

SUPREME COURT OF NOVA SCOTIA

Citation: Wade v. Burrell, 2011 NSSC 60

Date: 20110228
Docket: Hfx No. 185646
& Hfx No. 263570
Registry: Halifax

Between:

BRANDON WADE, infant, by his litigation guardian, **STEPHEN MADDEN** and **PETER WADE** and **GAIL WADE** and **CYNTHIA ELIZABETH HARDING**

Plaintiffs

v.

MARGARET BURRELL, DEBORAH DAVIS, ALAN DAVIS
and **HEATHER DAVIS**

Defendants

- and -

Between:

BRANDON WADE, infant, by his litigation guardian, **STEPHEN MADDEN**

Plaintiff

- and -

THE CO-OPERATORS GROUP LIMITED carrying on business
as **COSECO INSURANCE COMPANY**

Defendants

Judge:

The Honourable Associate Chief Justice Deborah K. Smith

Heard:

July 15th, 2010 and January 26th, 2011 at Halifax, N.S.

Oral Decision:

February 9th, 2011

Written Decision:

February 28th, 2011

Counsel:

John A. McKiggan, Esq. on behalf of the Plaintiff, Brandon Wade
Ronald Pizzo, Esq. appearing on behalf of Arnold Pizzo McKiggan
No one appearing on behalf of the other parties

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Summary:

The 12 year old Plaintiff was involved in a motor vehicle accident when he was two years of age as a result of which he suffered serious and permanent injuries. The infant Plaintiff had been sitting in a stroller in a parking lot when he was pinned and crushed between two vehicles. A motion was brought to approve the infant's settlement, appoint a trustee in relation to the settlement funds and for approval of the solicitor's account for services rendered. The total settlement was in the amount of \$1,436,347.57. In addition, the Defendants were contributing costs in the amount of \$18,143.52. The Firm that represented the Plaintiff was seeking fees in the amount of \$392,000.00 plus HST in the amount of \$58,800.00 for total fees of

\$450,800.00. The Plaintiff's litigation guardian had entered into a Contingency Fee Agreement.

Issue: Should the solicitor's proposed fee in the amount of \$392,000.00 be approved by the Court ?

Result: When approving fees in an infant settlement situation, the Court must consider whether the proposed fee is fair and reasonable. In determining the matter the Court considered the following factors:

- (a) the time and effort required and spent;
- (b) the complexity and importance of the matter;
- (c) whether special skill was required and provided;
- (d) the results achieved;
- (e) the terms of the Contingency Fee Agreement entered into in relation to the matter;
- (f) the circumstances of the person who is to pay counsel or of the fund out of which counsel is to be paid;
- (g) the amount of the settlement;
- (h) who is to receive any award of costs; and
- (i) the risks involved in pursuing the matter.

While the lawyer involved obtained a good result for the infant and carried the case for over 10 years without being paid, the risks assumed by the Firm in taking on the case were not significant. Weighing the various factors, the Court was not satisfied that the requested fee (in the amount of \$392,000.00) was fair and reasonable. The fee was reduced to \$280,000.00. The \$18,143.52 in costs received from the Defendants was to be deducted from this amount. Accordingly, the amount paid to the Firm out of the settlement funds was \$261,856.48.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
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