

NSPS LTD Plan Subrogation Rights

The Subrogation Clause

Section 12. (1) of the Plan Document states:

“Where a long-term disability benefit is payable for an injury or illness for which any third party, including the employee’s motor vehicle insurer under the Section D or SEF 44 coverage is, or may be, legally liable, the Trustees will be subrogated to all rights and remedies of the employee, including the Estate of the employee, against the third party, to recover damages in respect of the injury or death, and may maintain an action in the name of such employee, or the Estate of the employee, against any person against whom such action lies, and any amount recovered by the Trustees shall be applied to:

- (a) payment of the costs actually incurred in respect of the action, and reimbursement to the Trustees of any disability benefits paid, and the balance, if any shall be paid to the employee whose rights were subrogated;
- (b) any settlement or release does not bar the rights of the Trustees under subsection (1) unless the Trustees have concurred therein;
- (c) an employee will fully cooperate with the Trustees in order to allow the Trustees to do what is reasonably necessary to assert the Trustees' rights to subrogation, including but not limited to entering into subrogation agreements prescribed by the Guidelines made pursuant to this Plan.

The Settlement Process

As indicated, one of the conditions of you conducting the accident claim is that the LTD Fund’s consent is to be obtained for any proposed settlement. The process usually followed to obtain this consent is as follows:

- When it is time to settle, your lawyer will contact the LTD Fund, or its lawyer, to advise of the proposed settlement, usually by providing a copy of the proposed settlement demand.
- The LTD Fund will review the settlement proposal, focusing primarily on the income loss portion of the proposed settlement. In cases where less than 100% of the income loss is being claimed, requests may be made for further information to explain why.



- So that you will know what your net recovery will be, at the time that your proposed settlement is consented to, the LTD Fund will advise what portion of the proposed settlement it expects to be reimbursed to it to repay the LTD benefits paid to you. Consent to the settlement is not conditional upon you agreeing with the amount to be reimbursed to the LTD Fund from the settlement, so a settlement can proceed even though you and the LTD Fund may disagree on the amount of the reimbursement. However, in that circumstance, the LTD Fund will require that the amount of its required reimbursement be held in trust until the issue is resolved.
- Once consent to a proposed settlement is given, or a consent to a range of proposed settlements is given, you are then free to negotiate the settlement with the third party within the authority provided by the consent. When the claim is settled, your lawyer will repay the LTD Fund from the settlement proceeds (or keep that amount in trust if the amount of the reimbursement is in dispute), and pay the rest to you, after deducting legal fees. Confirmation of consent will be given to the third party, on request.

The Reimbursement to the LTD Fund

The LTD Fund is to be reimbursed from the income loss portion of your accident claim. The subrogation provision provides that this income loss recovery is to be paid in the following order of priority: costs incurred in the claim (i.e. legal fees), the LTD benefits paid to you to the date of settlement, and the balance, if any, to you. The following examples will show how this works.

Example 1

Income loss	\$100,000.00, plus interest of \$10,000.00
Income loss recovery	100%
Legal Fees	25% of recovery ¹
LTD paid	\$65,000.00 (65% of income)
Recovery priority	
-Legal Fees	\$27,500.00 (25% of \$110,000.00)
-LTD	\$71,500.00 (\$65,000.00, plus interest of \$6,500.00)

¹ For ease of calculation, this example assumes that the 25% includes the HST on your legal fees and your disbursements, and is net of costs and disbursements recovered by you in your settlement. A more detailed calculation will be done at the time of settlement, usually between your lawyer and the LTD Fund's lawyer.



-You \$11,000.00 (\$10,000.00 plus interest of \$1,000.00)

Example 2

Income loss \$100,000.00, plus interest of \$10,000.00
Income loss recovery 100%
Legal Fees 25% of recovery
LTD paid \$35,000.00 (\$65,000.00, less offset of \$30,000.00 in CPP disability benefits received)

Recovery priority
-Legal Fees \$27,500.00 (25% of \$110,000.00)
-LTD \$38,500.00 (\$35,000.00, plus interest of \$3,500.00)
-You \$33,000.00 (\$30,000.00 plus interest of \$3,000.00)

Example 3

Income loss \$100,000.00, plus interest of \$10,000.00
Income loss recovery 50%
Legal Fees 25% of recovery
LTD paid \$35,000.00
Recovery priority
-Legal Fees \$13,750.00 (\$50,000.00, plus interest, x 25%)
-LTD \$38,500.00 (\$35,000.00, plus interest of \$3,500.00)
-You \$2,750.00 (\$2,500.00 plus interest of \$250.00)

The above examples deal with past income loss recovery. Your accident claim may also include a recovery for future income loss or loss of earnings capacity. That recovery, net of legal costs (the "offset fund"), while kept by you, will be used as a basis for the LTD Fund to claim an offset against its future bi-weekly LTD obligations to you. The amount of the bi-weekly offset will depend upon the amount and basis of the future income loss portion of the recovery. The following three examples cover the bulk of the cases:

- a) In cases of 100% future income loss recovery, the likely result will be that there will be no further LTD benefits paid to you.
- b) If your future income loss recovery compensates you for two years of income loss from the settlement, then the deduction from your bi-weekly

LTD for the offset will be the amount of the offset fund divided by the 52 bi-weekly payments over the two years from the settlement.

- c) If your future income loss recovery is intended to compensate you for partial or periodic income loss until normal retirement at age 65, then the bi-weekly offset will be based upon the offset fund spread out over the time from settlement to age 65.

The method of calculation of the reimbursement and offset can vary from case to case, depending upon the case's circumstances. This will be dealt with by your legal counsel and the LTD Fund's legal counsel at the time of the settlement of your claim.