



ONSC finds Broker failed to Offer Optional SABS Benefits Properly

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The Ontario Superior Court has dismissed a plaintiff's action against a broker, claiming the broker did not 'properly' offer him the chance to purchase optional income replacement benefits.

In *Zefferino v. Meloche Monnex Insurance*, the plaintiff suffered personal injuries in a May 27, 2005 motor vehicle accident, such that he could no longer be gainfully employed. She was the named insured under an automobile insurance policy sold by the defendant. Under the standard policy terms, the plaintiff was entitled to receive and did receive the statutory minimum income replacement benefit of \$400 per week as a result of his income loss following the accident.

The plaintiff alleged that the defendant failed to offer optional income replacement benefits which, if they had been offered, the plaintiff would have purchased. As a result of that failure on the part of the defendant, the plaintiff alleges he was under-insured. His income at the time of the accident would have qualified him for income replacement benefits of \$1,000 per week.

The defendant moved for summary judgment. The judge found that the defendant broker's conduct fell below the required standard of care required of a seller of insurance. More specifically, the judge found that the broker's offer of optional benefits was more in the nature of a mention accompanied by a solicitation of interest. The judge found that the broker did not comply with the statutory mandate contained in the SABS:

[T]he failure to properly offer the optional benefit coverage, effectively negating any requirement to ensure that customers can make an informed decision on the subject, is a breach of the standard of care applicable to the defendant in the circumstances. I am not persuaded that the evidence of common practice in the industry offered by the defendant through its own representatives is sufficiently persuasive to establish a standard of care under which the offer of optional benefits could be made in a less meaningful way.

However, the judge also found on the evidence that the plaintiff would not have purchased the optional benefits had they been properly offered. The plaintiff and his spouse purchased insurance from four other insurance companies during the ten years before relationship with the defendant began. There was no evidence that anything other than basic coverage was secured on any of those prior occasions. The choice of securing insurance through the defendant was based on price.

Accordingly, the judge dismissed the action against the broker.

Although this case dealt with a 2005 accident, it highlights the issues insurers (especially direct writers) will continue to face if their clients aren't offered 'properly' optional benefits – especially under the post September 1, 2010 regime.

[Zefferino v. Meloche Monnex Insurance, 2012 ONSC 154 \(CanLII\)](#)