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DECISIONS, DECISIONS, DECISIONS: GENERAL PRINCIPLES FOR INSURERS WHEN DECIDING TPD CLAIMS

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An insurer breached its duty to a person claiming a Total and Permanent Disablement benefit when it declined the claim on two separate occasions. This decision highlights the general legal principles for insurers when deciding TPD claims, particularly when the claim involves a re-insurer.

IN ISSUE

- Whether the decision by an insurer to decline a claim for a Total Permanent Disablement benefit should be declared void and of no effect on the basis that the insurer breached its duty in the process of reaching its decision.

THE BACKGROUND

The plaintiff was formerly a Detective Sergeant who worked undercover with the NSW Police Force. He was discharged in 2011 due to suffering from post-traumatic stress disorder and accordingly claimed a Total and Permanent Disablement (TPD) benefit from his superannuation fund in 2012. This fund provided cover to members pursuant to a policy held with Metlife Insurance Limited (Metlife) which was reinsured with RGA Reinsurance Company of Australia Limited (RGA). RGA declined to indemnify Metlife in respect of the plaintiff's claim on the basis that the injury arose prior to the commencement of the reinsurance agreement. Metlife declined the plaintiff's claim for TPD benefits by a letter dated 1 December 2014 (the first decision, and again by a letter dated 9 June 2017 (the second decision).

THE DECISION AT TRIAL

In relation to the first decision, the court found that Metlife had breached its duty to the plaintiff in various ways:

1. Metlife failed to disclose its reinsurance situation with RGA to the plaintiff.
2. Metlife failed to provide the plaintiff with a copy of written legal advice as to whether the claim should be accepted, which it had already provided to RGA.
3. Metlife failed to avoid the conflict of interest between its contractual obligations:
    a. to make decisions governed by the duty of utmost good faith to the plaintiff, and

b. not to contravene the reinsurance agreement with RGA by paying the claim without RGA's approval.

4. Metlife took into account an irrelevant consideration (RGA's refusal to indemnify)when making its decision and, in doing so, breached the duty of utmost good faith it owed to the plaintiff and the duty to act reasonably when forming an opinion of the plaintiff. Finally, Metlife failed to explain how it reached its decision so that the plaintiff could be satisfied that the decision was made in good faith.

In relation to the second decision, the court found that it was inappropriate for Metlife to approach the second decision by considering whether the material which had arisen since the first decision warranted a different decision on reconsideration. Instead, Metlife, should have considered the entire claim with all material afresh, without being tainted by the first decision. The court held that the decisions by Metlife were void and of no effect.

IMPLICATIONS FOR YOU

This decision highlights the importance of an insurer separating its own decision-making from the influence of any reinsurer rights. An insurer also needs to be able to demonstrate the reasonableness of its decision by incorporating into its written decision an evaluation of the medical, vocational and other evidence, and whether it has been accepted, rejected, reconciled or otherwise dealt with to explain how they came to their decision. Further, when reaching a second decision, an insurer must approach that second decision afresh and not allow itself to be tainted by the first decision.

MX v FSS Trustee Corporation as Trustee of the First State Superannuation Scheme & Anor [2018] NSWSC 923

AUTHORS

ISOBEL YULE
SOLICITOR

+61 7 3231 6166
isobel.yule@bnlaw.com.au