

NOVA SCOTIA COURT OF APPEAL

Citation: Ryan v. Sun Life Assurance Company, 2005 NSCA 12

Date: 20050127

Docket: CA 220129

Registry: Halifax

Between:

Leslie Susan Ryan

Appellant

Respondent by Cross-Appeal

v.

Sun Life Assurance Company of Canada

Respondent

Appellant by Cross-Appeal

Judge: The Honourable Justice Thomas Cromwell

Appeal Heard: November 17, 2004

Subject: *Subrogation - Group Disability Insurance Policy - Interpretation of Insurance Contracts*

Summary: Ms. Ryan was disabled as a result of a motor vehicle accident. She received income replacement benefits based on her loss of earnings under a group disability insurance policy with Sun Life. She also sued the other driver involved in the accident and recovered a lump sum settlement which was not apportioned among her various heads of damage. A dispute arose between Ms. Ryan and the insurer about the insurer's rights under a subrogation clause. A Chambers judge ruled that the insurer was entitled to seek reimbursement only from settlement proceeds fairly attributable to damages for income loss, past or future. Ms. Ryan appealed and the insurer cross-appealed.

Issues: 1. Does the subrogation clause apply to Ms. Ryan?

2. If so, does the right of subrogation apply to the whole of the settlement proceeds?
3. Does the right of subrogation relate to benefits paid to the date of settlement or also the future benefits to which she becomes entitled afterwards?

Result: Appeal and cross-appeal dismissed. The Chambers judge was correct to hold that the subrogation policy applied to Ms. Ryan. Although it was not agreed upon until after the date of her accident, the parties agreed that it would be effective as of an earlier date and their agreement to this effect governed the effective date of the policy.

The Chambers judge was right to conclude that the insurer could claim against the settlement proceeds that relate to either past or future income loss.

The insurer's right to reimbursement or set off does not extend to benefits which accrued in the future but only to benefits paid or found to have been payable as of the relevant time.

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 18 pages.