of cases. For motor vehicle accident claims, establishing the date of loss is rather simple. Most of the time, with certain exceptions, all the court needs to do is look at the date of loss.

But the same approach does not apply in the context of long-term disability claims where there can be multiple denials, multiple levels of appeal, or the denial is not clear and unequivocal. There can be heated debate between plaintiff and defence counsel as to when a limitation period should begin to run.

A dispute over a limitation period in a LTD claim was the subject of the decision in *Richards v. Sun Life Assurance Company of Canada* 2016 ONSC 5492. In this motion for summary judgment, Sun Life took the position that the plaintiff's



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action was commenced after the two-year anniversary of the day which the plaintiff knew, or ought to have known that a cause of action arose.

Sun Life had approved the plaintiff's short term disability benefits. But before paying any further benefits, it requested further information from the plaintiff by way of letter dated May 1, 2007, which stated:

"On April 10, 2007, you were provided with 14 days to contact our office, and we have not received any response from you and your file has been terminated effective January 29, 2007. No further action will be taken on your claim."

A second letter also dated May 1, 2007 stated:

"We have received your Plan Sponsor's Statement for Long

Term Disability (LTD) benefits submitted on your behalf. However, we have not yet received your completed Member's Statement Disability Transaction Form. We need this for to assess your LTD claim."

On one hand, Sun Life is stating that no further action would be taken on the plaintiff's claim. Yet, on the other hand, it is requesting further information to assess the plaintiff's LTD claim. You can see how an unsophisticated disability claimant could get confused.

The plaintiff took no steps to pursue an LTD appeal, but called Sun Life on three separate occasions after May 1, 2007, to enquire as to the status of his claim.

At the hearing of the motion, the plaintiff took the position that Sun Life's letter of May 1,

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2007, was not a clear and unequivocal denial. The plaintiff's evidence at the return of the motion focused on his state of mind in around 2007 and 2008. The plaintiff provided evidence that he felt "confused and misled." His file had been opened and closed multiple times by Sun Life prior to 2007, and that although his benefits were not being paid, he didn't think this to mean that his claim was denied entirely. The plaintiff had called Sun Life as late as September 2008 to inquire as to the status of his LTD claim; thereby showing his belief that his claim

was still open.

The court's difficulty with this position was that there was no evidence to explain why the plaintiff had waited from his last contact with Sun Life in September 2008, until October 2012 to commence an action. There was also no evidence presented as to what caused him to discover his cause of action when he did.

Justice Stephen Bale, hearing the motion, rejected the plaintiff's argument that a rolling limitation period should apply to this case such that the plaintiff would only be barred from claiming benefits that would have been payable more than two years before the action was commenced. He distinguished this case, from other rolling limitation period cases such that the issue here was the plaintiff's initial entitlement to LTD benefits. It would be unfair in such a case to require Sun Life to litigate those facts for a potentially unlimited period of time.

For LTD insurers, it's important to make sure that their "clear and unequivocal" denials are exactly that. Sending out form letters which on one hand deny a claim, yet on the other hand lead a plaintiff to believe that their claim remains open pending further information is neither clear, nor unequivocal. For plaintiffs, the lesson from this case is the same as the lesson on so many other limitation based cases: Lawyer up and get those claims issued.

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