

NOVA SCOTIA COURT OF APPEAL

Citation: *MacKean v. Royal & Sun Alliance Insurance Company of Canada*,
2015 NSCA 33

Date: 20150410

Docket: CA 424628

Registry: Halifax

Between:

Cindy L. MacKean and Dalton Holley, through his litigation guardian
Cindy L. MacKean

Appellants

v.

Royal & Sun Alliance Insurance Company of Canada

-and-

Joseph Allen Goodall

Respondents

Judge: The Honourable Justice Peter M.S. Bryson

Appeal Heard: October 15, 2014, in Halifax, Nova Scotia

Subject: Assessment of Damages, Insurance, Subrogation, Uninsured
Motorist Coverage, Practice and Procedure

Summary: Plaintiffs sued uninsured defendant driver for damages sustained in a motor vehicle accident. They also sued Royal which provided uninsured (Section D) coverage. Uninsured driver did not defend. Royal paid the plaintiffs \$505,000.00 and pursued a subrogated claim against the uninsured driver. They obtained default judgment with damages to be assessed. At the assessment Royal led evidence of the reasonableness of the settlement as the measure of damages. The motions judge found that settlement was irrelevant to the assessment of damages and dismissed Royal's motion with leave to reapply. He also found that the assessment should be done as of the

motion date.

Issues: Was settlement amount relevant to assessment of damages?

Held: Appeal allowed and remitted to Supreme Court for assessment of damages. In the special circumstances of Section D coverage, the settlement was relevant because by statute and contract it was based on what the plaintiffs “were legally entitled to recover” from the uninsured motorist. Royal needed to lead enough evidence to show that the settlement amount was reasonable. That required some evidence of what the plaintiffs would likely recover on a full assessment of damages. Damages are normally assessed as of the motion date.

This information sheet does not form part of the court’s judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 20 pages.