

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KRISTY LYNNE ARMOUR

Plaintiff

- and -

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

Defendant

A Proceeding under the Class Proceedings Act, 1992

STATEMENT OF DEFENCE

1. The Defendant Industrial Alliance Insurance and Financial Services Inc. ("**Industrial Alliance**") admits the allegations contained in paragraphs 5, 8 and 19 of the Statement of Claim.
2. Industrial Alliance has no knowledge in respect of the allegations contained in paragraph 2 of the Statement of Claim.
3. Industrial Alliance denies all the other allegations contained in the Statement of Claim except as expressly admitted herein. Industrial Alliance denies that the plaintiff, or any class member, is entitled to the relief claimed in paragraph 1 of the Statement of Claim.
4. With respect to paragraph 9 of the Statement of Claim, Industrial Alliance states that the class definition is as provided in the certification order of this Court, which was made on consent of the parties and dated November 1, 2019.

Overview

5. Industrial Alliance is a Canadian life insurance company. Among other things, Industrial Alliance provides group disability insurance policies, including the Public Service Management Insurance Plan policy ("**PSMIP Policy**").

6. The plaintiff, Kristy Lynne Armour ("**Ms. Armour**"), has been receiving long-term disability ("**LTD**") benefits since August 6, 2014 under the PSMIP Policy.

7. Ms. Armour's dispute with Industrial Alliance and the commencement of this class proceeding relates to the methodology by which Industrial Alliance calculates the annual cost of living allowance ("**COLA**") adjustment to LTD benefits under the PSMIP Policy.

8. Contrary to the allegations in the Statement of Claim, Industrial Alliance has paid LTD benefits and any applicable COLA adjustments to Ms. Armour and the class members in accordance with the PSMIP Policy and its corresponding member policy handbook. Industrial Alliance states that there is no legal or factual basis for the allegations made against it and the claim should be dismissed with costs.

The PSMIP Policy

9. The PSMIP Policy is a large group insurance policy issued to the Public Services Management Insurance Plan and their Successors. It was initially issued in 1968 by The National Life Assurance Company of Canada ("**National Life**"). In 2005, Industrial Alliance assumed the administration of the PSMIP Policy when it acquired both the assets and liabilities of National Life.

10. The PSMIP Policy provides public service employees who are excluded from collective bargaining, as well as certain designated groups and associate members and executives of the public services, with group life insurance, accidental death and dismemberment insurance, dependents' insurance and LTD insurance.

11. The LTD insurance component of the PSMIP Policy provides a monthly income benefit for employees who are unable to work for a lengthy period of time because of a totally disabling illness or injury as defined in the PSMIP Policy. However, the LTD benefit works in conjunction with other income replacement benefits that the employee may also be eligible to receive. The two principal income replacement benefits (other than LTD benefits) that may be available to PSMIP-eligible employees who become totally disabled are (i) disability benefits under the Canada Pension Plan (“**CPP**”) and (ii) medical retirement benefits under the *Public Service Superannuation Act* (“**PSSA**”).

12. Pursuant to the PSMIP Policy, CPP and PSSA benefits are “Reductions” from the amount of LTD benefits payable under the PSMIP Policy.

13. The LTD benefits paid under the PSMIP Policy, as well as CPP and PSSA benefits that may be paid to eligible employees who are disabled, are all subject to annual COLA adjustments.

14. The COLA adjustments for PSSA benefits are prorated in accordance with subsection 4(3) of the *Supplementary Retirements Benefits Act*, R.S.C. 1985, c. S-24.

Administration of the PSMIP Policy

15. The PSMIP Policy is a type of “full retention” policy, meaning that Industrial Alliance administers it on behalf of the policyholder and pays out the benefits. Premium contributions to the PSMIP Policy are made both by the eligible federal public service employees and their employer such that any LTD benefits paid out to eligible employees are considered to be taxable income in the hands of the employee.

16. The policyholder of the PSMIP Policy is the Board of Trustees of the PSMIP Plan (“**Trustees**”), composed of senior government officials appointed by the Treasury Board of Canada (“**Treasury Board**”).

17. The Treasury Board has an administrative arm called the Treasury Board of Canada Secretariat (“TBS”). Industrial Alliance is required to report annually to the TBS and Trustees as to the status of the PSMIP Policy’s finances. In addition, Industrial Alliance informs the TBS about certain administrative matters.

Methodology of Calculating Benefits under the PSMIP Policy

18. The PSMIP Policy provides for the payment of LTD benefits to totally disabled eligible employees on a monthly basis. The PSMIP Policy describes the method of calculating the “Initial Monthly Income Benefit” and also the manner in which the “Monthly Income Benefit” escalates in each subsequent calendar year.

19. Pursuant to the PSMIP Policy, the calculation of the initial “Monthly Income Benefit” is mathematical and is based on 70% of the employee’s pre-disability salary. This initial calculation is subject to the “Reductions” provision of the PSMIP Policy, which provides that the initial calculation be reduced by 100% of other income replacement benefits (*i.e.*, PSSA, CPP) being received by the employee.

20. Ms. Armour is in receipt of both CPP and PSSA benefits, so the initial amounts of these benefits are deducted from her LTD benefits amount under the PSMIP Policy.

21. The Monthly Income Benefit is paid monthly throughout a calendar year so long as the employee continues to remain eligible for LTD benefits under the PSMIP Policy.

22. At the end of the first calendar year in which LTD benefits are paid to an employee, the Monthly Income Benefit is subject to a COLA adjustment. Industrial Alliance calculates the amount of the LTD benefits for subsequent years by increasing the Monthly Income Benefit in accordance with the “Escalation of Benefits” provision at page 16 of the PSMIP Policy, which states:

In subsequent calendar years, the amount of Monthly Income Benefit payable shall be increased as of January 1st in each year by the lesser of:

1. The amount of any cost of living increase which is provided by the escalation provisions of the *Supplementary Retirement Benefits Act*, as that Act read on November 1, 1970, and
2. 3% per annum, with respect to a total disability which commences on or after September 1, 1979, and
3. 2% per annum, with respect to a total disability which commenced prior to September 1, 1979.

23. When Industrial Alliance reduces the initial amount of Monthly Income Benefit by the amount of CPP and PSSA benefits received by an employee, it reduces the benefit only by the initial amount of the benefit received. To the extent such benefits are themselves adjusted for COLA, the employee receives the benefit of such increases in the form of increased payments directly from CPP and PSSA.

24. Throughout the history of the PSMIP Policy, Industrial Alliance has used the foregoing methodology to calculate LTD benefits and COLA adjustments. Industrial Alliance has no liability to Ms. Armour and the class members in respect of its calculation methodology.

25. Industrial Alliance states that its methodology is further detailed and reflected in the PSMIP Policy employee "handbook" published by the TBS and made available to all eligible employees.

The current handbook, which is available on the Canada.ca website states:

How are my benefits calculated?

If you become totally disabled, your gross annual benefit will be 70 per cent of your insured annual salary at the end of your elimination period. The definition of salary is the same as that used for the Supplementary Death Benefit under the *Public Service Superannuation Act (PSSA)*. Your insured annual salary for LTD purposes is equal to your annual salary at the end of the elimination period if it is a multiple of \$250, or the next multiple of \$250 above that amount. A member working on a part-time basis will have his or her insured annual salary based on assigned hours of work. Payments are made monthly. Other income, whether it be income

received as a result of being in receipt of benefits under the PSSA or disability income under the Canada Pension Plan (CPP) or Quebec Pension Plan (QPP), will be deducted as an 'offset' from your LTD benefits.

Your net benefit (i.e. the amount payable to you after other income has been deducted as an offset), will be subject to an annual increase related to increases in the cost of living, up to a maximum of three per cent.

Any retroactive salary increase approved after the date of your LTD benefits become payable affects your insured salary and benefit level only when the effective date of the increase precedes the date your LTD benefits began. Therefore, a retroactive salary increase approved in April that took effect from February 10 would only affect your LTD benefits if they began on February 11 or later.

Example of benefit calculation

1. Your annual salary at the end of elimination period	\$47,925
2. Your insured salary (annual salary taken to the next highest multiple of \$250) would be	\$48,000
3. Your gross annual LTD benefit is (70% of \$48,000)	\$33,600
4. Less other income you are receiving	
Ex: PSSA	\$14,000
CPP disability benefit	\$8,000
5. Your net annual LTD benefit would be	\$11,600
6. And the amount of monthly LTD payments (\$11,600/12) would be	\$967

If the cost of living rose by two per cent the year following the commencement of your benefits, your net monthly LTD benefit of \$967 would be increased by two per cent to \$986.34 on the January 1 following the effective starting date of your benefits.

At the same time, your PSSA and CPP or QPP benefits would also be increased in relation to rises in the cost of living. You would receive the full increases under those plans and those increases would not be deducted from your LTD benefit.

On January 1 of each subsequent year, your LTD benefit would be further increased to reflect increases in the cost of living, up to a maximum of three per cent annually.

No Breach of Contract or Duty of Good Faith

26. Industrial Alliance denies that it has breached the terms of the PSMIP policy or acted in bad faith.

27. Contrary to the allegations at paragraphs 15, 17, 18, 23, 26 and 27 in the Statement of Claim, Industrial Alliance has not failed to pay Ms. Armour, or any of the class members, the COLA adjustments to which they are entitled under the terms of the PSMIP Policy; nor has Industrial Alliance wrongfully calculated their COLA adjustments contrary to the terms of the PSMIP Policy.

28. At all material times, Ms. Armour and the class members were paid LTD benefits and COLA adjustments under the PSMIP Policy in accordance with the express terms of the PSMIP Policy and handbook, and the methodology set out above at paragraphs 18 to 25. Specifically, Industrial Alliance's application of the annual COLA adjustment to the *net* monthly disability benefit payable to any given class member *after* applying specified Reductions complies with the terms and obligations of Industrial Alliance under the PSMIP Policy.

29. Industrial Alliance denies the allegations of bad faith and/or wilful misconduct on its part as set out in the Statement of Claim at paragraphs 16, 17, and 29. In all of its dealings with Ms. Armour and the class members, including those respecting the calculation of annual COLA adjustments for LTD benefits, Industrial Alliance has acted reasonably and in good faith, and in accordance with its contractual, statutory and all other rights and obligations.

30. Industrial Alliance specifically denies the allegation at paragraph 29 of the Statement of Claim that it "preferred its own corporate and financial interests" above those of its insured. Such allegations are wholly without foundation and demonstrate a fundamental lack of understanding of the terms and conditions of the PSMIP Policy and the manner in which it is administered.

No Misrepresentation

31. Industrial Alliance has consistently and accurately represented to Ms. Armour and the class members that it calculates the annual COLA adjustment to the net monthly disability benefit payable after applying specified Reductions in accordance with the PSMIP Policy.

32. Ms. Armour has not pleaded any specific misrepresentation.

Damages

33. Industrial Alliance denies that Ms. Armour, or any class member, has not received the COLA adjustment to which they are entitled and suffered any damages as alleged, or at all.

34. In the alternative, if the class members, or any of them, have suffered any damage as alleged, which is not admitted but denied, Industrial Alliance pleads that the damages claimed are excessive, exaggerated, remote, unavailable at law, unmitigated and unconnected with any alleged act or omission on the part of Industrial Alliance, and puts each of the class members to the strict proof thereof.

35. Ms. Armour alleges at paragraph 29 of the Statement of Claim that Industrial Alliance's conduct warrants punitive damages. Industrial Alliance strongly denies this allegation and states that Ms. Armour's claim for bad faith, punitive and exemplary damages is without any basis. At no time did Industrial Alliance's conduct warrant punishment, deterrence and/or denunciation, nor was Industrial Alliance's conduct reprehensible or outrageous.

Claims are Statute-Barred

36. The alleged claims of Ms. Armour and the class members are barred by applicable limitation periods, and Industrial Alliance pleads and relies upon the provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24.

37. Industrial Alliance states that the principles of discoverability do not apply in the circumstances of this case so as to postpone or preclude operation of limitation periods that are otherwise applicable.

38. Industrial Alliance further pleads and relies upon all pertinent statutes and regulations, including the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended, the *Rules of Civil Procedure*, Reg. 194, and the *Insurance Act*, R.S.O. 1990, c. I.8, as amended.

39. Industrial Alliance asks that this action be dismissed with costs.

January 25, 2021

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Plaintiff

-and-

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Defendant

Court File No. CV-18-00078412-00CP

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Proceeding Commenced at Ottawa

STATEMENT OF DEFENCE

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