

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Berta v. Armstrong, 2007 NSSC 373

Date: 20071228

Docket: S.H. No. 182315

Registry: Halifax

Between:

Ilona Lynn Berta

Plaintiff

v.

Kim Armstrong and A. Lassonde Inc.

Defendants

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Judge: The Honourable Associate Chief Justice Deborah K. Smith.

Heard: August 28th, 2007 in Halifax, Nova Scotia.

Oral Decision: October 19th, 2007.

Written Release: December 28th, 2007.

Subject: Production of Documents/Information. Settlement Privilege.

Summary: The Plaintiff was involved in a motor vehicle accident in January of 1998. She suffered injuries to her neck, shoulders and upper back as a result of that collision. She commenced an action in relation to that accident which was settled out of court.

The Plaintiff was involved in a second motor vehicle accident in June of 2000. According to the Plaintiff's discovery evidence, she re-injured her neck, shoulders and upper back in that collision. On discovery (in relation to the second accident) the Plaintiff was asked how much she received in compensation as a result of the January 1998 collision. On the advice of her solicitor, the Plaintiff refused to answer the question.

The Defendants brought an application seeking (1) an Order requiring the Plaintiff to disclose the amount of compensation that she received in relation to the 1998 motor vehicle accident (2) a breakdown of the compensation that

she received for each of head of damage for which she was compensated as well as (3) copies of any settlement documentation relating to the settlement including any settlement agreement or release. The Plaintiff objected to the production of this information suggesting that it is protected from production based on the doctrine of settlement privilege.

Issue: Is the documentation/information sought producible?

Result: The Court concluded that regardless of whether the information sought would *prima facie* be protected from production based on the doctrine of settlement privilege – it is appropriate and necessary in the circumstances of this case to grant the Order requested in order to avoid the possibility of double or over-recovery of damages.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***