

## The Employer as Agent of the Insurer

By Catherine Dumas

*On August 13, 2004 the Court of Appeal rendered a judgment in Compagnie d'assurances Standard Life vs. Tougas<sup>1</sup> and allowed against La Maritime the principal appeal of Standard Life and the incidental appeal of the respondent Tougas. It ordered La Maritime to pay Mr. Tougas monthly benefits of \$1,155.44 retroactively to April 1<sup>st</sup>, 1995 and for as long as he remained disabled or until he reached the age of 65, whichever occurred first.*

### The Facts

Mr. Tougas, who was employed as a handler for Royalcor Steel inc. (hereinafter "Royalcor") since October 1993, ceased working in April 1994 because of psoriatic arthritis. On November 11, 1994, he started exhibiting symptoms of psoriatic arthritis in his right knee. In January and March 1995, Mr. Tougas underwent an operation following which his attending rheumatologist, Dr. Gutkowski, declared him disabled and unable to return work. Mr. Tougas was dismissed from his employment on April 7, 1995. Royalcor's group insurance was provided by La Maritime when Mr. Tougas was hired but it was replaced by a policy issued by Standard Life on September 1<sup>st</sup>, 1994. Both La Maritime and Standard Life refused to pay disability benefits and to assume the costs of Mr. Tougas's disabling condition.



### The Superior Court Judgment

The Superior Court allowed Mr. Tougas's claim against Standard Life. The Court held that Mr. Tougas's psoriatic arthritis first appeared in November 1994, rather than in April, and ordered Standard Life to pay disability benefits in the amount of \$54,923.29 to Mr. Tougas for the period from his dismissal until August 31<sup>st</sup>, 1998, the date on which Mr. Tougas was able to engage in an occupation of a light and sedentary nature.

### The Contentions of the Appealing Parties

La Maritime argued that Mr. Tougas's disabling condition had begun on November 11, 1994, at which time Standard Life had replaced it as insurer. La Maritime added that even if Mr. Tougas's disability had begun in April 1994, it was still not liable as it had not been informed of it within six months of its occurrence in accordance with section 276 of the Regulation respecting the application of the Act respecting insurance.

Standard Life argued that La Maritime was never notified of Mr. Tougas's disability only because of Royalcor's failure to send the policy replacement forms within the prescribed time. Furthermore, as Royalcor was in fact acting as agent of La Maritime, La Maritime was deemed to have known of Mr. Tougas's disability in August 1994.

### The Court of Appeal Decision

In a decision written by Madame Justice Rousseau-Houle, the Court of Appeal reversed the first instance judgment against Standard Life, allowed Standard Life's principal appeal and allowed Mr. Tougas's action against La Maritime, which was ordered to pay Mr. Tougas a monthly indemnity of \$1,155.44 retroactively to April 1<sup>st</sup>, 1995 and for as long as he remained disabled or until he reached the age of 65, whichever occurred first.



<sup>1</sup> [2004] R.R.A. 763 (C.A.).

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The Court of Appeal first held that the initial symptoms of psoriatic arthritis had appeared in April 1994 when Royalcor's group insurance was provided by La Maritime and that the Superior Court had clearly erred by concluding that the disability had only begun in November 1994.

The Court then dismissed La Maritime's allegations to the effect that it had not been notified of Mr. Tougas's disability within six months of its occurrence, thus preventing it from being held liable for payment of the disability benefits.

The Court of Appeal was of the opinion that Mr. Tougas's disability was known to Royalcor, which was sufficient under the rules of mandate to make La Maritime liable. Notwithstanding the existence of a clause in La Maritime's policy to the effect that [our translation] "the policyholder [Royalcor] shall not be deemed to be the agent of the insurer for any purpose whatsoever under this policy", the Court of Appeal held that Royalcor was in fact the agent of La Maritime because of the important administrative tasks which were entrusted to it. Royalcor's failure to send La Maritime Mr. Tougas's claim was a fault committed in the performance of the administrative tasks entrusted by La Maritime and was sufficient to make La Maritime liable to pay the disability benefits.

## Conclusions

This decision is in keeping with the principles set out by the Court of Appeal in *Deslauriers vs. Les Coopérants, Société mutuelle d'assurance-vie*<sup>2</sup>. In that case, the Court of Appeal upheld the existence of a mandate given by an insurer to a policyholder because of the significant administrative tasks which had been entrusted to it with respect to the administration of the insureds' files.

It is important to note that in its examination of the mandate, the Court of Appeal did not give any importance to the clause in the policy to the effect that the policyholder could not be considered the insurer's agent. Instead, it looked at the importance of the administrative tasks which were in fact entrusted to the policyholder.

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<sup>2</sup> [1993] R.R.A. 874 (C.A.).

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