

NOVA SCOTIA COURT OF APPEAL

Citation: *Royal and Sun Alliance Insurance Company of Canada v. Stuart Estate*,
2005 NSCA 6

Date: 20050107

Docket: CA 221099

Registry: Halifax

Between:

Royal and Sun Alliance Insurance Company of Canada

Appellant

v.

John T. Stuart, as Executor of the Will of Audrey E.
Stuart, and The Audrey E. Stuart Trust

Respondents

Judge: The Honourable Justice Nancy Bateman

Appeal Heard: December 8, 2004

Subject: Discoverability; Contract of Insurance

Summary: Respondent sued insurer for cost of remediating fuel oil contamination on their residential property. The damage occurred around 1986 but the claim was not made until 1998. Insurer had denied coverage on the basis that the claim was not reported within the time limits of the home insurance policy. The trial judge found, applying the discoverability principle, that the material facts were not known, nor were the respondents put to an inquiry, until 1998. He ordered coverage subject to policy limits.

Issue: Did the judge err in finding that the respondents were reasonably diligent in their handling of this matter?

Result: Appeal dismissed with costs to the respondents. The

discoverability principle is one of construction (see **Peixeiro v. Haberman**, [1997] 3 S.C.R. 549 at para. 37 and **Burt v. LeLacheur** (2000), 186 N.S.R. (2d) 109; N.S.J. No. 230 (Q.L.)(C.A.) at para. 29). Its application depends on the particular contractual and statutory wording. Before time runs, the claimant must have sufficient knowledge of the material facts to put him or her to an inquiry. The judge made no extricable legal error in his application of the discoverability principle to the facts as found, nor did he make a palpable or overriding factual error.

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 14 pages.