

## **You Must Pay Before You Can Sue: \$200,000 in Security for Costs Awarded**

### ***The Issue***

In certain situations, the Court can order that a plaintiff (bringing a lawsuit) must pay money into Court as a pre-condition to continuing their lawsuit.

### ***Why This Matters***

The recent Ontario Superior Court of Justice case of [Future Health Inc. v. Economical Mutual Insurance Company, 2012 ONSC 4308 \(CanLII\)](#) deals with a plaintiff company that was bankrupt and bringing this lawsuit against the defendant. The plaintiff bankrupt company was ordered to pay security for costs, arising from the concern that the plaintiff had 'nothing to lose' with the lawsuit – i.e. the risks arising from losing the lawsuit are lessened, since the bankrupt plaintiff company would have no assets to pay any adverse cost award arising from a loss at Trial.

For people involved in car accidents or hurt in a slip and fall accident, it is important to note that Security for Costs motions can be brought against you, in your lawsuit as plaintiff, if you reside / live outside of Canada. The theory in that type of situation is that if you do not live in Canada and have no assets here, then you would also be 'judgment proof' or have very little risk exposure in case you ultimately lost your lawsuit (i.e. the defendant would have a difficult time enforcing a costs award against you if you live in another country).

### ***The Details***

In case of [Future Health Inc. v. Economical Mutual Insurance Company, 2012 ONSC 4308 \(CanLII\)](#), this physiotherapy / chiropractic therapy centre, previously focused heavily on

providing car to people injured in car accidents, says that it was driven out of business by the defendant Economical Insurance and others. The plaintiff company went bankrupt in 1998 and started this lawsuit in 2000.

Interesting, this security for costs motion was brought by the defendant in 2012. Notwithstanding this 12 year delay (note: security for costs motions are to be brought in a timely manner), the defendant here satisfied the Court that there was no undue delay in bringing this motion.

The Court's breakdown of the issues to consider is found at paragraph 7:

- [7] The issues to be determined are therefore as follows:
- (a) **Impecuniosity/financial hardship** – Has Future Health met the required nus of establishing impecuniosity or financial hardship?
  - (b) **Merits of case** – Has Future Health met the required onus of establishing the merits of the case?
  - (c) **Delay** – Should the requested order be refused on the basis of delay by Economical in seeking security for costs?
  - (d) **Quantum** – What is the appropriate amount for security for costs?

At the time of the motion, the defendant Economical submitted that its legal costs were almost \$100,000 incurred. Economical further submitted to Court that it would have to review approximately 80 bankers boxes of materials in order to prepare and proceed through to Examinations for Discovery. Given that 10 other insurers were potentially alleged to have been involved in this same conspiracy against the plaintiff therapy centre, if each of those insurers had similar amounts of documents to review, then the total amount of material (of all 11 insurers) might be in the range of 880 bankers boxes of materials.

At paragraph 34, the Court ordered that the plaintiff company pay \$200,000 into Court within 90 days, as security for costs. Ominously for the plaintiff, the Court left open the door for the defendant Economical to bring further security for costs motions, in this action, as required:

## VII. Conclusion

[34] For the reasons above, an order will issue as follows:

(a) The Plaintiff is required to pay into court as security for costs, as follows:

- (i) Within 45 days of service of this order on the Plaintiff, the sum of \$50,000,
- (ii) Within 90 days of service of this order on the Plaintiff, an additional \$150,000, and
- (iii) Upon further motion of the Defendant, such additional amount as the court determines is just.

(b) Until security for costs required by this order has been paid into court, the Plaintiff may not take any step in this action except an appeal from this order.

For further information on security for costs, see our previous blog: [Court orders security for costs, cites cost of enforcing costs award](#)

Gregory Chang  
Toronto Insurance and Personal Injury Lawyer