Watch Your Language! The 2 Words that Cost a Disability Plan $91,000

They say a picture is worth 1,000 words. But sometimes words themselves—or the lack thereof—are worth a lot of money. Like $45,500 apiece. Here's a case in point.

BACKGROUND

Employees receiving disability benefits through their employers may apply for workers' compensation payments covering the same disability. Fair enough. But what happens if the claim is accepted and the employee starts getting workers' comp payments?

Most employers want to be able to get this money back from the employee. So they include a provision letting the plan subtract any workers' comp payments received against disability benefits due under the disability plan. Setting off payments is perfectly legal. But you better watch out how you draft the offset clause in the plan document. Specifically, make sure the right to offset includes workers' comp payments not just for the original disability but for related ones.

THE QUESTION

Here's a quiz to dramatize the point. It's based on an actual case—2 of them in fact. One took place in Alberta, the other in BC. In both cases, a disability plan sued a beneficiary to recover workers' comp payments. The issue in each case was whether the offset clause allowed them to do this. One plan won; the other lost.

Here are excerpts from the actual plan documents. Can you tell by reading them who won?

- **Alberta Plan:** [Disability benefits will be reduced by] "any amount of income provided for the Employee by reason of the Employee's same or subsequent disability. . . ."
- **BC Plan:** "Benefits will be reduced by any income the Member receives . . . for the same disability. . . ."

THE ANSWER

The Alberta plan won; the BC plan lost.

THE EXPLANATION

At first glance, the 2clauses appear almost identical. But the BC plan applies to payments for the "same disability"; the Alberta plan covers the "same *or subsequent* disability." It looks like a miniscule difference. But failure to include these 2 measly little words cost the BC plan $91,202. Here's what happened in each case:

The Alberta Case

An employee starts receiving disability benefits after suffering three accidents at work. He files for workers' comp but his claim is denied. He appeals and after a 2-year fight, wins his case and starts getting workers' comp benefits. The plan sues the employee to recover the amount of disability benefits it paid him from the proceeds of the workers' comp payments. The plan wins. The offset clause in the plan clearly covers the payments the employee received from workers' comp, the court rules [*Sun Life Assurance Co. of Canada v. Halla*, [1993] A.J. No. 693].

The BC Case

A truck driver suffers a debilitating knee injury. He's turned down by workers' comp and spends 11 years appealing. All this time, he receives disability benefits under the plan. He promises to pay back the plan if and when he wins the workers' comp. appeal. Finally, he does win and starts getting workers' comp benefits. But he refuses to pay back the plan. The reason? A year after hurting his knee, the employee hurts his back in rehab and eventually needs spinal fusion surgery. The employee claims that the workers' comp benefits cover both the knee and back injury but the offset clause and promise to pay back covers only the knee injury.

The court agrees and directly cites the Alberta case. Had the clause been worded like the clause in the Alberta case, which covered "the same or subsequent disability," the offset clause *would have* covered the back injury and the employee would have had to pay back the workers' comp. benefits, the court says. But the clause in this plan covered only the "same disability." And, since the back injury wasn't the same disability, the offset clause didn't apply [*McGill v. Worthing*, [2005] B.C.J. No. 1759].

THE LESSON

These cases demonstrate that if a dispute arises with a disabled beneficiary over the meaning of a provision in a disability plan, the court will interpret the words of the plan very strictly against the plan. This means that if there's any ambiguity at all, the court may read the plan in a way that favors the beneficiary. This applies not simply to offset rights but to just about any other provision of the disability plan.