

be awarded for impairment of income earning capacity. If you face such a claim, here are some practical steps to consider:

- 1) Obtain early and complete disclosure of the claimant's personal income tax returns for a five-year period before the injury;
- 2) Obtain production of corresponding corporate financial statements, books and ledgers;
- 3) Engage a forensic accountant at an early

stage to assess documentary and oral evidence to challenge the historical basis for the claim;

- 4) Consider surveillance of the claimant to be satisfied that the alleged levels of disability correspond with daily living activities.

The head of damage for loss-of-earning capacity can form the largest component in many personal injury claims, often in the hundreds of thousands of dollars. It is

important to recognize that such claims can be advanced even if a claimant is employed through a closely held or family-owned corporation. **IW**

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PAINE EDMONDS

Rule 66 reduces litigation costs



By Ivar Lee

During the course of settlement negotiations, a litigant's damages are obviously the main focus for an insurer and its counsel. Costs are rarely considered until the end of negotiations.

Costs, in a legal context, refer to the additional monetary compensation meant to offset legal expenses – and to which a successful litigant is entitled. This compensation is based on specific unit values for various legal tasks in preparation for

trial. Costs can amount to a large sum and depend on the complexity of a lawsuit. As a result of significant changes in 2007 to the tariff of costs in B.C., insurers face even greater exposure in light of rising costs now claimable by a litigant.

One of the most notable changes is an increase from \$80 to \$110 for the value of each unit for “matters of ordinary difficulty,” which would include the vast majority of lawsuits. The significance of these changes is made clear by the following example:

Under the old tariff, a litigant settling before trial might reasonably claim about 40 units, which amounts to \$3,200. Under the new tariff, that same party might now expect to claim about 50 units – \$5,500.

What can insurers do to counter these rising costs?

In appropriate cases, one effective method is for insurers to instruct counsel to make the lawsuit subject to Rule 66. This rule is applicable where the trial of the lawsuit can be completed within two days and where neither party wishes to have a trial by jury. (Rule 66 trials are heard by judge alone). The court decides if a trial can be completed within two days, a duration often more than sufficient for lawsuits where liability is not at issue and there are only a few experts and witnesses needed to testify.

Specifically, how does Rule 66 help limit costs in lawsuits settled before trial?

Rule 66 sets out a maximum amount of costs a party is entitled to, depending on whether the trial lasts one day (at \$5,000) or two (\$6,600). This puts a maximum on what parties are entitled to when settling before trial.



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