

Appeal Court rules unionized employer can be sued for negligent administration of life insurance plan

The Ontario Court of Appeal has once again considered the issue of the jurisdiction of courts over litigation between unionized employers and their employees. The issue, well-known to readers of *FOCUS* alerts, is the applicability of the doctrine set out by the Supreme Court of Canada in its 1995 decision, *Weber v. Ontario Hydro*, under which courts will decline to take jurisdiction over a dispute if the essence of the dispute arises under the collective agreement. The decision, *Perlett Estate v. Riverside Health Care Facilities Inc.* (May 26, 2005) demonstrates how important the language of a collective agreement is to a determination of whether employees can go to court or must arbitrate the dispute. The decision involved a claim for life insurance benefits by the estate of a deceased nurse. The group life insurance plan provided for two types of benefits: basic life insurance benefits in stipulated amounts and enhanced benefits equal to double the annual earnings of the insured. Because, in 1981, the nurse had elected basic benefits coverage, when her estate presented its claim for the benefits, the insurer paid out only about \$10,000.

GRIEVANCE AND COURT ACTION LAUNCHED

The nurse's union commenced a grievance against the employer under the arbitration provisions of the collective agreement. The employer took the position that the grievance was not arbitrable because its only obligations under the collective agreement in relation to the group life insurance plan were to pay a stipulated percentage of the premium on the policy when due and to provide employees with an information booklet concerning the policy. The policy did not form part of the collective agreement nor did the collective agreement set out the terms upon which the group life insurance plan was to be administered.

The estate then sued the employer and the insurer in court. It settled its claim against the insurer, but the action against the employer continued. The estate alleged that the employer had been negligent in its administration of the group life insurance plan, with the result that the estate had been wrongfully denied the enhanced benefits to which the nurse would have been entitled under the plan. The employer agreed not raise the issue of the court's jurisdiction to hear the matter at trial and, on this basis, the grievance was settled.

In her decision, the trial judge held that the employer owed its employees a duty of care to advise them about group insurance and to administer its group benefits plans competently. In the case of the deceased nurse, the judge found, the employer had breached this duty in several respects and that, if properly informed of the availability of the enhanced insurance benefits under the policy, the nurse would have applied for and received the enhanced benefits coverage. However, citing *Weber*, the judge dismissed the action, holding that the employer's negligence in administering the insurance plan was a matter governed by the collective agreement. The judge made this ruling despite the fact that the jurisdictional issue had not been raised during the trial. The estate appealed the dismissal.

COURT OF APPEAL: COLLECTIVE AGREEMENT SILENT ON THE DISPUTE

The Court of Appeal allowed the appeal and gave three reasons. First, it held that, in concluding that the issue of the employer's negligence in administering the group life insurance plan was governed by the collective agreement, the trial judge had failed to determine the essential character of the dispute and whether the matter fell within the ambit of the collective agreement, having regard to the employer's limited obligations in the specific provisions of the agreement that related to the group life insurance plan. Second, the issue of whether the estate's claim was arbitrable had not been raised at trial. Yet the judge's holding that the claim was arbitrable was the very basis on which she had dismissed the claim.

Third, the Court held, the essential character of the dispute was not, in fact, governed by the collective agreement:

"[T]he essential character of the dispute between the parties in this case concerned the propriety of [the employer's] administration of the group life insurance plan and its duties to [the nurse] as a participating member of that plan. The collective agreement is silent on these issues. The agreement provides only for [the employer's] obligations to pay the premiums on the Policy when due and to furnish its employees with an information booklet concerning the Policy."

In this case, the Court noted, there was no dispute as to whether the employer had paid premiums under the policy, as it was required to do under the agreement. Accordingly, the Court held, the essential character of the dispute did not engage the rights and obligations of the parties as set out in the collective agreement.

"CLEAR FINDINGS" OF TRIAL JUDGE ON BREACH BY EMPLOYER UPHeld

Having overruled the trial judge's dismissal of the estate's action on jurisdictional grounds, the Court went on to note that the judge had made "clear findings" that the employer had owed the nurse a duty of care to properly administer the plan and that it had breached this duty. The employer had not appealed this aspect of the judge's ruling, and there was no dispute between the parties as to the amount of the estate's loss – over \$200,000. Given these factors, the Court held that it should give effect to the trial judge's findings. In the result it awarded the estate more than \$200,000 in damages along with interest.

In Our View

This decision is again a reminder that the determination of whether a dispute must be arbitrated is driven by whether the essential nature of the dispute arises from the interpretation, application, administration or violation of the collective agreement. (See also "[Ontario Court of Appeal revisits arbitrability of employee benefit claims](#)".)

It should be noted also that the result in this case is consistent with those in a recent series of decisions that deal with the circumstances under which employee benefit claims are arbitrable. The principle emerging from those decisions is that, if the language of the collective agreement indicates an intention by the employer to be responsible for providing benefits, the claim may be arbitrated. If the agreement is silent about benefits, or if the employer undertakes only to pay plan premiums, the employee must pursue their remedy in court.

For further information, please contact **Lynn Harnden** at (613) 940-2731.

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