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Profit sharing agreement insurance

User ID: Subscriber Status:Free In a recent trial win for McMillan, the Ontario Superior Court in *Victess Capital Corp. v. Intact Insurance Co.* [1] he made a decision that sheds light on the definition of insurance under Section 1 of the Insurance Act (the Act). The decision confirms that the option of blocking a broker's profit sharing is not safe under the Law, although the insurer explicitly refers to the program as profit sharing insurance. Historical The author was a broker representing the defendant, Intact Insurance Company (Intact). The two parties entered into a profit sharing agreement (the Broker's Profit Sharing Agreement). Profit sharing programs allow brokers who meet a minimum amount of profitability to earn a bonus based on the amount of deals the broker brings to the insurer. Under the Broker's Profit Sharing Agreement, the plaintiff could elect the Nine Month Option, which allowed brokers to block their share of the year's profits from September 30 for a rate of 15% of that profit share. This ensured that if the broker's profit share decreased after September 30, the broker would take home the highest profit share value of September 30 at the end of the year. In November 2012, Intact sent a letter to the author asking if it wanted to elect the Nine Month Option and block its share of profits from September 30, 2012 (the Charter). Together with the Charter, Intact sent the author a profit sharing statement on September 30, 2012, showing the plaintiff's profit share as approximately \$90,000. The plaintiff elected the Nine Months Option. In December 2012, Intact found that it had made a miscalculation and that the profit sharing statement provided to the author was incorrect. In fact, the author was only entitled to a profit share of approximately \$24,000. Plaintiff's Claims The plaintiff filed a lawsuit against Intact seeking to recover the difference between the two amounts of the profit shares, arguing that the Charter constituted a new independent contract that Intact infringed when it only paid the defendant the correct profit share amount of \$24,000 instead of \$90,000 (minus the 15% fee), referred to in the Charter. At trial, the plaintiff amended his claim statement, claiming that this new standalone contract was an insurance contract under the Law. The plaintiff argued that by electing the Nine Month Option, he was making sure against the occurrence of new claims in the fourth quarter that could cause it to lose profit. The plaintiff took the position that, since the Charter was an insurance contract under the under Section 124 of the Act, no term of the contract that was not in the Charter was admissible in evidence if it harmed the author. As such, the author argued, the in the Broker's Profit sharing agreement, which gave full discretion to intact on the final determination of any disputes related to the calculations, including profit sharing calculations, shall be excluded from the evidence. Court results No standalone insurance contract The court found that the Charter was not a standalone contract and that there was no separate offer contained within it. The court also found that the Charter could not be interpreted as an insurance contract as defined in the Law, as it did not meet the definition of insurance under Section 1 of the Act. According to the court, the option to elect the Nine Month Option in the Broker's Profit sharing agreement was nothing more than to provide an optional alternative means of calculating the applicant's right to a bonus. The option to block the participation in the applicant's profits as of September 30 was not providing the plaintiff's author with insurance against losses or liabilities arising from claims made by third parties. The court noted that the plaintiff could never be at risk of suffering a loss as a result of the election of the Nine Month Option, since any loss against insured was inherent in the nature of the right that the plaintiff enjoyed under the Broker's Profit Sharing Agreement. The court made this finding, notwithstanding the fact that Intact referred to the Nine Month Option as profit sharing insurance and bonus insurance in the Charter and in the profit sharing statement. According to the court, the colloquial use of the word safe or safe did not alter the analysis that it was not, in fact, safe. In ensuring that the plaintiff was not entitled to the difference between the profit share quoted in the Charter and the correct amount of \$24,000, the court found that the plaintiff probably knew or should have known that the value of the profit share referred to in the Charter was too good to be true. The court confirmed that even if the Charter were to be considered a standalone contract, the court would not hesitate to apply the rectification doctrine to avoid conferring a blow on the plaintiff seeking to take advantage of Intact's error. Major takeaways Insurers can take comfort in the fact that they are not unintentionally offering insurance policies to brokers through their broker profit sharing programs. The definition of Insurance under the Law is clear and closely defined. Even if an insurer colloquially uses the language of insurance to describe a program, if the program does not comply with the strict definition of insurance under Section 1 of the Act, the Law will not apply. The PIIB is very unique in its approach to profit sharing. 90% of profit sharing, new business bonuses and other replacements are distributed to affiliates. Contract piib brokerage requires 90% of calculated profit calculated to be distributed by 15 April of the following year. PIIB's unique pooling method allows an agency to guarantee and budget its profit sharing payment year by year. The best way for you to understand the calculation is to let us calculate exactly what you would have earned if you had been affiliated with PIIB last year. Contact us and we will be happy to help you and take you through the calculation: info@piib.com John Wood McGee & Thielen Insurance Brokers, Inc – Sacramento, CA Our original Co-op was charging us \$40,000 in fees, and taking 25% of the share in profits from the top. PIIB offered us a fee of \$10,000, and only a 10% stake in profit sharing. I only went to state college, but the math seemed pretty straightforward to me. Besides, we like Larry and the piib gang a lot better, so this one really fell into the brainless category. We've been members of the PIIB for a few years, and the decision to change still looks better and better all the time. For most agencies, revenue is composed of commission and profit sharing. Profit sharing is a beautiful thing —usually a risk-free bonus and just down paying up to 5% of the written annual premium. However, there is a way to earn a much bigger bonus - one that is not limited to a certain percentage of prize. This is possible through a captive agency. Profit sharing is an additional incentive that insurers offer their best-selling agencies. Insurers use part of their underwriting profits to encourage sales and motivate independent agents to sell their products instead of those of another carrier. Profit sharing has extra requirements above and beyond commissions, but agencies that serve them essentially receive free money for the same work they have already done. For example, an operator can offer a bonus of 1.5% of an agency's total volume if its annual sales reach \$1,500,000 and they maintain a loss rate of 50% or better — that means an extra \$22,500 on top of any commissions they had already been paid. You might think: I'm not even close to selling a million a year, and that's why it's so advantageous to belong to SIAA: while many new independent agencies aren't selling that volume of premiums on their own, together we can all meet the requirements and then share the profits. Whether a company has 10 employees or 100, a single site or multiple and is celebrating its fifth year or its 50th, our ProSeries products are designed to meet the simple and complex insurance needs of small businesses. Learn more

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