

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *BC Rail Partnership v. Standard Car Truck Company*, 2009 NSSC 240

**Date:** 20090813

**Docket:** Hfx No 220557

**Registry:** Halifax

**Between:**

*BC Rail Partnership*

Plaintiff

v.

*Standard Car Truck Company, Trentonworks Limited  
and Greenbrier Leasing Limited*

Defendant

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**Judge:**

The Honourable Justice Gregory M. Warner

**Heard:**

June 11 and 15, 2009, in Halifax, Nova Scotia

**Subject:**

Summary Judgment- 1972 *Civil Procedure Rule 13.01 and 13.02*

**Summary:**

On December 10, 1999, a BC Rail train derailed near Pemberton, British Columbia, resulting in the loss of one life, damage to BC Rail's track and equipment, loss of freight, and use of the track. BC Rail claims that the derailment was caused by the improper design or manufacture of the stabilization system of the "truck" or undercarriage of one of the 155 new rail boxcars leased to it by Greenbrier Leasing Limited ("Greenbrier") a few weeks before. The fatal trip was the first using the allegedly defective boxcar.

**Issue:**

Greenbrier applies for summary judgment under 1972 *Civil Procedure Rule 13.01 and 13.02* on the basis that under the Lease:

i BC Rail agreed to obtain insurance for the benefit of both it and Greenbrier and had no right of subrogation against Greenbrier; and,

ii BC Rail expressly waived any possible claims against Greenbrier, including of the type advanced in this action.

**Result:**

On application of the principles of contract interpretation to the Lease, the Court determined that: (1) interpreting the lease within its four corners, BC Rail's claims were not barred; (2) it could not make a determination without resorting to extrinsic evidence that was in dispute, as to whether the insurance provision in the Lease precluded a right of subrogation. A genuine issue existed. Summary Judgment denied.

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