

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Industrial Alliance Insurance and Financial Services Inc. v. Brine*,  
2015 NSCA 104

**Date:** 20151117  
**Docket:** CA 431538  
**Registry:** Halifax

**Between:**

Industrial Alliance Insurance and Financial Services Inc.

Appellant  
Respondent by Cross-Appeal

v.

Bruce Brine

Respondent  
Appellant by Cross-Appeal

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**Judges:** Decision of the Court

**Appeal Heard:** April 16, 2015, in Halifax, Nova Scotia

**Subject:** Insurance – policy interpretation – duty of good faith – mental distress damages – damages for lost opportunity – aggravated damages – punitive damages – subrogation

**Summary:** The insured Mr. Brine was totally disabled and was covered by a long term disability policy issued by Industrial Alliance (“insurer”). The insurer accepted coverage and paid disability benefits. Under the policy, the insurer was to be the last payor. Mr. Brine recovered amounts from other sources. The insurer then stopped paying any disability benefits in order to recover these amounts. Mr. Brine entered bankruptcy. After his discharge from bankruptcy, the insurer continued its cessation of disability benefits until the overpayments were recouped. Then the insurer resumed the disability benefits. At trial, the insured claimed that the insurer had breached the terms of the policy, on recovery of overpayments, and the insurer’s duty of good faith. The insurer claimed another amount that Mr. Brine had received

from a human rights complaint.

The trial judge held that the policy did not entitle the insurer to completely stop the payments, in order to recover the overpayment. Rather, the policy required the insurer to prorate its recovery over time. The judge awarded Mr. Brine damages for the insurer's breach of the policy. The judge determined that the insurer had breached its duty of good faith in several respects. The judge awarded Mr. Brine \$30,000 for mental distress, \$150,000 aggravated damages and \$500,000 punitive damages.

The insurer and Mr. Brine appealed and cross-appealed from various aspects of the judge's decision.

**Issues:**

Did the judge err in her interpretation of the policy's provisions respecting the insurer's recovery of overpayments, and in the application of those provisions given Mr. Brine's bankruptcy? Did the judge err in formulating the principles governing the insurer's duty of good faith? Did she err in her conclusions that the insurer breached its duty of good faith, and by not finding other breaches of the insurer's duty of good faith? Did the judge err by denying damages for lost opportunity? Did she err by awarding aggravated damages? Did she err in the quantification of damages for mental distress and aggravated damages? Did she err in awarding punitive damages, or in the quantification of punitive damages? Did the judge err in her interpretation and application of the policy's subrogation provision?

**Result:**

The Court of Appeal allowed the insurer's appeal in part, and dismissed Mr. Brine's cross-appeal.

The judge did not err in her interpretation or application of the policy's provisions regarding recovery of overpayments, or the test governing the insurer's duty of good faith. She did not err either in her rulings that the insurer had breached its duty of good faith on several bases, or in rejecting the two further alleged bases for such a breach that Mr. Brine had urged. The judge did not err in denying damages for lost opportunity or in her ruling that the insurer was subrogated to an amount, related to lost income, from Mr. Brine's recovery on his human rights claim.

The judge committed an appealable error in her quantification of

damages for mental distress and aggravated damages. The Court of Appeal substituted one award of \$90,000 for the judge's two awards of \$30,000 (mental distress) plus \$150,000 (aggravated damages). The judge did not err in awarding punitive damages, but committed an appealable error in their quantification. The Court of Appeal reduced the punitive damages from \$500,000 to \$60,000.

***This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 64 pages.***