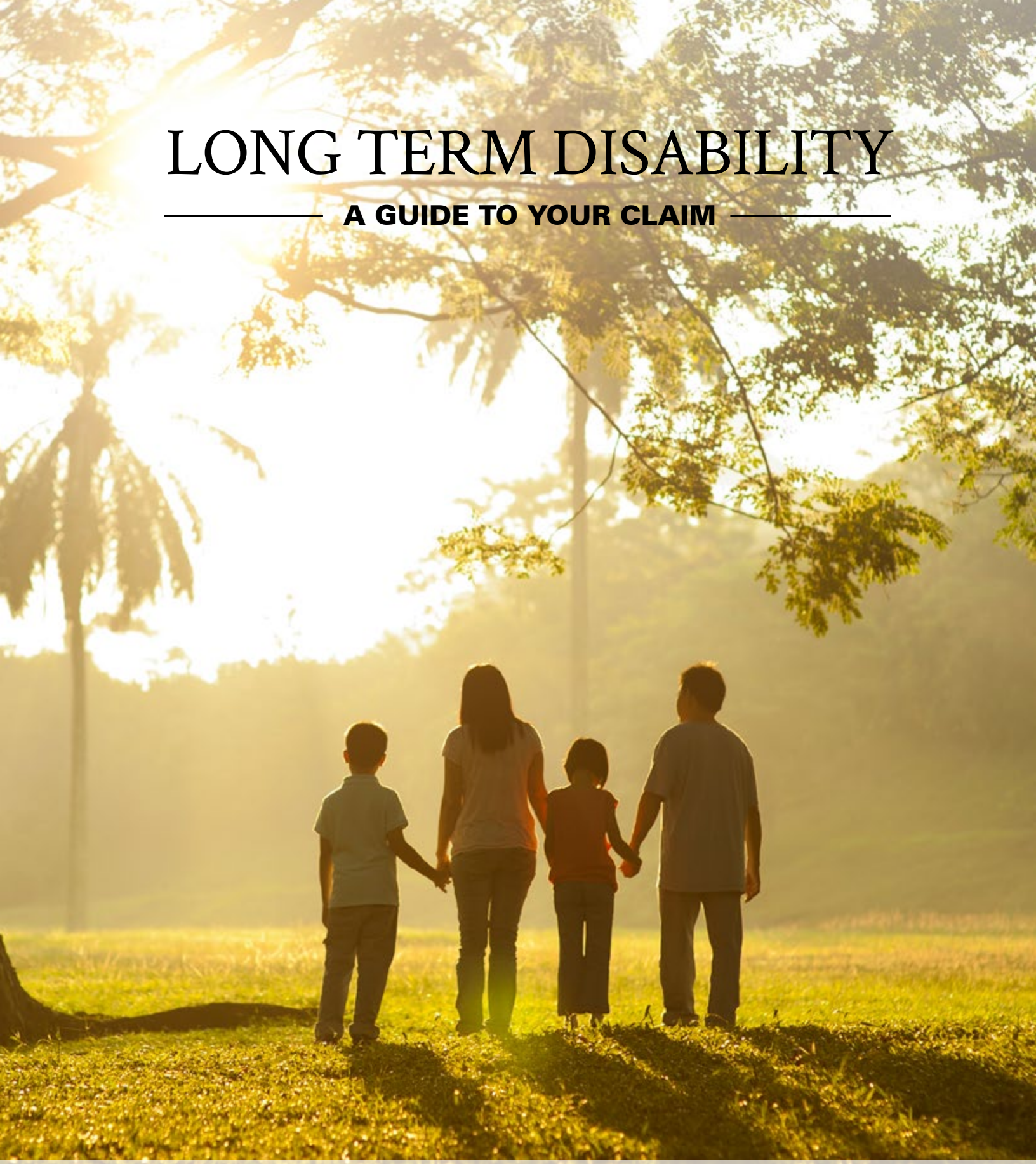
LONG TERM DISABILITY

A GUIDE TO YOUR CLAIM



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BACKGROUND INFORMATION ABOUT LTD INSURANCE

WHAT IS LTD INSURANCE?

Long-Term Disability (LTD) insurance pays you a portion of your lost income if you become too disabled to work.

HOW IS LTD INSURANCE REGULATED?

LTD insurance in Canada is regulated at the provincial level and is therefore governed by your province's laws, which may include:

ARE ALL LTD POLICIES THE SAME?

If you drive a car, you must have insurance. Since car insurance is legally required, all car insurance policies in that province are fairly similar and must offer at minimum a certain amount of coverage.

Disability insurance policies are different. Because you aren't obligated to have an LTD policy, there is no legally defined minimum or "standard" coverage. That means **all LTD policies are different** and can vary greatly from one to the other.

ARE YOU ELIGIBLE?

WHAT IF MY DISABILITY DIDN'T HAPPEN AT WORK?

Even if you receive your LTD coverage through your employer, **you don't need to have been injured at work to qualify for long-term disability benefits.** LTD insurance isn't there to compensate you for workplace accidents – **it's to replace your income if you become unable to work.**

WHAT QUALIFIES AS A LONG-TERM DISABILITY?

Most LTD policies cover you no matter what injury or disability prevents you from working – the key point is that you aren't able to work.

Some policies, however, exclude certain specific illnesses; others may exclude illnesses that are compensable under a workplace compensation claim.

Note that **the disability must have happened since the time your LTD insurance was active**, so any disability you had before you got your insurance will be excluded.

HOW DISABLED DO I HAVE TO BE TO QUALIFY?

Generally, you will qualify for LTD benefits if you are not able to do all (or most) of the duties of your current job.

Some policies say you must be "completely disabled" to qualify for benefits. That's usually just a different way to state the point above - **that you must be unable to perform the normal functions of your usual job**. It doesn't necessarily mean that you must be completely unable to do any part of your job at all – just that your disability is such that it would be better for you to stop working so you can focus on getting better.

Certain policies also require that, to qualify, you must be unable not only to do your current job, but any job for which you are qualified. Your policy documents will have full details.

WHEN CAN I APPLY FOR BENEFITS?

You need to be off work for several months before you can access LTD coverage – this is called the "elimination" or "qualifying" period and it generally ranges from 90 to 180 days (3 to 6 months). Your policy will specify the exact waiting period that applies to you. The waiting period exists to ensure that injuries are truly "long term" and not something that will heal in a few weeks.

In the short term you may have access to Short-Term Disability coverage (also called a Weekly Indemnity benefit plan) – those benefits will be available after a much shorter waiting period. If you don't have access to Short-Term Disability or Weekly Indemnity benefits, you may qualify for Employment Insurance Sickness Benefits through the Government of Canada. These can provide you with up to 15 weeks of sick benefits that usually provide up to 55% of your weekly income.

MAKING THE APPLICATION

HOW DO I APPLY?

The first thing to remember is that the rules that apply to you (for example which deadlines apply to you, the benefits you may be entitled to, how to apply for benefits) are all found in your specific insurance policy. There are very few general rules that apply to all long-term disability claims – the specifics vary from policy to policy, so you need to check your own policy to determine which rules apply to your claim.

Each long term disability insurance company has its own application package that you need to fill out and return to them. They generally all include three basic forms:

1. Claimant Statement Form (you fill this one out yourself)
2. Employers' Form (your employer fills this one out)*
3. Doctor's Medical Report Form (your doctor must fill this one out)

*If you are a self-employed professional or business person, you will have to fill out application forms for the self-employed. These will be supplied by your insurance company.

A delay in the insurance company receiving any of these forms will hold up your entire application. It's extremely important to have these forms filled out properly by yourself, your employer and your doctor.

> My doctor supports my LTD claim but the insurance company wants me to see a doctor they have chosen. Can they do this?

Many LTD policies allow the insurance company to have you assessed by the doctor of their choice to decide whether you are entitled to benefits. If that happens, the doctor chosen by the insurance company must be reasonably qualified to do the assessment, and the exam itself must be reasonable.

If you refuse (without good reason) to see the insurance company's doctor, you will be in breach of the insurance policy, which may be grounds for the insurance company to deny your claim.

This is often an area of great concern; if you have any doubts or questions, it may be in your best interest to seek the advice of a qualified lawyer.

THE INSURANCE COMPANY'S RESPONSE

I THINK THE INSURANCE COMPANY HAS HIRED SOMEONE TO FOLLOW AND VIDEOTAPE ME. IS THIS LEGAL?

Insurance companies often hire outside companies to follow, photograph and record people who make LTD claims. They do this to ensure that you are truly disabled and to minimize fraudulent claims.

That means it's particularly important to be honest and open with your doctors, specialists, the insurance company and your lawyer. If you are honest and open, nothing they videotape or photograph will hurt your case. In fact, it can be helpful to have that evidence, as it usually shows that you are in fact disabled.

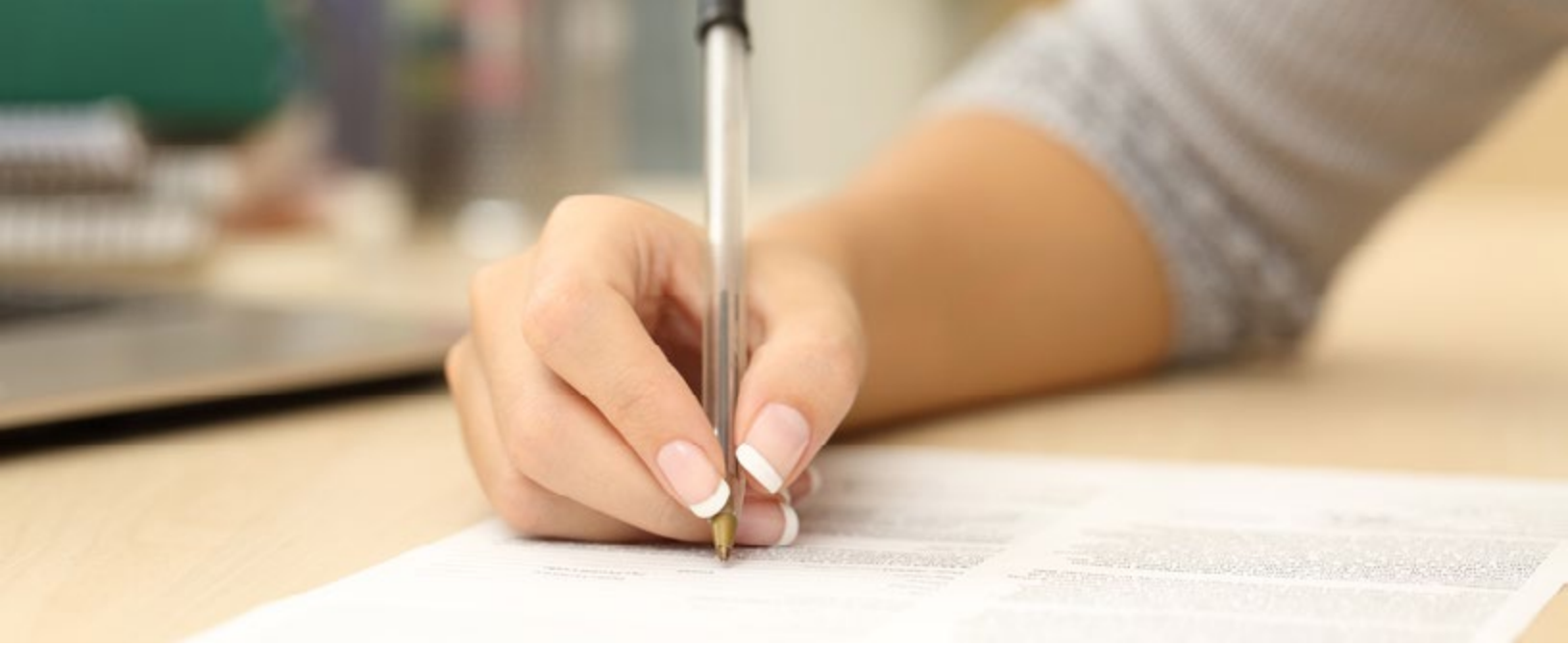
Generally speaking, this type of surveillance is legal. Most investigative companies obey the law and do not engage in anything that could be considered trespassing or an invasion of your privacy. However, if at any time you feel in danger, you should contact the police.

RECEIVING A RESPONSE

Once the insurance company receives all three forms (see pg. 5), it will review the information and make its decision. The length of time they have to make a decision will depend on what is stated in your policy – typically the time limit is 30 to 90 days.

When it has processed your claim, the insurance company will get back to you with one of three decisions:

1. Claim Approved
2. Claim Denied
3. More information is needed



MY CLAIM WAS APPROVED, WHAT HAPPENS NOW?

HOW MUCH DOES LTD PAY?

LTD policies typically pay 2/3 of your pre-disability salary (66.6%) but they may range between 50% and 80%. Some policies also have a maximum monthly payment which may cap the total amount you receive. Your policy will specify the amount you are entitled to.

Can other benefits be deducted from my LTD payments?

Most LTD policies are intended to top up the disability benefits available to you elsewhere. This means LTD policies usually deduct the amount you receive from other sources, such as:

- Benefits from any Worker's Compensation plan
- Disability benefits received under any other government program, like CPP or EI sickness benefits
- Income from a crime victim compensation program
- Wages from any employer, including any severance pay

CAN THE INSURANCE COMPANY DEDUCT MY CHILDREN'S PORTION OF MY CPP DISABILITY BENEFITS?

Often your LTD benefits can also be reduced by the amount payable to your dependants (children, for example) as well. One very common example of this is the deduction of benefits payable to the children of a person receiving CPP Disability. If your insurance company makes this deduction you should speak with a lawyer right away.

CAN MY LTD INSURANCE COMPANY FORCE ME TO APPLY FOR CPP BENEFITS OR OTHER BENEFITS?

Often, yes. Many policies allow the insurance company to make you apply for benefits from another source (like CPP or Worker's Compensation), since these additional benefits would be deducted from the payments you receive from the insurance company. If you choose not to apply for these other benefits, the insurance company may still deduct from your monthly benefits the amount you would have been entitled to receive.

If you apply for other benefits and are denied, they may also be able to make you appeal the decision. If you are asked to do something like this, ask the insurance company representative to show you which part of the policy gives them the power to ask you to do this.

ARE MY BENEFITS TAXED?

If your employer was paying for your LTD insurance, your benefits will be taxed. If you were paying for the insurance yourself they will not be taxed. If you were each paying a portion of the insurance premium, you may need a legal opinion on the taxation that will apply.

DOES LTD PROVIDE MEDICAL AND DENTAL BENEFITS?

No. LTD benefits serve only to replace your income and do not include any additional benefits that you may have been receiving from your employer. You may be able to keep your workplace medical plan while you are on LTD, but that would be arranged between you and your employer, not with the LTD insurance company.

HOW LONG DOES LTD LAST?

Most plans last until you are 65 years old. Some plans, however, have a specific time frame – for example 5 or 10 years, or as low as 2 years.

MY CLAIM WAS DENIED, WHAT SHOULD I DO?

First, read the letter you received from the insurance company and find out why they have denied your claim. Their reason may be something as simple as a clerical error, or they may be missing a key piece of paperwork. In many cases they require a form to be filled out by your doctor before making a decision – if that's the case, you should immediately make arrangements with your doctor and make sure the insurance company has all the forms it needs to process your claim.

The insurance company may also have refused your benefits due to an issue with your employer. In that case you should contact your employer immediately because the employer is often able to assist you in getting the insurance company to fairly process your claim.

If you have submitted all proper paperwork and your doctor supports your claim, but the insurance company still refuses your claim, you have two remaining courses of action: doing an internal appeal with the insurance company, or taking legal action, which generally involves suing the insurance company to obtain your benefits.

> If you think you have missed a deadline, you should meet with a lawyer as soon as possible. There may be ways to get around a missed deadline or to argue that the deadline should be extended.

I'M CURRENTLY RECEIVING LTD, BUT...

MY INSURANCE COMPANY SAYS THAT AFTER TWO YEARS THEY CAN STOP PAYING ME IF I CAN WORK SOMEWHERE ELSE. IS THIS TRUE?

Most LTD policies state that for the first 24 months (2 years), you are entitled to claim LTD benefits if you cannot perform the essential duties of your own occupation. This is called the "**Own Occupation Test".**

After that two-year period, your eligibility for LTD will be based on whether you are unable to do any occupation for which you are reasonably qualified (or could become qualified for). That is called the "**Any Occupation Test"**.

Those conditions can vary greatly from one policy to the next. Some policies are "Own Occupation" until age 65, meaning you are entitled to benefits all the way up age 65 unless you become able to do your usual job again. Others are "Any Occupation" from the start.

Courts have said that "Any Occupation" does not mean literally any job - it must be a position for which you are **not over qualified** or **unsuited by background** and where you will not be **doing trivial work**.

Additionally, some insurers will provide you with vocational training to help you find another job that is more suitable for you if your disability is ongoing and prevents you from returning to the job you had before you became disabled.

I'M ON LTD AND MY WORKPLACE TERMINATED MY EMPLOYMENT. WHAT DOES THIS MEAN FOR MY LTD BENEFITS?

With most LTD policies, what matters is when you became disabled. So long as you were actively employed at the time you became disabled, your termination should not affect your LTD benefits.

However, if you receive a severance payment from your employer, that amount may in some cases be deducted from your LTD benefits.

The situation can become more complicated if you were not actively employed when you became disabled (for example if you were temporarily laid off) or if your employment was terminated while you were on short-term disability. A qualified lawyer can assist you with this situation.

THE INSURANCE COMPANY TERMINATED MY BENEFITS

MY LTD BENEFITS HAVE BEEN CUT OFF. WHAT CAN I DO?

First and foremost, it's important to read the insurance company's letter very carefully. They may have terminated your benefits for any number of reasons:

If your benefits were terminated because a form is missing or some information was not provided, contact the insurance company immediately and try to get the paperwork to them as soon as possible.

If your benefits are being terminated because the insurance company does not believe you are disabled, speak to your doctor and ask if he or she believes you meet the Own Occupation or Any Occupation test (see page 9) which applies to you. If your doctor believes you are disabled according to the appropriate test, have them write a letter to the insurance company confirming their opinion.

Sometimes the insurance company will terminate benefits even if your doctor believes you are still disabled. In this case you may need to take legal action to reinstate your LTD benefits.

Take note of any deadlines given to you by the insurance company. You may have a limited time to submit additional information to support your claim.

INTERNAL APPEAL OR LAWSUIT?

If you meet the requirements of the LTD policy and your doctor has confirmed that you are disabled - but the insurance company still refuses your claim - you have two remaining courses of action:

INTERNAL APPEAL

Most insurance companies provide an appeals process for denied claims. They will review your file again (including any new information that you may have submitted) and come back to you with a decision, usually after 60 or 90 days. There may be two or more levels of appeal. **In most cases, internal appeals are not mandatory.**

SUING FOR YOUR BENEFITS

If the internal appeal is unsuccessful (or if you decided to sue right away) you can begin a lawsuit to obtain your benefits. At this point in the process, suing is your last possible course of action.

> There are strict limitation dates associated with LTD claims. It's very important that you take immediate action to obtain legal advice once your claim is denied.

HOW THE LAWSUIT WORKS

WHAT DO I SUE FOR?

In all LTD lawsuits, you sue for the payment of the disability benefit to which you are entitled. If the denial of your claim caused you to suffer a great amount of stress, you can sue for compensation for "**mental distress**". You can also claim pre- and post-judgment interest on the amounts claimed, as well as a contribution from the defendants towards your legal fees.

Some lawsuits may also include punitive damages for "**bad faith**". This is rare and only awarded if the insurance company has acted in a particularly malicious, vindictive and harsh manner.

WHO DO I SUE?

In most LTD cases, you sue the insurance company that is refusing to pay your benefits. Sometimes it may be necessary to sue your employer or a non-profit board of trustees that administrates your LTD plan. In some rarer cases you may need to sue the broker who sold you the policy.

WHAT IS THE PROCESS INVOLVED IN SUING THE INSURANCE COMPANY?

Generally, the court process begins by delivering a Statement of Claim (commonly called a lawsuit) which sets out the allegations you are making against the insurance company. Once the insurance company receives it they will immediately stop any ongoing internal appeal.

The insurance company will then file a defense against your lawsuit and documents will be exchanged. At some point you will be asked questions under oath and you will likely need to undergo medical assessments, both with your own doctor and the doctor for the insurance company.

Usually there are then settlement negotiations, where both sides attempt to come to an agreement. This may lead to a mediation or settlement conference. If that is not effective, the matter will go to trial.

DO I HAVE TO GO TO COURT?

If the settlement negotiations (and mediation, if it happens) fail, your case will end up in court and a judge or jury will decide whether your benefits will be reinstated or not. However, most lawsuits settle before going to court – sometimes even on the courthouse steps.

HIRING A LAWYER

DO I NEED A LAWYER?

Technically you can go through the entire legal process on your own - without hiring a lawyer - although if you do hire somebody to help you, that person must be licensed to practice law.

It may seem self-serving for lawyers to say that you should consult a lawyer, but the legal process is complex and requires a thorough understanding of the law, as well as experience with the important procedural steps that must be followed as part of a lawsuit. If you do hire a lawyer, you should look for one with experience in handling brain injury lawsuits against insurance companies.

CAN I AFFORD A LAWYER?

Lawyers do not all charge clients the same way for representing them in a personal injury lawsuit. Some lawyers will charge you by the hour, while some will take a percentage of the compensation you obtain from the insurance company.

There will also be expenses related to running your case - for example hiring medical experts. Some lawyers may have you pay for those expenses upfront (or while the case is ongoing), while others will cover them and seek repayment if the case settles. In our case, we do not charge you any legal fees or expenses upfront. We are paid with a portion of your settlement only if your case is successful.

10 REASONS TO CHOOSE CANTINI LAW | DROIT

1. Handling personal injury claims **since 1987**
2. **Results**: you will get fair treatment and full compensation.
3. Free interviews (office, home or hospital). **There is no obligation.**
4. **No fee** if no recovery.
5. We devote **100%** of our practice to serious personal injury claims.
6. We never represent insurance companies; **we are on your side** and your side only.
7. We help access and co-ordinate the **most effective** medical rehabilitation team.
8. We make certain you are kept **completely informed** every step of the way.
9. We negotiate settlements for you but **unlike many other law firms**, we are also Trial lawyers. We have the experience and resources to take your case to Court.
10. Our **outstanding track record** confirms you can expect a very prompt and professional service with excellent results.

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