

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Thornton v. Economical Insurance Group, 2010 NSSC 355

**Date:** 20100924

**Docket:** Hfx No. 290561

**Registry:** Halifax

**Between:**

John Thornton

Plaintiff

v.

The Economical Insurance Group

Defendant

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**Judge:** The Honourable Justice Allan P. Boudreau

**Heard:** January 14, 2010 in Halifax, Nova Scotia

**Subject:** Insurance - Section B Periodic Benefits - Limitation of Actions - "Rolling Cause of Action" - Procedure (Civil Procedure Rule 12)

**Summary:** The Plaintiff, John Thornton, has sued a Section B insurer, The Economical Insurance Group (Economical) approximately ten years after he had been denied further lost wages benefits resulting from a motor vehicle accident. The Defendant, Economical, has brought this application pursuant to Civil Procedure Rule 12 asking the Court to declare Mr. Thornton's action barred by the applicable limitation periods and as being well outside the discretionary provisions of the *Limitation of Actions Act*. Mr. Thornton contends that his cause of action only arose when he received medical evidence to support and settle his Section A claim, some eight years after the accident and some seven years after the denial of further Section B benefits. Mr. Thornton also contends that there is no limitation period to claims for Section B loss of wages benefits because they are subject to what has been called a "Rolling Cause of Action".

**Issue:**

**The issues:**

1. Is this a proper Motion to hear under Civil Procedure Rule 12?
2. If this Motion is properly dealt with under Rule 12;
  - (a) Does the “discoverability rule” operate to permit Mr. Thornton’s action. ie: when did the cause of action arise?
  - (b) Is Mr. Thornton’s claim for loss of income under Section B benefits Statute barred by the Limitation of Actions Act and/or the Insurance Act?
3. Is there a continuous or “rolling” cause of action in Nova Scotia as it relates to Section B benefits; and if so, does it apply to Mr. Thornton’s claim?

**Result:**

Defendant insurer’s Summary Application pursuant to Civil Procedure Rule 12 dismissed as not being appropriate in this case. Costs in the cause.

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