

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Weeks v. Aviva Canada Inc., 2006 NSSC 83

Date: 20060427
Docket: SAT. No. 257177
Registry: Antigonish

Between:

Marjorie Weeks and Ernest Weeks

-and-

Aviva Canada Inc.

LIBRARY HEADING

Judge: The Honourable Justice Robert W. Wright

Heard: March 8, 2006 at Antigonish, Nova Scotia

Written

Decision: April 27, 2006

Subject: Insurer's duty to defend

Summary: In the Statement of Claim in a personal injury action, the plaintiff pleaded negligent use and operation of an ATV owned by one of the defendant parents and operated by her son (a minor). Both parents were also sued for, *inter alia*, negligent supervision of their son in his use and operation of the ATV. The particulars of negligence pleaded ended with the catchall phrase of "such other negligence as may appear".

The ATV was not covered by a motor vehicle insurance policy. The parents therefore sought to have the action defended by their insurer under a personal liability rider attached to their homeowner's policy. The insurer refused to defend the action, relying on an exclusion clause which excepted coverage for any claims arising from the ownership, use or operation of any motorized vehicle.

Issue: Do any of the allegations in the Statement of Claim invoke the insurer's duty to defend?

Result: The pleading of negligent supervision against the parents did not raise a concurrent and discrete cause of action unrelated to the ownership, use or operation of the vehicle. There was no realistic possibility that such a claim, even if successful, would fall within the policy coverage and hence there was no triggering of the insurer's duty to defend.

Similarly, the rote pleading of "such other negligence as may appear" added nothing of substance to the specific allegations contained in the Statement of Claim and was, in and of itself, insufficient to found a duty to defend. The application was accordingly dismissed.

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