

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Miller Estate v. Co-operator's General Insurance Company,
2005 NSSC 260

Date: 20050927

Docket: S.K. No. 248634

Registry: Kentville

Between:

Robert Joseph Miller and Margaret Miller, as Executors of the Estate of Robert
Bruce Miller, deceased

Plaintiffs

v.

The Co-operators General Insurance Company

Defendant

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Judge: The Honourable Justice Gregory M. Warner

Heard: At Kentville, N.S., on September 20, 2005

Subject: Interpretation of auto insurance (Section B) policy.

Issue: (1) Is the insured's estate entitled to all incurred funeral expenses under the standard Section B coverage, in the event that no head of household or dependant survives him?

(2) What are funeral expenses for the purposes of Section B coverage?

Summary: The facts are not in dispute. A single person died when the vehicle, in which he was a passenger, was involved in a head on collision. His family under Section B coverage claimed over \$27,000.00 for the cost of the funeral service, casket, monument (\$16,600.00), flowers and obituary notices. The insurer under Subsection 1 (Medical, Rehabilitation and Funeral Expenses) paid the maximum \$1,000.00. The insured claimed

that the wording of paragraph 5 of Subsection 2, Part I (Death Benefits) implied that where no head of household or dependants survived the insured, all incurred funeral expenses were payable. It relied on the majority decision of the PEICA in **Reeves Estate** (1990) and on the principle that wording should be construed against an insurer. The insured disagreed and submitted that, in any event, funeral expenses only included the cost of the ceremony (about \$3,900.00).

Result:

First Issue - The wording of Section B is mandated by government regulation. *Contra preferentum* does not apply. Driedger's modern approach to statutory interpretation as outlined and applied in **Bell ExpressVu** (SCC 2002) and **Glykis** (SCC 2004) was applied. Interpreting the words in paragraph 5 in their grammatical and ordinary sense, and in the broader context of the legislation and insurance coverage, revealed no ambiguity. No additional funeral expenses were payable (beyond the \$1,000.00 limit in Subsection 1) under Subsection 2, in the event that no head of household or dependants survive the insured.

Second Issue - Funeral expenses were not limited to the cost of the ceremony but included all reasonable expenses connected with the ceremony and burial.

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