

INDEX

accident

- defined in case law generally, 113
- *Gibbens v. Co-operators Life Insurance Co.*, 115
- satisfactory proof of accidental death, 119
- *Wang v. Metropolitan Life Insurance Co.*, 119

accident and sickness coverage, distinguished from life insurance

- age, 3
- commencement, 2, 43
- generally, 1-2
- representations, 2-3
- termination, 3

accident and sickness insurance legislation across Canada, Table of Concordance, Appendix B

Administrative Services Only (ASO) Plans, 246

adverse cost insurance, 243

age

- age limit, 3
- misstatement in group insurance or creditors' group insurance, 3

agents

- CLHIA guidelines, 398
- delivery of policy to, 22, 60
- generally, 8-9
- insurer's, 8, 18, 22, 25-26
- language issues, and, 49
- misrepresentation, 35-37

alcoholism, exclusion clause, 75, 76

alternate employment, availability, 86

- would a reasonable employer hire the plaintiff, 86

anxiety claims, *see depression and anxiety claims*

approval receipts, 26

arbitration/collective agreement, lawsuits where benefits governed by, 215

ASO Plans, 246

award, lump sum, future benefits, 228

bankruptcy of insurance companies, 401-402

bifurcation of issues at trial

- Alberta, 293
- British Columbia, 292
- generally, 288
- Ontario, 290

burden of proof

- generally, 87
- onus on insured, 88
- onus on insurer
 - reversal of reverse onus rule, 90
 - reverse onus rule, 88
 - shifting onus of proof, 91

Canadian Council of Insurance Regulators (CCIR), 400

Index

- Canadian Life and Health Insurance Association (CLHIA)**
 - generally, 7
 - Guidelines, 7, 67, 398
 - Position Statement on Genetic Testing, 306
- Canadian Life and Health Insurance Compensation Corporation (COMCORP)**, 401
- chronic fatigue syndrome**, 102, 123, 129, 131, 140, 141, 142, 257
- chronic pain**, 103, 130, 140, 143
- claim liability**, *see burden of proof, exclusion clauses, loss of insurance coverage and occupation, disability and*
- CLHIA Guidelines**, 7, 67, 298
- collective agreements, lawsuits where benefits governed by**, 222
- conditional receipts**, 26
- consumer protection**, 401
- contracts**
 - parties to, 11-13
 - policy language not mandated, 13
- coverage**
 - approval receipts, 26
 - change in insurability, effect of, 24
 - commencement, 22, 25
 - conditional receipts, 26
 - effective on delivery of policy, 59
 - end date for LTD benefits, 61
 - forfeiture, relief from, 63
 - grace period, 60-61
 - interim, 25
 - lapse, 61
 - loss of, 97
 - notice of termination of, 68
 - pre-existing condition exclusion clauses, 69
 - reinstatement, 66
 - temporary binding receipts, 27
 - termination, 60
 - via resignation of employment, 27
 - via termination of employment, 31
- CPP disability benefits**, 144
 - evidence of disability, as, 144
 - reduction of LTD benefits, and, 151-154
- creditor disability insurance**, 13-15
- critical illness insurance**
 - critical illness vs. long-term disability claims, 296
 - definition, 295
 - denial of benefits
 - • date of diagnosis, 301
 - • exclusion clause, 298
 - • lack of “covered condition” or “covered critical illness”, 296
 - • misrepresentation or non-disclosure in application, 302
 - • survival period not met, 296
 - genetic testing, disclosure and, 305
- damages**
 - aggravated, 254
 - bad faith, failure to provide insured with copy of policy, 19
 - case law, 266
 - consequential, 282
 - extra-contractual, 253
 - • privilege, 237-238
 - • where are we now, 280
 - mental distress, 263
 - punitive

Index

damages (*cont'd*)

- • against insureds, 285
- • examination for discovery questions, 287
- • generally, 260

depression and anxiety claims

- archaic case law, 109
- case law involving psychiatric conditions, 101
- DSM-V criteria for major depressive disorder, 104
- evidence of treating psychiatrist, 107
- generally, 100
- global assessment of functioning, (GAF), 101
- necessary treatment, 109
- recent case law, 105
- suicide risk, 111

disability

- burden of proof, 87
- CPP as evidence of, 144
- policy definitions, 73
- total disability defined, 74

DSM-V criteria for major depressive disorder, 104

duties

- disclosure, 36
- disclosure of social media accounts, 145
- disclosure of surveillance evidence, 132
- disclosure on reinstatement, 66
- mitigation, 92
- work through pain, 94

effective date of group LTD insurance, 21

effective date of insurance, 22-23

employment, *see also* occupation, disability and

- notice period, extension of LTD coverage during, 159
- severance pay, reduction of LTD benefits, and, 158

entering into the lawyer-client relationship, 316

- contingency fees agreements: meaningful access to justice for disability claimants, 316
- contingency fees must be fair and reasonable, 317
- disability benefit reinstatement and contingency fees, 322
- fair and reasonable: a two-step test, 318
- Ontario's contingency fee reform — the largest Canadian contingency report to date, 320

evidence

- alternative occupations, 125
- co-workers, of, 126
- court-ordered medical examinations, 135
- CPP as evidence of disability, 144
- disclosure of financial records, 140
- internal medical consultants, of, 127
- plaintiff, of, 122
- social media accounts, 145
- subjective medical conditions, 140
- surveillance, 128-135
 - • how much, 133
 - • • case law, 134-135
- treating physicians, of, 123
- treating psychiatrist, 125
- treatment, requirement of, 138

Index

exclusion clauses

- alcoholism, 96
- criminal offence, disability caused by, 96
- critical illness, denial of benefits, 298
- failure to remain under medical care, 96
- incarceration, 96
- pre-existing condition, 69
- substance abuse, 97

extra-contractual damages, *see also* damages

- privilege, and, 253

fibromyalgia, 130, 132, 140-144, 196, 254, 257

forfeiture, relief from, 63

fraudulent misrepresentation

- generally, 49
- premium refund not required, 53
- underwriters, duties, 54

future benefits, lump sum award, 228

Gibbens v. Co-operators Life Insurance Co., definition of accident, 115

global assessment of functioning, (GAF), 101, 104

grace period, 61-62

group certificate, 17-18

group coverage, termination, 67

group creditor's insurance

- administration of plan, 16-17
- generally, 13-15
- group certificate not required, 17

- Group Insurance Guidelines, and, 398

group insurance

- administration by insurer, 15-17
- age misstatement, 3
- group certificate, 17-18
- providing policy to insureds, 18-19
- self-administered groups, 15-16
- termination, 67

guidelines

- CLHIA guidelines, 8, 67, 398, 401
- CRA Guidelines, 226
- DSM-V, mental illness diagnostic guidelines, 104
- Group Insurance Guidelines, 398
- industry guidelines, 7, 12, 23

hazardous occupation, 3, 4

Healthcare of Ontario Pension Plan (HOOPP), reduction of LTD benefits, and, 154

insurability

- change in, effect, 24
- insured uninsurable, misrepresentation and, 57

insurable interest, 21-22, 399

***Insurance Act*, selected sections, Appendix A**

jury trials

- Alberta, 214
- British Columbia, 213
- Manitoba, 214
- New Brunswick, 214
- Newfoundland & Labrador, 215
- Nova Scotia, 214
- Ontario, 212-213
- Prince Edward Island, 214

Index

jury trials (*cont'd*)

- Saskatchewan, 214

lapse

- forfeiture, relief from, 63
- overpayment, and, 62
- reinstatement, 66
- 30-day grace period, 61-62

life insurance distinguished from accident and sickness coverage

- age, 3
- commencement, 2, 59
- generally, 1-2
- representations, 2-3
- termination, 3

limitation periods

- defence accepted (Ontario), 188
- defence rejected (Ontario), 181
- denial, clear and unequivocal, 194
- failure to prosecute action, 209
- late lawsuit provisions, 206
- late written notice of claim, 203
- no duty to inform insured, 208
- punitive damages claims, 194
- rolling limitation periods, 198

limitation periods, provincial legislation

- Alberta, 176
- British Columbia, 175
- Manitoba, 180
- New Brunswick, 179
- Newfoundland and Labrador, 180
- Nova Scotia, 179
- Ontario, 172, 181
- Prince Edward Island, 180
- Saskatchewan, 180

litigation process

- adverse cost insurance, 243
- arbitration/collective agreement, benefits governed by, 215
- ASO Plans, 246
- bifurcation of issues, 288
- carveouts, 235
- clawbacks, 234
- costs, 241
 - • adverse costs insurance, 243
 - • special costs absent a punitive damages award, 243
 - • trial, 241
- end date for LTD benefits, 232
- expedited trial, 249
- future benefits, lump sum award, 228
- judge or jury, 212
- mandatory interlocutory injunction for payment of benefits, 232
- prejudice, 250
- privacy, 247
- privilege, 237
- proper forum, 240
- release enforceability, 236
- suing claims staff personally over denial of benefits, 239
- summary judgment, 241
- taxability of LTD settlements, 223
- trial costs, 241

loss of insurance coverage, 60

LTD mediation tips

- CPP offset, 391
- defence don'ts, 395
- nastiness will not help, 395
- other mediation pitfalls, 394
 - • broad releases, 394

Index

- LTD mediation tips (*cont'd*)
 - • clawback provisions, 394
 - present value discount rate, 393
 - settlement number, 395
 - simple but effective, 393
- mandatory interlocutory injunction for payment of benefits**, 232
- materiality and duty to disclose**, 36
- medical assessments, case law, Appendix E**
- medical conditions, subjective**, 140
- meeting with the disability claimant**, 308
 - capacity, 312
 - diffusing anxiety, 308
 - have an agenda, 310
 - the plaintiff must understand, 310
- misrepresentation**
 - case law, Appendix C
 - critical illness insurance, denial of benefits, 296
 - duty to disclose, 36
 - fraudulent misrepresentation, 49
 - insured was uninsurable, 57
 - language issues, 49
 - materiality, 42
 - overriding duty of good faith, 41
 - premium refund not required, 53
 - signature of insured binding, 47
 - *uberrimae fidei*, 36
 - underwriters, duties of, 54
- occupation, disability and**
 - alternative employment, 86
 - any occupation, 75
 - burden of proof, 87
 - failed return to work attempts, 94
 - mitigation, 92
 - • duty to mitigate, 92
 - own occupation, unable to carry on, 74
 - plaintiff deemed totally disabled if all their energy is required to work, 95
 - *Sucharov v. Paul Revere Life Insurance Co.*, 77-85
 - work avoidance, 79
- offsets/integration of benefits**
 - CPP disability benefits, 151
 - Healthcare of Ontario Pension Plan (HOOPP), 154
 - income replacement benefits, 165
 - • case law, 165-168
 - notice period, extension of LTD coverage during, 59
 - severance pay, 158
 - subrogation, 162
 - Workers' Compensation benefits, 155
- Personal Information Protection and Electronic Documents Act (PIPEDA)***, 247-248
- pre-existing condition exclusion clause**, 69
- plaintiff disability litigation — key considerations**, 322
 - common employment issues in LTD litigation, 339
 - develop a case theme early, 322
 - manage client expectations from the start, 326
 - marshal the evidence early, 322
 - should you hire an opinion expert, 380
 - social media — ethical fundamentals, 329

Index

plaintiff disability litigation — key considerations (*cont'd*)

- the fine line between good and bad faith, 377
- unionized disability claimants, 332
- where to sue — jurisdictions across Canada, 358

premiums

- overpayment, no duty to apply to future premiums, 62
- payments as condition for coverage, 59-60
- pre-existing condition exclusion clause, 69
- refund not required where fraudulent misrepresentation, 49

privacy, 247

privilege, 237-238, 248

psychiatric conditions, case law involving, 101

receipts

- approval, 26
- conditional, 26
- interim, 25
- temporary binding, 27

regulation of disability insurance industry

- bankruptcy of insurance companies, 401
- Canadian Council of Insurance Regulators (CCIR), 400-401
- CLHIA Guidelines, 398
- consumer protection, 401
- generally, 397
- regulators, 399
- *Uniform Insurance Act*, 398

reinstatement

- duty of disclosure on, 66
- generally, 13, 50
- suicide risk and, 67, 111, 223

reverse onus rule

- generally, 88
- reversal of, 90

severance pay, reduction of LTD benefits, and, 158

social media accounts as evidence

- not producible in common law provinces, case law, 148
- Ontario legislation, 145
- producible in common law provinces, case law, 146

Société canadienne d'indemnisation pour les assurances de personnes (SIAP), 401

statutory conditions, 4-7, 13, 60, 174

subrogation/reimbursement of benefits, 162

Sucharov v. Paul Revere Life Insurance Co., total disability and, 77-85

suing claims staff personally over denial of benefits, 239

surveillance evidence

- disclosure, 132
- generally, 128
- insurers, cases helpful to, 128
- plaintiffs, cases helpful to, 131

Table of Concordance, accident and sickness insurance legislation across Canada, Appendix B

taxability of LTD settlements, 223

temporary binding receipts, 27

Index

termination

- generally, 3
- group coverage, 67
- notice of, 68

total disability

- case law, Appendix D
- defined, generally, 74-75
- *Sucharov v. Paul Revere Life Insurance Co.*, total disability and, 77-85
- work avoidance, 79-80

uberrimae fidei, 36

underwriters, duties, 54

- when an insurer's underwriters need to investigate further, 54

Uniform Insurance Act, 398

waiver, reliance on policy provisions, and, 62

Wang v. Metropolitan Life Insurance Co., definition of accident, 115

WCB benefits, reduction of LTD benefits, and, 155-156

work avoidance, 79-80

WSIB benefits, 156