

Baker v. Blue Cross: Proving Bad Faith & Punitive Damages at Trial



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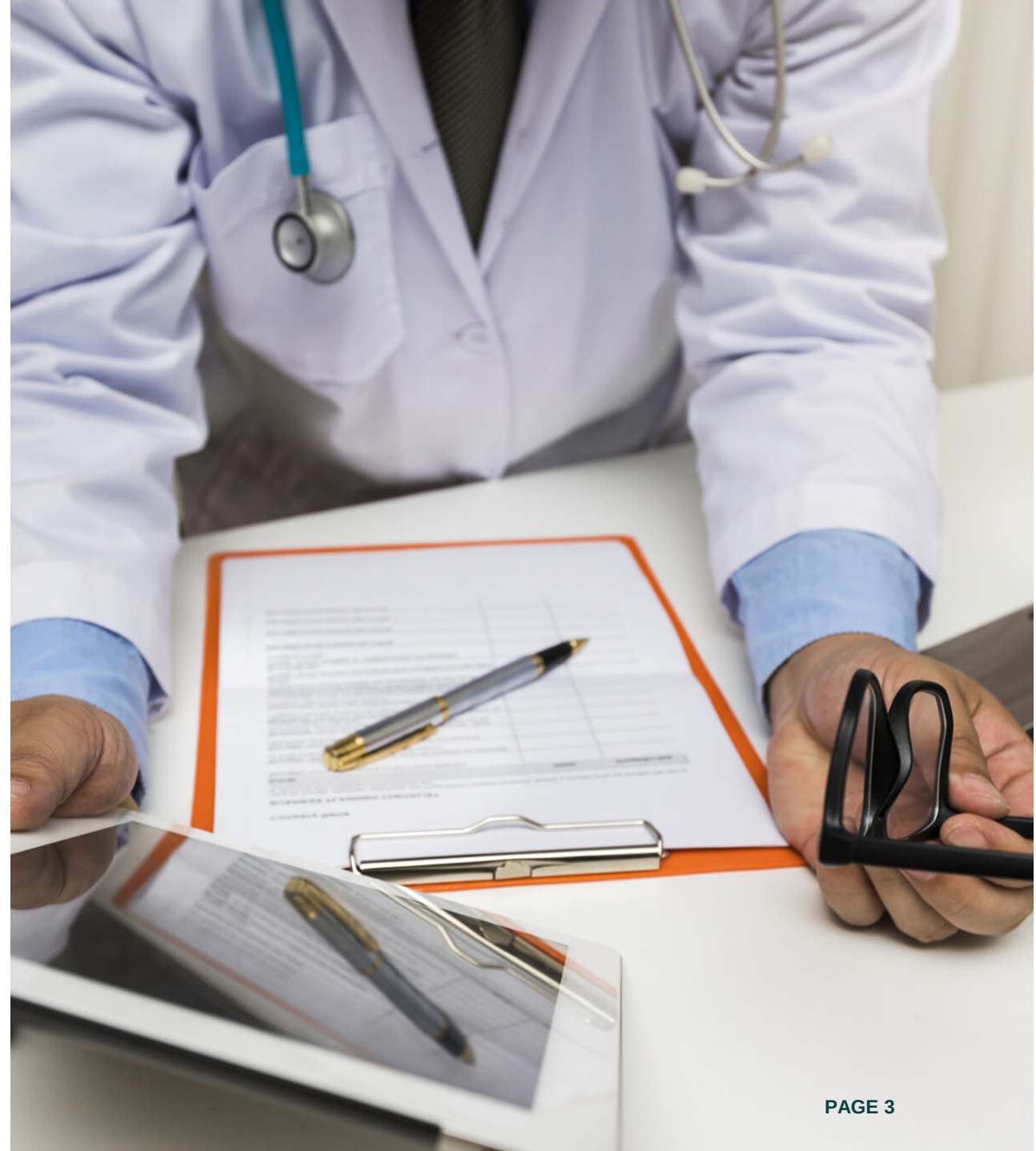
Case Overview & Timeline

- Sara Baker: 38-year-old hospital director who suffered a stroke and claimed “total disability”
- Blue Cross: repeated denials, flawed claims handling, excessive use of surveillance.
- Timeline: 2013 (denial of benefits)–2023 (Court of Appeal decision)



Key Facts Supporting Bad Faith

- Multiple treating physicians confirmed Ms. Baker's disability
- Blue Cross terminated benefits three times, often ignoring medical evidence
- Jury awarded reinstatement of benefits, aggravated (\$40K) and punitive (\$1.5M) damages.
- Trial Judge awarded full indemnity legal costs.



Legal Framework - What Courts Require

- Breach of the duty of good faith
- Address the objectives of retribution, deterrence and denunciation
- Requires high-handed, malicious, arbitrary or highly reprehensible misconduct
- Quantum must be no more than is necessary to address the objectives.



Evidence – Ignoring Medical Experts

- Blue Cross disregarded reports from Dr. Macdonald, Dr. Gladstone, Dr. Finkelstein, Dr. Philbrook, Dr. Voorneveld
- Terminated benefits based on ambiguous or incomplete “paper reviews”
- Failed to obtain independent medical examinations supporting the denial of benefits. Misstated findings in IMEs.



Evidence – Errors in Internal Records

- Assessment Plans and referral forms contained false or misleading histories
- Internal notes claimed “no current symptoms” despite contrary medical evidence
- Referral forms to consultants omitted key facts and information
- Failure to follow own medical guidelines.



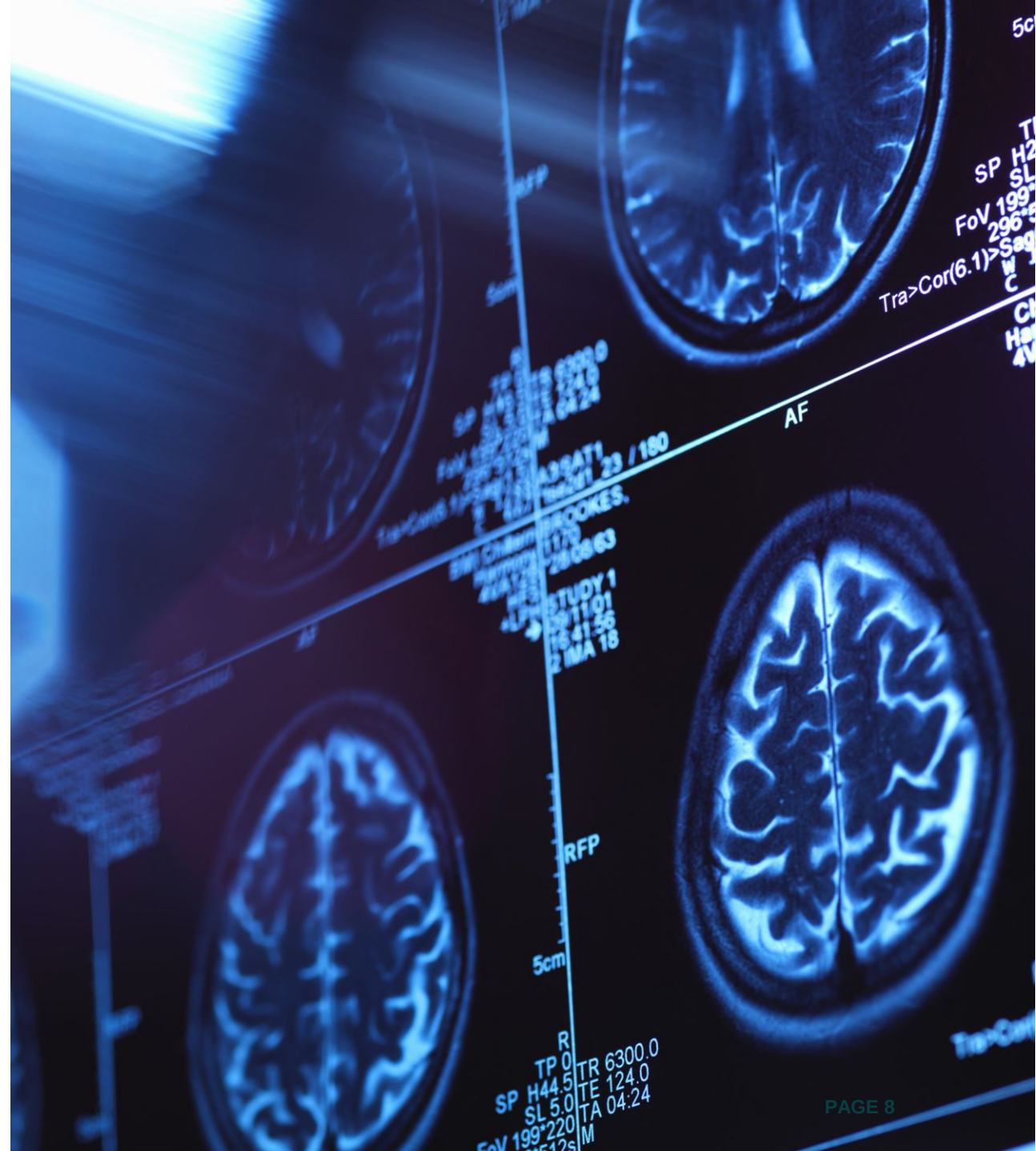
Evidence – Adversarial Claims Handling

- Deny first, seek records later, then deny appeal ignoring contrary information.
- Forced Baker to appeal multiple times, delaying benefits
- Refused to contact treating physicians, placing burden on Ms. Baker
- Used surveillance and neighborhood inquiries to attack credibility



Evidence – Misrepresenting Own Expert Reports

- Twisted findings of neuropsychologist Dr. Kane and vocational expert Ms. Kresak
- Claimed Dr. Kane said Baker could work as a nutritionist—she did not
- Claimed TSA identified six suitable jobs—only one met income threshold



Evidence – Systemic Pattern of Denial

- Five different claims examiners, though only final claims examiner testified at trial
- Denials maintained despite accumulating evidence
- Internal communications showed plan to deny, not investigate



Evidence – Failure to Correct Errors

- No effort to correct false histories or misstatements
- Never corrected error in job title
- No follow-up with consultants on obvious gaps
- No attempt to clarify or reconcile conflicting evidence
- Errors in correspondence, including final denial letter.



Quantifying Punitive Damages – Why \$1.5M?

- Jury found systemic, egregious misconduct
- Awarded an amount in line with *Whiten* and *Hill* (adjusted for inflation)
- Amount required to deter future misconduct by large insurers.

TORONTO SUN

Court upholds Canada's record punitive damages against LTD insurer

Blue Cross insurance was ordered to pay \$1.5M in punitive damages and \$1M in legal costs after years of denying coverage

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Sara Baker suffered a stroke in 2013 that left her totally disabled, then she endured a marathon legal battle with Blue Cross Insurance Company of Canada. [LinkedIn](#)

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Costs – Full Indemnity Justified by Bad Faith

- Trial judge cited “special circumstances”
- Court of Appeal held that insurer misconduct was worthy of sanction of full indemnity costs.
- Rule 49 offer to settle also well below trial result
- Fairness required insurer to bear full costs.



Lessons Learned & Best Practices

- Trial strategy, including choice of witnesses matters (i.e. treating doctors, failure to call examiners)
- Right client, right facts
- File a jury notice where insurance is involved
- Document every denial, misstatement, and delay



Lessons Learned & Best Practices

- Use insurer's own records and admissions
- User insurer's tactics against them.
- Build a narrative of systemic misconduct
- Consider the quantum sought, which should be rationally connected to the purposes of a punitive damages award.



Thank you!

Question?



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