

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Hart v. Combined Insurance Company of America, 2005 NSSC 344

Date: 20051215

Docket: SAT 2605-180369

Registry: Antigonish

Between:

Darcy Hart, as Guardian *ad litem*, on behalf of Amanda Hart,
and Darcy Hart

Plaintiffs

v.

Combined Insurance Company of America

Defendant

And Between:

Combined Insurance Company of America

Plaintiff

v.

Amanda Hart and Darcy Hart, as Guardian *ad litem* on behalf of
Amanda Hart, and Darcy Hart, in her personal capacity and Kenneth Hart

Defendants

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Judge: The Honourable Justice John D. Murphy

Heard: May 16, 17, 18, 19, 2005, in Antigonish, Nova Scotia

Final Written

Submissions: July 11, 2005

Subject: **Insurance - Sickness and Disability**

Summary: Infant Plaintiff, very seriously disabled by Aicardi Syndrome, seeks Insurance Policy benefits for periods of hospitalization and convalescence. Insurer denied responsibility on basis that hospital stays were for respite care, and counter-claimed for reimbursement of benefits previously paid, alleging claims were advanced based upon erroneous information. Plaintiffs say Defendant's conduct denying payment was improper and seek punitive and aggravated damages.

- Issues:**
- (1) Plaintiffs' entitlement to benefits related to hospitalizations and to post-discharge convalescence.
 - (2) Plaintiffs' claim for punitive and/or aggravated damages.
 - (3) Insurer's Counter-claim to recover amounts previously paid.
 - (4) Costs.

Result: Plaintiffs are entitled to benefits related to periods of hospitalization and convalescence. Primary reason for hospital visits was monitoring and treating severe effects of Aicardi Syndrome. Plaintiffs' circumstances were within plain meaning of policy words - because of a "covered sickness" she was "totally disabled" and confined "in hospital overnight" as an inpatient. Even if hospitalizations had been for "respite care", Insurer would be required to respond under the Policy, which contained no exclusion based upon type of care.

Convalescent benefits were payable pursuant to Policy terms, and Defendant was also estopped from challenging Plaintiffs' entitlement after providing those benefits for seven years.

Although Defendant wrongfully attributed misrepresentations and deceitful motives to the Plaintiffs, Insurer's conduct was not so egregious, malicious or offensive, in context of a case which involved genuine issues to be determined, as to warrant punitive or aggravated damages .

Counter-claim dismissed as Plaintiffs are entitled to all Policy benefits previously received and now claimed.

Increased costs awarded as Plaintiffs were exposed to substantial risks, and Defendant's conduct making unfounded statements that Plaintiffs behaved deceitfully unnecessarily polarized the parties, made litigation more difficult than necessary, and created a climate where exploration of settlement was very unlikely .

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