

# LET THE EXPERTS EXPLAIN THE BENEFITS

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The recent British Columbia Supreme Court decision in *Feldstein v. 364 Northern Corporation*<sup>[1]</sup> provides a useful reminder to employers that the consequences of providing incorrect or incomplete information about group insurance benefits to employees or prospective employees can be costly. The Plaintiff, Mr. F, developed cystic fibrosis at the age of 9. F worked as a software engineer for MacDonald, Dettwiler ("MDA") for 6 years and was insured under a group long term disability policy. Mr. F was not required to undergo any medical examination or fill out a health questionnaire to qualify for the group coverage. Instead, qualification was automatic following 6 months of employment.

Mr. F subsequently decided to apply for employment with the defendant 364 Northern Development Corporation ("364"). Since Mr. F had a young family and a mortgage, life insurance and long term disability coverage at least equivalent to what he enjoyed at MDA were critical to him. Accordingly, Mr. F specifically inquired about his eligibility under the 364 long term disability plan. Mr. F. disclosed his cystic fibrosis health condition and was provided with a benefits brochure from his prospective employer, which made reference to providing "Proof of Good Health" for the purposes of qualifying for LTD coverage. He was told that proof of good health meant completing the three month probationary period. He understood from this response from 364 that there were no other requirements in order to qualify for LTD coverage. This was consistent with his experience at MDA.

Accordingly Mr. F. accepted the position with 364. Then approximately 6 months later his health began to drastically deteriorate such that he was required to apply for LTD coverage. Upon application for LTD benefits the carrier, Sun Life, advised that because Mr. F. had not completed a health questionnaire, that his maximum monthly LTD benefit would be limited to \$1000.

Mr. F sued 364 for misrepresentation. The trial judge accepted that Mr. F. would not have accepted employment with 364 unless he was certain that he would be entitled to LTD coverage equivalent to what he had at MDA.

364's representation that Mr. F would automatically qualify for LTD once he completed his 3 month probation period (and thereby not advising Mr. F. that he was required to fill in a health questionnaire) was found to be negligent. Mr. F was awarded an amount equal to the amount that he would have received from Sun Life

(under the full coverage) for a period of 40 months (after deduction for CPP benefits) and an award of \$10,000 for aggravated damages.

This decision of the BC Supreme Court demonstrates the importance of providing full and correct information to prospective employees about benefits coverage. The consequence of getting it wrong may be that an employer in effect becomes responsible for insurance benefits. Accordingly it is important that inquiries about benefits be answered only by a representative of the employer with expertise in benefits coverage or, better still, responded to by the insurance provider.

by Louis J. Zivot

[1] 2016 BCSC 108 (BCSC, Power J.)[\[ps2id id='1' target=''\]](#)

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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