Case In Point

New High Water Mark for Punitive Damages Award: $4.5 Million

Date: May 1, 2013

A recent decision of the Court of Queen's Bench for Saskatchewan, which granted an injured worker $4.5 million in punitive damages, has garnered considerable media attention.

The plaintiff, Mr. Branco, was a Canadian citizen. He sued his employer (Kumtor, owned by Saskatchewan-based Cameco) and insurers AIG and Zurich Life in relation to benefits arising from a workplace injury, which had occurred in 1999 while he was working overseas. Following the workplace injury, AIG was notified of the injury, triggering a "workers' compensation" equivalent claim. There was extensive medical evidence that confirmed he was permanently disabled. Nonetheless, AIG discontinued Mr. Branco's benefits for failure to cooperate with what the Court found to be an inappropriate vocational retraining program.

Zurich provided long-term disability ("LTD") benefits for Kumtor employees. Despite medical reports confirming the plaintiff's disability, Zurich did not accept the claim until nine years after the accident. As a result of the insurers' actions, the plaintiff and his family were without funds for several years.

The Court found that the insurers failed to deal with the plaintiff's claim in good faith and instead tried to take advantage of his economic vulnerability by refusing to pay benefits in order to gain leverage in negotiating an unreasonably low cash settlement. The Court recognized that the previous largest punitive damages award against an insurer was $1 million, and noted that this previous award had clearly failed to deter the insurance industry from such actions.

Aggravated damages were awarded against AIG in the amount of $150,000 and against Zurich in the amount of $300,000. Punitive damages were awarded against AIG in the amount of $1.5 million and against Zurich in the amount of $3 million. The Court stated that it was attempting to send a message to the insurance industry and that insurers must discontinue "exploiting the vulnerability of insureds in times of disaster."

The employer was found to have been in breach of the employment contract in failing to submit the initial claim to Zurich in a timely fashion. Nonetheless, the Court explicitly found that in contrast to the insurers, the employer acted in a fair and reasonable manner by paying the plaintiff's salary until the end of his contract, not seeking reimbursement for an overpayment made, and by filing the appropriate forms with AIG in a prompt manner when the employer believed it to be a short-term injury. As a result, the Court declined to award any aggravated or punitive damages against the employer.

Employers should continue to be aware of the risk of a punitive damages claim when dealing with employees making disability claims, although as stated in this case, only conduct which is viewed by a court as sufficiently "malicious" and "high-handed" should warrant an actual award of punitive damages.

Branco v American Home Assurance Company, 2013 SKQB 98 (CanLII)