

*Kosta v. Western Union Ins. Co. and  
Savage v. Elite Ins. Co. and  
Seeton v. Commercial Union Assurance Co. of Canada,*

2001 NWTCA 8  
Date: 2001 09 18  
Docket: CA 00821/22/23

THE COURT:

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THE HONOURABLE MR. JUSTICE McCLUNG  
THE HONOURABLE JUSTICE RICHARD  
THE HONOURABLE JUSTICE VEALE

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BETWEEN:

ROBERT KOSTA

Appellant

- and -

WESTERN UNION INSURANCE COMPANY

Respondent

AND BETWEEN:

EDMUND SAVAGE

Appellant

- and -

ELITE INSURANCE COMPANY

Respondent

AND BETWEEN:

HARRY SEETON

Appellant

- and -

COMMERCIAL UNION ASSURANCE COMPANY OF CANADA

Respondent

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MEMORANDUM OF JUDGMENT

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Counsel for the Appellant <i>Kosta</i> :	Austin Marshall
Counsel for <i>Western Union Insurance Company</i> :	D. Hagg
Counsel for the Appellant <i>Savage</i> :	Austin Marshall
Counsel for <i>Elite Insurance Company</i> :	T.J. Delaney
Counsel for the Appellant <i>Seeton</i> :	Austin Marshall
Counsel for <i>Commercial Union Assurance Company of Canada</i> :	S.E. Cozens

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MEMORANDUM OF JUDGMENT

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**THE COURT:**

[1] For success on these appeals, the Appellants must show the motions judge made an error of law, or made a fact finding that was unreasonable. Upon careful consideration of the reasons given by the motions judge, and of the submissions on behalf of the Appellants, we fail to see any such error, or any unreasonableness in the statement of undisputed facts by the motions judge.

[2] We note that in the original motions brought before the motions judge by these Appellants, these Appellants took the position that the facts, as between them and their insurers, were undisputed, and they accordingly sought from the motions judge a declaration of the rights of the parties under the insurance contract. In his reasons the motions judge carefully set out the undisputed facts, undisputed facts which he gleaned from these Appellants' own evidence placed before the motions judge. The Appellants having received an unfavourable ruling from the motions judge, in our respectful view it is now not open to the Appellants to argue, on this appeal, that the issue of the "business pursuits" exclusion clause is not amenable to summary determination on a chambers motion. Nor, in our respectful view, is it of any assistance to the Appellants on the hearing of these appeals, to speculate what other findings of fact a trial judge might eventually make in the underlying tort action.

[3] The motions judge carefully examined the pleadings in the underlying tort action. He properly acknowledged, at paragraph 15, that the allegations of fact in those pleadings "must be given a wide interpretation and must be considered as capable of being proven." As required by binding case authority, he sought the true intention and meaning of the pleadings. He determined that the claims against these Appellants were in negligence, and that it was alleged that because of these Appellants' involvement with the strike and union activities, they owed a duty of care to the deceased miners, and breached that duty. The Appellants have failed to satisfy us that the motions judge

erred in the determination of the nature of the claims against the Appellants in the underlying tort action.

[4] The motions judge correctly found that the Appellants' union activities necessarily arose from their employment as miners. That determination was clearly open to the motions judge on the material before him, as was the resulting conclusion that the claims in the tort action against these Appellants fall within the business pursuits exclusion of the insurance policies.

[5] For these reasons, this Court ought not to interfere, and we would dismiss the appeals.

APPEAL HEARD on JUNE 19, 2001

MEMORANDUM FILED AT  
YELLOWKNIFE, Northwest Territories  
this 18th day of September 2001

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Authorized to sign for McCLUNG, J.A.

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RICHARD, J.A.

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Authorized to sign for VEALE, J.A.

CA 00821/22/23

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IN THE COURT OF APPEAL  
OF THE NORTHWEST TERRITORIES

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BETWEEN:

ROBERT KOSTA

Appellant

- and -

WESTERN UNION INSURANCE COMPANY

Respondent

AND BETWEEN:

EDMUND SAVAGE

Appellant

- and -

ELITE INSURANCE COMPANY

Respondent

AND BETWEEN:

HARRY SEETON

Appellant

- and -

COMMERCIAL UNION ASSURANCE COMPANY OF CANADA

Respondent

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MEMORANDUM OF JUDGMENT

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