

BRIEFING NOTE

Court of Appeal reins in punitive and aggravated damages awards

The largest awards for punitive and aggravated damages against an insurer in Canadian jurisprudence have been reduced by the Saskatchewan Court of Appeal.

In *Zurich Life Insurance Company Limited and American Home Assurance Company et al v. Luciano Branco*, 2015 SKCA, the appellate court cited factual errors and errors in law in the trial decision, which involved the suspension and withholding of workers compensation benefits and long term disability benefits by the two insurers. The appellate court found that punitive damages were warranted against American Home because it did wrongfully withhold benefits when its own medical specialist failed to provide a report in a timely way and the evidence suggested that American Home tried to force the plaintiff to accept an improvident settlement. However, the Court of Appeal reduced the punitive damages award from the \$1.5M to \$175,000.

The Court of Appeal confirmed that Zurich breached its duty of good faith when it failed to pay the full amount of long term disability benefits owing to the plaintiff (Zurich offered the full amount less \$9,000 for legal expenses incurred) and the failure to pay lasted more than 6 years, but punitive damages against Zurich were reduced from the \$3M awarded by the trial judge to \$500,000. The trial judge had awarded a total of \$450,000 for damages for mental distress for the stress and anxiety arising from the financial hardship induced by the insurers' wrongful withholding of benefits. The Court of Appeal reduced the global award for damages for mental distress to \$45,000, noting that the trial award was excessive when compared to the cap on non-pecuniary damages.

It remains to be seen whether Mr. Branco will seek leave to appeal the appellate court's decision to the Supreme Court of Canada.

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