

Duty to Offer Insurance Coverage: Causation Issue

The recent decision of the Court of Appeal in *Zefferino v. Meloche Monnex*¹ provides a helpful look at the issue of causation where an insurer or agent fails to offer insurance.

Mr. Zefferino obtained auto insurance from Meloche Monnex. Apparently, the insurer failed to offer him optional income replacement benefits. He sued and moved for summary judgment on the basis that: (1) the insurer owed him a duty to offer the extra insurance; (2) it had not done so, and (iii) there was a gap in coverage. Mr. Zefferino argued that these facts were sufficient for judgment to be granted, submitting that on a claim arising out of insurance broker negligence, there was an exception from the normal rule that a plaintiff must prove causation, and this could be justified on the basis that insurance contracts are different than normal contracts. To do otherwise, he argued, would place an impossible burden on the insured.

The court held that it is a question of fact as to whether an insured would have purchased the additional insurance, if it had been offered. While each case will turn on its own facts, it is incumbent upon a plaintiff to lead sufficient evidence so that the trial or motions judge can make that finding of fact. A bald assertion by an insured that he would have purchased the extra insurance, if it had been offered, is not enough. Further, in this case, the insured had never before purchased the additional insurance and there was no evidence other than his bald assertions to explain why he would have done so this time.

This case has obvious (positive) implications for banks and credit unions which are faced with claims by surviving spouses where mortgage (life) insurance was not put into place. The claimant cannot rely solely on the gap in coverage, but instead must lead some evidence of causation.

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