

NOVA SCOTIA COURT OF APPEAL

Citation: *Wawanesa Mutual Insurance Company v. Neary*, 2003 NSCA 66

Date: 20030612

Docket: CA 185134

Registry: Halifax

Between:

The Wawanesa Mutual Insurance Company,
a body corporate

Appellant

v.

S. Douglas Neary

Respondent

JUDGE: CHIPMAN, J.A.

APPEAL HEARD: May 13, 2003

JUDGMENT DELIVERED: June 12, 2003

SUBJECT: **Insurance - Liability Insurance - Duty of Insurer to Defend Insured
Scope of Coverage - Exclusion Clauses**

SUMMARY: This was an appeal from a decision of Hall, J. in Chambers ordering the appellant insurer to defend the respondent, with respect to specifically limited allegations only, in an action brought against him for damages, pursuant to a personal insurance policy issued by the appellant to the respondent.

The action arose out of a tragic accident which resulted when an amphibious vehicle being demonstrated by the respondent to Vincent Sawler rolled over and as a result Sawler sustained serious injuries. He brought an action against the respondent and others for damages.

The policy was a homeowner's policy affording coverage for liability incurred by the insured under a variety of circumstances including the insured's work for someone else as a sales representative. Otherwise business uses and use of motor vehicles for business purposes and the rendering of professional services were excluded. Hall, J. found that the respondent should be defended only with respect to the allegations against him relating to his demonstration of the vehicle. He also found that this activity was not excluded by the various exclusions in the policy.

ISSUE:

1. Was there *prima facie* coverage under the policy?
2. Did the liability pleaded against the insured also result from excluded causes under the terms of the policy and, if so, what was the result?

RESULT:

The Court of Appeal reviewed the allegations made against the insured, the terms of the policy and relevant jurisprudence. The Court found that *prima facie* there was coverage respecting the allegations relating to the insured's demonstrating of the vehicle. The fact that the injuries as pleaded also arose out of causes excluded in the policy was not sufficient to oust coverage where it was not made clear that such events were excluded even if they were also caused by a cause covered by the policy. The Court referred to and followed the reasoning in the decision of the Supreme Court of Canada in **Derksen v. 539938 Ontario Ltd.**, [2001] 3 S.C.R. 398, S.C.J. No. 27 (Q.L.).

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 17 pages.