

INSURANCE LAW BULLETIN

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Limitation Periods and Non-Earner Benefits: The Debate should be over

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Recent case law from the Superior Court of Justice has once again confirmed that the limitation period is triggered following an insurer's proper denial of a non-earner benefit even if the claim has not technically crystallized.

In *Bustamante v. The Guarantee Company of North America*¹, the plaintiff was injured in a motor vehicle accident on June 3, 2004. She submitted an application for accident benefits which confirmed that she may be eligible for the income replacement and non-earner benefits. The insurer recognized that the plaintiff was potentially entitled to both benefits and requested the plaintiff complete an election form. The plaintiff elected the income replacement benefit. On September 1, 2004, the insurer denied the non-earner benefit by virtue of the fact that the plaintiff qualified for the income replacement benefit. The income replacement benefit was discontinued as of July 26, 2006 based on the findings in various insurer examinations. Slightly more than three years later (September 25, 2009), the plaintiff applied for non-earner benefits. Following a failed mediation, a claim was issued for non-earner benefits and various damages relating to bad faith and mental distress. The insurer sought summary judgment on the grounds that the limitation period had expired and that there was no genuine issue requiring a trial.

At the motion, the plaintiff's argument focused on the submission of the election form. It was argued that her election of the income replacement benefit (via OCF-10) meant that no application for the non-earner benefit had been made. Since there was no claim to the non-earner benefit at the time of the denial in September 2004, the limitation period was not triggered. Justice Ramsay disagreed. He referenced the recent Court of Appeal decision in *Sagan v. Dominion of Canada General Insurance Co.*² In particular, Justice Ramsay stated the following:

In *Sagan*, the insurer refused benefits because there was no disability certificate. The lack of a disability certificate was held not to affect the validity of the refusal. *I do not see why an election or lack thereof would make any difference, either. I interpret the application as an application for any available benefit. The election form simply determines which one*

¹ 2014 ONSC 6978.

² 2014 ONCA 720.

the applicant prefers to receive if she turns out to be eligible for more than one. But in any event it is the refusal that starts the limitation period running. (emphasis added).

Summary judgment was granted.

Justice Ramsay also released a similar decision granting summary judgment on December 3, 2014. In *Steele v. Intact Insurance Company*,³ the plaintiff was injured in a car accident in February 2007. She applied for non-earner benefits in October 2011. No disability certificate (OCF-3) was ever submitted indicating that she met the test. As a clear and unequivocal refusal of the benefit was made in 2007, the limitation period had expired.

In addition to the above, we now know that the Supreme Court of Canada has refused leave to appeal of *Sietzema*. These decisions make it clear that if a non-earner benefit has been properly denied, the limitation period will begin to run on the date of the denial despite the fact that the benefit is not technically available.

³ 2014 ONSC 6999.