

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Kroger v. Upshall, 2006 NSSC 327

Date: 20051220
Docket: S.H. No. 162260
Registry: Halifax

Between:

Heather Ann Kroger

-and-

Lynn Upshall; Cole Harbour Service Centre Limited, a body corporate;
Byways Automotive Group Limited, a body corporate carrying on business as
Byways Rent-Car; John Charles Cole; Kelly Kelson; and Canada Life
Assurance Company, a body corporate

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Judge: The Honourable Justice Robert W. Wright

Heard: December 20, 2005 at Halifax, Nova Scotia

Oral

Decision: December 20, 2005

Written

Decision: November 2, 2006

Subject: Application to sever issues of liability from damages - Civil Procedure Rules 28.04 and 1.03.

Summary: Four employees of Canada Life, travelling together in a rented car on a business trip to Saint John, New Brunswick decided to extend their trip by driving on to Calais, Maine to do some shopping. On their way back, they were involved in a violent head on collision which left the plaintiff with serious personal injuries, including a traumatic brain injury. The plaintiff sued the driver and owner of the rented vehicle as well as their common employer Canada Life. The defendant driver cross-claimed against Canada Life for indemnity for all or a portion of any damages

assessed against her in the plaintiff's action.

The plaintiff waited 2½ years on the civil jury long trial list only to have the trial adjourned shortly before its start date (through no fault of counsel). Defence counsel for the operator and owner of the rented car then brought an application for severance of the liability issues as between the defendants and the plaintiff and as between the defendant driver and the defendant Canada Life.

Issue: Whether it is just and convenient to sever the liability issues from damages?

Result: The application for severance was granted where the court concluded that there was a strong likelihood that the disposition of these discrete liability issues would lead to the achievement of a final settlement. The logistics of costs and delay favoured the granting of the severance where trial dates on liability were available a mere two months away which in all likelihood would be dispositive of the entire litigation. Because of the prospect of a further lengthy delay in bringing the matter to trial otherwise, plaintiff's counsel indicated a willingness to commit to a judge alone trial which would erase the concerns presented by a jury mode of trial.

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