

# SHILLINGTONS<sup>LLP</sup> | LAWYERS

1500 - 148 Fullarton Street  
London, ON N6A 5P3  
www.shillingtons.ca

## INSURANCE LAW BULLETIN

March 2017 – Rose Bilash & George Hamzo

---

### ***Watkins v. Western Assurance Company, 2016 ONSC 2574***

#### **Late Application for Benefits by Family Member Not Involved in the Accident**

---

[The information below is provided as a service by Shillingtons LLP and is not intended to be legal advice. Those seeking additional information on the issues above should contact the firm at (519) 645-7330.]

#### **FACTS**

In 2003, Timothy Watkins' mother was involved in a car accident. Watkins was not in the vehicle and was 15 years old at the time. The plaintiff's mother held a valid policy of automobile insurance with Western. Neither party provided sworn evidence regarding the content of the application package that Western may have provided to the plaintiff's mother following the accident.

The plaintiff reached the age of majority on July 14, 2005. In May of 2010, counsel for the plaintiff sent a letter to Western on behalf of Watkins. The letter stated that, as a result of Western's failure to pay benefits to the plaintiff's mother, Watkins was unable to succeed in school, and went astray from his course as a successful student. The letter stated that Watkins had the right to apply for statutory accident benefits as a member of his mother's household and that he would be making that application "shortly".

In 2011 and 2012, Watkins brought two actions against Western. The 2012 action claimed non-earner benefits and extra-contractual damages ("the accident benefits claim"). The 2011 action claimed damages arising out of Western's handling of the mother's accident benefits claim ("the derivative claim"). Western brought two separate motions: a motion for summary judgment of the accident benefits claim and a motion to strike the derivative claim.

At the time of the hearing of the motions, the plaintiff had not applied for accident benefits and had not provided any medical evidence to support that, as a result of and within 104 weeks of the accident, he suffered a complete inability to carry on a normal life.

## ISSUES

In assessing the summary judgment motion, Justice Braid considered four issues:

- i. Does Western's failure to provide a written explanation of benefits available to Watkins stop the time requirements for submitting an application for accident benefits and/or the limitation period?
- ii. If not, does Watkins have a reasonable explanation for the delay in submitting an application for non-earner benefits?
- iii. If not, should Watkins be granted relief from forfeiture?
- iv. Finally, is there a genuine issue requiring a trial?

In assessing the motion to strike the derivative claim, Justice Braid considered the following question:

- i. Does the statement of claim disclose a reasonable cause of action?

Ultimately, the court found that there was no genuine issue for trial on the accident benefits claim and summary judgment was granted in favour of the insurer. However, the court found that it was not plain and obvious that the derivative claim was certain to fail, and therefore dismissed the motion to strike that claim.

## ARGUMENTS

The plaintiff argued that Western did not comply with its obligation to provide a written explanation of the benefits available to him under the SABS. He alleged that, because the insurance company failed to comply with this informational requirement, the plaintiff was not required to notify the insurance company that he intended to apply for benefits within 30 days, to file an application for benefits within 30 days and/or to commence a claim within two years.

The court rejected the plaintiff's argument. In coming to its decision, the court reiterated the procedure for claiming accident benefits pursuant to the SABS. First, the insured had to notify the insurer of his intention to apply for a benefit no later than 30 days after the circumstance that gave rise to the entitlement to the benefit, or as soon as practicable thereafter. The court found that this period did not run when the plaintiff was a minor.

After the insurer received notification, the insurer was required to promptly provide the insured person with the appropriate forms and a written explanation of the benefits available under the regulation. Finally, the insured was required to submit a signed application for the benefit to the insurer within 30 days after receiving the materials.

There was no evidence before the court that the plaintiff or his mother specifically told the insurer that the plaintiff intended to apply for a benefit. However, an assessment form received by the insurer in 2003 stated that the plaintiff's mother had a 15-year-old son living with her. The plaintiff argued that this was sufficient notice to Western that the plaintiff was a dependant covered by the insurance policy. Therefore, he should have been provided with a written explanation of benefits available to him under the policy. The court stated that it was a "rare case" when a minor dependant, who was not present at the time of the accident, suffers harm as a result of that accident which makes him

eligible for accident benefits. In those circumstances, the insurer's obligation to provide the insured with an explanation of accident benefits was only triggered when "the minor dependant has suffered harm as a result of an accident and/or that the minor dependant intends to apply for accident benefits". Indeed, Justice Braid strongly rebuked those who suggested otherwise:

"It is an absurd interpretation of the legislation to suggest that an insurer must provide an explanation of benefits to every dependant of a policy holder when the dependant was not present at the accident."<sup>1</sup>

The court found that the limitation period for the application of accident benefits began to run 30 days after the plaintiff reached the age of majority (*i.e.* August 14, 2005). As the plaintiff never filed an application for benefits, the "reasonable explanation" saving provision had no application as the provision was restricted to *delays* in filing an application.

In coming to its decision, the court stressed the importance of the function of the regulation, which, in the court's view, was to ensure the timely submission and resolution of claims for accident benefits. If the court had accepted the plaintiff's argument, it would have meant that the time requirements for benefits and the limitation period would never have begun to run. This would have defeated the purpose of the SABS. The court also stressed the importance of limitation periods generally, citing several Court of Appeal decisions including *Sagan v. Dominion of Canada General Insurance Co.*,<sup>2</sup> *Sietzema v. Economical Mutual Insurance Company*<sup>3</sup> and *Bustamante v. Guarantee Company of North America*.<sup>4</sup>

## ANALYSIS

The decision in *Watkins* limits the class of insured persons to whom the insurer must notify of the time limits prescribed by the SABS. While the plaintiff in *Watkins* was technically an insured, he was not involved in the accident, nor did he witness the accident. To extend the insurer's obligation to notifying a dependant who was not present at the accident was, in the court's view, too onerous.

Notwithstanding, *Watkins* does not change the obligation of the insurer to notify the insured of his or her rights under the *Schedule* once the insurer becomes aware of the accident. The insurer must notify the insured (though not their dependants who were not involved in the accident) of the prescribed time limits. Otherwise, it will not be able to rely upon the strict time limits to avoid payment of benefits.

---

<sup>1</sup> *Watkins v. Western Assurance Company*, 2016 ONSC 2574 at para. 15.

<sup>2</sup> 2014 ONCA 720.

<sup>3</sup> 2014 ONCA 111.

<sup>4</sup> 2015 ONCA 530.