

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Saccary v. Vonhammerstein*, 2018 NSSC 135

**Date:** 20180413

**Docket:** Hfx. No. 409978

**Registry:** Halifax

Between:

Lillian Marie Saccary

Plaintiff

and

Hans Vonhammerstein

Defendant

and

Lillian Marie Saccary, Brittany Saccary and Selena Saccary by her Litigation  
Guardian Lillian Marie Saccary

Plaintiffs

and

Glenn Laffin

Defendant

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**Judge:** The Honourable Justice Robert W. Wright

**Heard:** April 13, 2018 in Halifax, Nova Scotia

**Oral Decision:** April 13, 2018

**Written Decision:** June 6, 2018

**Subject:** Civil Procedure Rules 21.02(2) and 55.04 – retention of medical expert to perform IME of the plaintiff in personal injury claims – whether selection of medical expert by the defendant unreasonable in all the circumstances.

**Summary:** The plaintiff was involved in two separate motor vehicle accidents in 2009 and 2011 respectively. Shortly before the

occurrence of the second accident, an IME was performed on the plaintiff by Dr. Edwin Koshi, a physiatrist, at the behest of her Section B insurer (those benefits no longer being an issue). The plaintiff subsequently obtained three medical expert reports in support of her personal injury claims in this litigation (in which two actions have been consolidated). A key issue in this litigation is the extent to which the plaintiff's current condition can be attributed to the occurrence of the second accident.

To address that question, counsel for the defendant has recently retained Dr. Koshi to perform another IME of the plaintiff to address her current medical condition and the cause and effect thereof. The plaintiff has refused to attend that IME on the basis that Dr. Koshi's ability to provide an objective opinion and to apply independent judgment for the assistance of the Court has been compromised by reason of the IME he performed on behalf of a peripheral party back in 2011. The defendant now brings this motion for an Order compelling the plaintiff to attend a medical examination by Dr. Koshi for purposes of this litigation.

**Issue:** (1) Given the prior IME performed by Dr. Koshi at the behest of the Section B insurer, should he now be disqualified from performing a further IME at the behest of the Section A insurer in the second accident because of the plaintiff's concerns over his objectivity and application of independent judgment?

**Held:** Given the defendant's *prima facie* right to have the plaintiff examined by an independent medical expert (duly qualified) of its own choosing, it falls to the plaintiff to demonstrate that the defendant's choice of expert is unreasonable.

In the absence of any specific evidence to the contrary, the Court was not persuaded that Dr. Koshi's ability to provide an objective opinion and to apply independent judgment for the assistance of the Court was thereby compromised. Without more, the Court was not satisfied that the plaintiff was able to establish a sufficient legal basis for the Court to interfere with

the selection of Dr. Koshi to perform a further IME. The motion was therefore granted with costs to the defendant in the amount of \$300.

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