

To Protect (your income) and Serve

Buswell v TAL Life Ltd [2018] NSWSC 1507

Key Points

- Damages are capital and not “income” under an income protection policy.
- To reduce compensation benefits due to a payment of damages for loss of earning capacity, income protection policies need to be clearly worded to do so.

Background

The plaintiff was a Senior Constable in the New South Wales Police Force. She was medically discharged on 28 August 2014 and received income protection benefits and the benefit period would be a maximum of seven years or until she reached 60 years of age.

The plaintiff’s income protection policy had a benefit offset clause which provided that any benefits payable would be reduced by “any Other Disability Income”, which included workers’ compensation benefits. The income protection insurer relied on this clause to reduce the plaintiff’s monthly benefit.

In 2017, the plaintiff received a settlement sum of \$300,000 for damages for injuries she sustained while working for the New South Wales Police Force.

The Court found the \$300,000 received by the plaintiff did not fall under the definition of “Other Disability Income” because:

- To be “Other Disability Income” the \$300,000 must be either be considered to be income or fall into the definition under the benefit offset clause, such as workers’ compensation benefits.
- The *Workers Compensation Act 1987* (NSW) distinguishes between payments of statutory compensation benefits and common law damages, and the \$300,000 was not compensation.
- The damages were capital and not income.
- The income protection benefits were only payable for a maximum of seven years. The damages were calculated for losses exceeding this seven year period.

The income protection insurer had to reinstate the plaintiff’s monthly benefits under the policy and had to pay the plaintiff all arrears under the income protection policy.



Lessons Learned

If insurers wish to reduce income protection benefits payable due to damages payments, the policy needs clear wording including potentially using an appropriate formula where damages are based on a loss of future earning capacity.

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