

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

Tel: 604 687 0411  
Fax: 604 669 9385

## **CASE SUMMARY: LTD PLAN ADMINISTRATOR LIABLE FOR BREACH OF DUTY OF GOOD FAITH AND AGGRAVATED DAMAGES: COURT MAKES HIGHEST AWARD TO DATE FOR AGGRAVATED DAMAGES IN THIS CONTEXT (\$50,000)**

The insured was awarded significant aggravated damages as well as substantial punitive damages because of an egregious breach of the duty of good faith by his disability plan's administrator.

**Insurance law – Disability insurance – Long-term disability – Jurisdiction of court – Breach of policy – Bad faith – Damages – Aggravated damages – Punitive damages – Mental distress**

*Greig v. Desjardins Financial Security Life Assurance Co.*, [2019] B.C.J. No. 1927, 2019 BCSC 1758, British Columbia Supreme Court, October 15, 2019, B.M. Young J.

The insured, who had suffered injuries in a motor vehicle accident, was re-injured on the job and was unable to return to work. He successfully applied for LTD benefits but his benefits were later terminated for 17 months before being re-instated. When the insured's benefits were cut off, he suffered from mental distress and financial disaster, including the loss of his farm property. The insured and his wife made an assignment into bankruptcy, separated for a period of time, and lived in their vehicle for six weeks.

The court first had to determine if it had jurisdiction to hear the claim because the insured was a unionized employee subject to the terms of a collective agreement and the LTD program arose from the collective agreement. The court found that it was necessary for it to assume jurisdiction because otherwise the insured would have no ability to claim for bad faith against Desjardins for its conduct in administering his LTD benefits.

The court found Desjardins liable and held that the relationship between the insured and Desjardins was akin to that of insured and insurer, and that Desjardins owed a duty of good faith even though it was acting as an administrator rather than an insurer. In finding Desjardins liable for an egregious breach of the duty of good faith, the court pointed to several failures, notably:

- Desjardins dealt with the insured as if he only suffered a physical injury and totally ignored psychological or emotional aspects of his disability. Despite overwhelming evidence at the time benefits were terminated of psychological and emotional aspects of the insured's ongoing issues, Desjardins failed to take any steps to acknowledge, support, or investigate these psychological symptoms;
- The claims adjudicator improperly required objective evidence of physical injury;
- The claims adjudicator unreasonably relied on an unsupported allegation of lack of motivation to return to work in the face of substantial evidence to contradict it;
- The claims adjudicator wrongfully alleged that the insured did not pursue appropriate treatment; and
- Desjardins failed to acknowledge or adjudicate the insured's request for a medical

appeal.

The court found that the insured suffered mental distress as a direct result of the termination of his benefits and Desjardins' handling of his benefits claim. The court, noted that aggravated damage awards for mental distress in the context of disability insurance policies have traditionally been low, with the highest at \$35,000, found that the insured's damages and humiliation were severe, and thus awarded \$50,000 – the highest aggravated damages award to date in this context.

In awarding punitive damages of \$200,000 the court emphasized an unfair arbitrariness in the claims adjudicator's handling of the claim; the fact that the claim adjudicator relied on evidence of malingering in the face of overwhelming contradictory evidence; Desjardins' complete failure to adjudicate the insured's medical appeal; and the fact that this was not the first time Desjardins had been found to have acted in bad faith for similar conduct.

This case was digested by [Tricia M Milne](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Tricia M. Milne at [tmilne@harpergrey.com](mailto:tmilne@harpergrey.com).