

Case Law Update

The Latest Position on TPD Claims

*Manglicmot v Commonwealth Bank
Officers Superannuation Corporation*

- Trustees' duties
 - Selecting a new insurance policy
 - Determining Total and Permanent Disability (TPD) claims

- Plaintiff employed as a bank teller
- Various injuries in 1998 - two work injuries and a motor vehicle accident injury
- Plaintiff reduced hours from full time to 15 hours per week
- TPD claim declined by trustee's insurer
 - Video surveillance report showed Manglicmot carrying shopping bags, driving etc
 - Manglicmot accepted redundancy – did not cease work due to an inability to carry out his duties
- Trustee had recently changed insurance providers to avoid substantial premium increase



- Decision to enter new insurance contract breached trustee's duties
- Plaintiff suffered loss from inability to claim TPD under new insurance contract

Old policy

-“unable ever to engage in or work for reward in any occupation or work...”

New policy

-“not ever be able to resume any occupation, whether or not for reward”

-“occupation” defined as “an occupation that the person can perform, on a full time or part time basis”



1. Act in members' best interests
2. Act impartially – consider only relevant matters
3. Exercise reasonable care
4. Act honestly and in good faith
5. Exercise discretions responsibly and predictably
6. Exercise powers with due consideration for the purpose for which the power was conferred



- Trustee had absolute discretion to enter new insurance contract
- Trustee not required to give reasons but did
- Decision must be made “with an absence of indirect motive ... honesty of intention, and with a fair consideration of issues”
- Case determined this same test applied whether the trustees gave reasons or not



- Trustee bound to consider benefits of policy as well as premiums
- Trustee obtained assurance that terms of new policy would be matched or bettered
- Sought legal advice to this effect
- = No breach of duty owed to plaintiff under general law – discretion exercised in good faith on genuine considerations

- Plaintiff argued his ability to work 15 hours a week was not a bar to TPD claim under old policy, but was under new policy
- Determined no reason to read old policy as necessarily meaning full time work only
 - Had to be unsuitable for *any* work
 - *Total* and permanent disability

- Number of 2010 Superannuation Complaints Tribunal read a “full time” requirement into TPD definition
- Case shows a shift in the opposite direction – capacity to work part time relevant to TPD benefit decision

- Take home message for trustees:
when making a decision affecting all
members or individual members
keep your trustees' duties in mind –
exercise discretion in good faith and
on genuine considerations

- Any questions?