

IN THE SUPREME COURT OF NOVA SCOTIA

[Cite as: Calvert W. Leng v. Glen Hanson, 2002 NSSC 3]

CALVERT W. LENG

PLAINTIFF

- and -

GLEN ROBERT HANSON, PEPSI COLA CANADA LIMITED,
a body corporate registered to carry on business in the
Province of Nova Scotia, and CO-OPERATORS GENERAL
INSURANCE COMPANY

DEFENDANTS

Justice Walter R. E. Goodfellow

Pictou, Nova Scotia

File No. S.P. 05714

LIBRARY HEADING

DATE HEARD: November 28th, 2001 (Chambers)

DECISION: November 28th, 2001 (Orally)

WRITTEN RELEASE

OF ORAL: January 8th, 2002

SUBJECT: INSURANCE LAW

SUMMARY: Application for determination as to whether exclusionary clause in insurance policy applies where Plaintiff elects not to pursue his entitlement to WCB benefits. Concluded very issue dealt with thoroughly by Justice MacLellan in *MacDermid v. Economical Mutual Insurance Company* (2000), 184 NSR (2d) 392 (S.C.). Opting not to pursue entitlement does not obliterate the clear exclusion that arises by contract. The exclusion is entitlement. Entitlement is not based upon receipt of benefits. It is not based on applying for benefits. It is not based upon applying and being denied. Declaration granted. Claim against Co-Operators General Insurance Company dismissed. Chambers costs \$700.00 plus disbursements of \$50.00, payable forthwith by Leng to Co-Operators.

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