IN FACT AND IN LAW

Life and Disability Insurance

October 2007

Notice of Accident Insurance Claim: One Year, No More

By Evelyne Verrier

In its judgment in ***Bourcier*** *v.* ***La Citadelle***[1] *rendered on September 4, 2007, the Court of Appeal confirmed that the insured accident victim must inform the insurer no later than one year following the date of the accident, in accordance with Article 2435 C.C.Q. Failure to do so results in forfeiture of the right to the benefit provided for in the accident insurance policy.*

The facts

Ms. Bourcier was the victim of a serious motorcycle accident on September 11, 2001. The accident eventually led to the total and irreparable loss of use of her right foot. She notified her employer, the Ville de Mercier, within the days following the accident and completed the forms necessary to obtain her salary insurance and SAAQ benefits. Her employer never transmitted the information to the insurer.

The obligation to give the insurer notice of loss within the 30 days [TRANSLATION] "*from the accident giving rise to the loss*" and the stipulation that such notice could not be submitted more than one year after the accident appeared in the insurance policy and complied with Article 2435 C.C.Q.

"2435. The holder of an accident and sickness policy or the beneficiary or insured shall give written notice of loss to the insurer within 30 days of acquiring knowledge of it. He shall also, within 90 days, transmit all the information to the insurer that he may reasonably expect as to the circumstances and extent of the loss.

The person entitled to the payment is not prevented from receiving it if he proves that it was impossible for him to act within the prescribed time, provided the notice is sent to the insurer within one year of the loss."

The employer finally gave notice to La Citadelle on October 29, 2004.

On July 26, 2005, Ms. Bourcier sued her employer, claiming the amount she would have received if the claim had been submitted in a timely manner to the insurer. In February 2006, the motion to institute the proceedings was amended to add La Citadelle as a defendant.

La Citadelle then filed a motion to dismiss based on the forfeiture of the right to the benefit due to the failure to provide the required information within one year of the accident, in accordance with Article 2435 C.C.Q., and on the prescription of the proceedings, since more than three years had elapsed since the accident.

The judgment in first instance

The Court accepted the two grounds in the motion to dismiss and rejected the argument that Ms. Bourcier could not have known, at the time of the accident, that she would lose the use of her foot and that the "*loss*" only occurred when this situation was finally confirmed. According to Ms. Bourcier, the term "*sinistre*" (loss) meant [TRANSLATION] "*the loss resulting from the occurrence of the insured risk*" and not the accident itself.[2]

[1] 2007 QCCA 1145.

[2] Para. [18] of the judgment.

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The judgment in appeal

Chief Justice Robert, in an opinion to which Judges Dussault and Forget subscribed, examined the definitions of the words "*sinistre*" (loss), "*risques*" (risks) and "*pertes*" (losses) appearing in dictionaries, and in the jurisprudence, and in the doctrine, and concluded that "*sinistre*" (loss) can only mean the accident itself and not the time when the insured's condition became permanent. He also confirmed that it was not up to the insured to determine whether the accident was worth reporting to the insurer, or when to do so.

The issue concerning the time limit stipulated in Article 2435 C.C.Q. to give notice of the "*loss*" is a question of law and the judge in first instance did not commit any error in concluding that the date of the "*loss*" was the date of the accident. Since the facts were clear and the time limit stipulated in the insurance policy and in Article 2435 C.C.Q. had expired, the judgment granting the motion to dismiss was upheld.

Mtre Evelyne Verrier represented the insurer in this litigation.

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