

## INSURANCE LAW BULLETIN

July 2009 - Caroline Thériault

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### LIMITATION PERIODS: STATUTORY ACCIDENT BENEFITS

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In *Golic v. ING Insurance Company of Canada*<sup>1</sup>, the Ontario Superior Court of Justice reaffirmed the two year statutory limitation period for claiming accident benefits. Approximately nine years after the defendant advised the plaintiff of its decision to terminate benefits, the plaintiff brought a motion to amend his claim requesting benefits from his insurer. At issue on this motion was whether the insurer's failure to inform the plaintiff in layman's terms of the procedures he could take in response to its refusal constituted a sufficient reason to override the limitation period.

It was the position of the insurer that the length of time taken by Mr. Golic to initiate this motion reduced its ability to gather information to defend the claim. It also relied on Mr. Golic's extensive litigation experience. Mr. Golic had been involved in four other mediations since this accident and had been represented by five different counsel.

Throughout the decision, Justice Quigley referred to the Supreme Court of Canada's decision in *Smith v. Co-Operators General Insurance Co.*<sup>2</sup> In that case, the two year limitation period was held to run on the date in which the insurer provided a valid refusal to pay accident benefits. A valid refusal must comply with section 71 of the Statutory Accident Benefits Schedule and be set out in straightforward layman's terms.

Although a major objective in insurance law is consumer protection, the court in *Golic* placed heavy weight on the plaintiff's previous litigation experience. The court found that "to permit the plaintiff to feign ignorance and use the consumer

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<sup>1</sup> (2008) 94 O.R. (3d) 446.

<sup>2</sup> [2002] 2 S.C.R. 129, 210 D.L.R. (4<sup>th</sup>) 443.

protection objectives of the legislation to mask the obvious knowledge he would have acquired”...would be an abuse of the objectives of the legislation.<sup>3</sup>

The court found that a plaintiff could only succeed in this type of motion if he or she satisfied two threshold tests:

1. The amendment requested by the plaintiff cannot cause prejudice to the defendant that could not be compensated in costs; and
2. The plaintiff has the onus to establish the existence of special circumstances that would circumvent the running of the limitation period. It must be shown that there would be no prejudice to the defendant.

### **COMMENTARY**

The Supreme Court of Canada in *Smith* confirmed the legislative duty of insurance companies to provide an insured with the procedure for resolving disputes in a case where payment of accident benefits has been refused. The two year limitation period will only begin to run when a valid refusal has been provided. The court's decision in *Golic* provides an interesting caveat to this rule and serves as a form of protection for insurance companies against a claimant who would attempt to initiate actions against their insurers several years after the refusal has been received. It also serves to protect against claimants who are experienced in the litigation process from pretending they are unaware of the procedures they are to undertake.

These exceptions aside, it will always remain in the insurer's best interests to clearly articulate in layman's terms the procedures to be followed after a denial for accident benefits has been received.

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<sup>3</sup> Supra note 1 at para. 34.