

NOVA SCOTIA COURT OF APPEAL

Citation: Thorburn Wharf Fisheries Ltd. v. ING Insurance Company,
2010 NSCA 96

Date: 20101130
Docket: CA 326134
Registry: Halifax

Between:

Thorburn Wharf Fisheries Limited

Appellant

v.

ING Insurance Company of Canada and
Aviva Canada Inc.

Respondents

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: November 23, 2010

Subject: **Damage to Wharf. “Named Perils” Insurance Policy.
Contractual Interpretation. Standard of Review.**

Summary: A summer storm caused large waves to batter a vessel against a wharf. In an attempt to minimize the damage, people tried to move the vessel to the other side of the wharf where it would be more sheltered from the wind. As they proceeded to untie the vessel and drag it, it swamped and sank, and then later re-surfaced causing damage to the structure of the wharf.

The wharf’s owners claimed their losses as an insured peril and asked the Court to decide, as a matter of law, whether damage to the wharf was excluded from coverage under their policy.

Applying recognized principles of contractual interpretation,

the Chambers judge found in favour of the insurer and that the damage to the wharf, in these circumstances, was excluded. In his view, there was no ambiguity and therefore *contra proferentem* did not apply.

Held:

Appeal dismissed. While it is true that the judge was discerning the meaning of certain words within an insurance contract and in that sense was required to employ correct legal principles of interpretation, in doing so he was applying those principles to a particular set of facts. Thus, the exercise was really a question of mixed fact and law to which deference is owed. His analysis and conclusion did not disclose any palpable and overriding error.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 4 pages.