

On June 24, 2022, a Toronto jury awarded the Plaintiff Sara Baker ("Ms. Baker") long term disability benefits owing from May 6, 2016, to the date of the verdict, plus aggravated damages of \$40,000 and punitive damages of \$1,500,000.

The insurer was the Blue Cross Life Insurance Company of Canada.

The trial commenced on May 26th, 2022 and continued until the jury verdict on June 24th, 2022. The Honourable Justice Vella presided over the trial.

Ms. Baker was a director at a major Toronto hospital when she suffered a subarachnoid haemorrhage (i.e. stroke) while exercising in 2013. She was unable to return to work after that time.

Initially, the insurance company paid benefits though they were denied within both the short term and "own occupation" periods under the policy. The initial denials were subsequently reversed. However, as of May 6, 2016, the insurer denied the claim based on the change in definition provision under the policy. All internal appeal avenues were subsequently exhausted, and the insurer maintained its denial.

The lawsuit was issued in 2017. The insurer delivered a jury notice. The insurer obtained over 375 hours of surveillance footage of Ms. Baker which showed her engaging in activities she testified she could carry out.

The trial was initially scheduled to take place in March of 2021 when juries were not available. Ms. Baker brought a Motion to strike the jury because of the delays in jury trials associated with the pandemic. The Defendant insisted that its litigation strategy required that the matter be decided by a jury. The Motion was decided in favour of the Defendant and the trial date was adjourned to 2022.

The Plaintiff's treating doctors and several lay witnesses testified at trial. These doctors included Dr. Jonathan Gladstone (neurologist), Dr. Ian Finkelstein (pain medicine specialist), Dr. Loch MacDonald (neurosurgeon) and Dr. P. Philbrook (family physician). In addition, Dr. P. Voorneveld (neuropsychologist) and Jeff Cohen (vocational evaluator) testified as Rule 53 experts.

The Plaintiff argued that the Defendant breached its duty of good faith in over a dozen respects. Among them included, failing to obtain her proper job description, failing to obtain medical opinions to support its denials, failing to follow the recommendations of its own medical assessors, disregarding the opinions of the Plaintiff's doctors, reliance on surveillance evidence and photographs that did not contradict the Plaintiff, failing to apply its own policies regarding the severity of the Plaintiff's medical condition and its expected duration, prematurely denying the claim, as well as the insurer's conduct during the course of the litigation.

Ms. Baker also testified regarding the mental distress she suffered as a result of the insurer's denial of her benefits.

There are no reasons for decision as this is a jury award. The extra-contractual damages awarded for aggravated damages (\$40,000) and punitive damages (\$1,500,000) exceed the largest known and standing decisions under insurance contracts (see *Fidler v. Sunlife Assurance Co. of Canada*, [2006] 2 S.C.R. 3 and *Whiten v. Pilot Insurance Co.*, 2002 SCC 18), though are commensurate with the previous high-end awards once adjusted for inflation.

It is anticipated the insurance company will appeal the decision.

This case summary was prepared by Thomson, Rogers. For more information regarding the decision or any preliminary motions, please contact trial counsel Stephen Birman, Robert Ben or Lucy Jackson at Thomson, Rogers (TR Law).