

NOVA SCOTIA COURT OF APPEAL

Citation: *Wright Medical Technology Canada v. Taylor*, 2015 NSCA 68

Date: 20150707

Docket: CA 429260

Registry: Halifax

Between:

Wright Medical Technology Canada Ltd.,
Wright Medical Technology, Inc. and
Wright Medical Group, Inc.

Appellants

v.

Ken Taylor

Respondent

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: January 29, 2015, in Halifax, Nova Scotia

Subject: **Class Proceedings Act, S.N.S. 2007, c. 28. Products Liability. Defective Hip Replacement Transplant Device. Standard of Appellate Review. Burden of Proof. Standard of Proof. Statutory Criteria for Certification. Common Issues. Preferable Procedure. Sale of Goods Act, S.N.S. 1989, c. 408. Costs.**

Summary: The motions judge certified, as a class proceeding, the plaintiff's claim against the defendants, alleging negligence in the design and manufacture of a hip replacement transplant device which failed when its neck component fractured, necessitating replacement surgery only two years later. The defendants appealed saying the judge erred in concluding that the claims of the proposed class members raised common issues for adjudication, and deciding that a class proceeding would be the preferable procedure for the fair and efficient

resolution of the dispute. They complained that the judge failed to “engage” in the rebuttal expert opinion evidence they presented which, they said, ought to have compelled the judge to conclude that there was no basis in fact to find any commonality for any of the proposed class action issues.

Held:

Appeal dismissed. The judge was correct in his application of the law. He did not err in principle. His consideration of the evidence and his weighing and balancing of the many factors arising from the issues before him, did not expose any palpable and overriding error.

The Court analyzed the prevailing authorities and explained the proper approach a motions judge is to take in addressing the evidence in applications for certification as a class proceeding. Judges faced with certification applications must be very careful in their assessment of the evidence. The factual assertions presented by each side must be fairly considered in order to decide whether the plaintiff has met the burden of showing some basis in fact for each of the statutory criteria under the **Act**. That evaluation must be more than a perfunctory exercise. It must rise above a superficial analysis amounting to little more than symbolic scrutiny. However, the judge must not veer into an evaluation of the merits of the claim, or the probative weight of the evidence said to support it, or the potential for success.

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 23 pages.