

**SUPREME COURT OF NOVA SCOTIA**

Citation: Industrial Alliance Insurance and Financial Services Inc. v. Brine,  
2014 NSSC 219

Date: 20140618  
Docket: Hfx. No. 174118  
Registry: Halifax

**Between:**

**Industrial Alliance Insurance and Financial Services Inc.**

-and-

**Bruce Brine**

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**Judge:** The Honourable Justice Cindy A. Bourgeois

**Heard:** November 4-7, 12 and 13, 2013 in Halifax and Bridgewater, Nova Scotia

**Written**

**Decision:** June 18, 2014

**Subject:** Interpretation of Insurance contracts, duty of good faith, application of principles of subrogation and estoppel.

**Summary:** Brine was an insured under a long term disability policy. He was approved for long term disability monthly benefits due to disabling depression. He was initially provided rehabilitation services which were subsequently cancelled. He asked for rehabilitation services to be re-instated, but the insurer did not do so. Due to receipt of lump sum retroactive payments in relation to CPP and Superannuation awards, the insurer undertook an upfront clawback of Brine's disability benefits for a period of almost five years, asserting that receipt of the retroactive funds resulted in an overpayment. Brine claimed the insurer acted in bad faith in a number of ways and sought significant aggravated and punitive damages. The insurer also sought pursuant to the subrogation provisions of the policy to recoup funds in relation to the

settlement of a human rights complaint undertaken by Brine.

**Issue:** Was the insurer's interpretation of the policy correct, permitting the clawback? Was the insurer estopped due to representations made to Brine from seeking to collect those funds? Did this debt survive Brine's bankruptcy? Did the insurer act in bad faith in terms of its management of Brine's claim? What damages, if any, are appropriate?

**Result:** The insurer was not permitted to undertake an upfront clawback of Brine's disability benefits, and damages were awarded accordingly. The overpayment did not survive Brine's bankruptcy. The insurer acted in bad faith in several ways. Brine was awarded aggravated damages due to the mental distress arising from the insurer's breach of its duty of utmost good faith. The insurer's conduct was so oppressive and high-handed, that it justified a significant award of punitive damages.

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**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.**

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