

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *Inglis v. Nova Scotia (Attorney General)*, 2007 NSSC 314

Date: 20071116

Docket: SH 203247

Registry: Halifax

Between:

Robert D. Inglis

Plaintiff

v.

The Attorney General of Nova Scotia, representing Her Majesty
The Queen in Right of the Province of Nova Scotia and Robert
Jack, representing the Trustees of the Nova Scotia Public
Service Long Term Disability Plan Trust Fund

Defendants

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Judge: The Honourable Justice M. Heather Robertson

Heard: June 21, 2007, in Halifax, Nova Scotia

Written Decision: November 16, 2007

Subject: Disclosure of settlement negotiations correspondence, where settlement with the employer is characterized as general damages and no earnings portion of the claim is accounted for.

Summary: The plaintiff a plumber had negotiated a settlement with his employer the Province of Nova Scotia in an action related to the termination of his employment after he had received LTD benefits for six years by reason of his diabetes, however in circumstances where he claimed he had not been accommodated with an eight-week return to work trial. The settlement resolved the action against his employer as well as an action commenced before the Nova Scotia Human Rights Commission. The LTD Plan sought settlement negotiations correspondence disclosure to ascertain if any

portion of the settlement amount could be characterized as an earnings portion of the claim, in light of the continuing action against the LTD Fund.

Issue: Is the LTD insurer, who is without contractual subrogation rights entitled to disclosure of settlement negotiations correspondence in light of the operation of s. 9(3) and (8), and s. 16 of the Nova Scotia Long Term Disability Plan which contemplates accountability for earnings recovered through a legally enforceable cause of action?

Result: In light of the continuance of the action against the LTD Fund, the Fund is entitled to disclosure of the settlement negotiation correspondence, in preparation for trial and has established a valid exception to the settlement privilege rule. Trial judge to ultimately rule on validity of characterization of settlement and parole evidence issues.

Cases cited *Waxman & Sons v. Texaco Canada Ltd.*, [1968] 1 O.R. 642, [1968] 2 O.R. 452 (C.A.); *Derco Industries Ltd. v. A.R. Grimwood Ltd., in Middlekamp v. Fraser Valley Real Estate Board (B.C.C.A.)* (1992), 71 BCLR (2d) 276 (C.A.); *Dos Santos (Committee of) v. Sun Life Assurance Co. of Canada*, [2005] B.C.J. No. 5; *Meyers v. Dunphy*, [2007] N.S. No. 5 2007 NLCA 1; *NSPS Ltd. Plan Trust Fund v. McNally* (1999), 179 N.S.R. (2d) 314 (C.A.), *Sun Life Assurance Co. of Canada v. Solypa* (2001), 96 B.C.L.R. (3d) 178; *Young v. Saskatchewan* (1992), 103 Sask. R. 50; [1992] 5 W.W.R. 49 Q.B.); *Mutual Life Assurance Co. v. Tucker* (1993), 119 N.S.R. (2d) 417; 330 A.P.R. 417 (C.A.); *Hudson's Bay Mining and Smelting Co. v. Fluor Daniel Wright*, [1997] M.J. No 398, affirmed [1998] M.J. No. 459 (C.A.); and *Amoco Canada Petroleum Co. v. Propak Systems Ltd*, [2001] A.J. No. 600.

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