

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

THE ESTATE OF SANDRA LEE DESROCHERS, deceased, by its administrator, GERALD JOSEPH MAURISSE DESROCHERS; GERALD JOSEPH MAURISSE DESROCHERS; MICHAEL DAVID JONES by his next friend THE PUBLIC TRUSTEE OF THE NORTHWEST TERRITORIES; and JASON PATRICK JONES by his next friend THE PUBLIC TRUSTEE OF THE NORTHWEST TERRITORIES

Plaintiffs

- and -



SIMPSON AIR (1981) LTD.; THE ESTATE OF BRENT CROSBY by his administratrix JULIETTE CROSBY and THE ESTATE OF GEORGE JOLY by its administratrix MARGARET ANNE JOLY

Defendants

Application to Compel Answers to Certain Written Interrogatories.
Application Denied.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.E. RICHARD

Heard at Yellowknife, Northwest Territories
on December 20, 1994

Reasons filed: March 31, 1995

Counsel for Plaintiffs: Adrian Wright
Counsel for Defendants: Virginia Schuler QC
 E. M. Lane

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Defendants

REASONS FOR JUDGMENT

- 1 The defendants apply under Order 15 of the Rules of Court for an order requiring the plaintiffs, and the Workers' Compensation Board, to answer certain written interrogatories served upon them on behalf of the defendants.
- 2 The issue is the ability of a defendant in a negligence lawsuit to ascertain, *via* examination for discovery and/or written interrogatories, the details of compensation payments made to a plaintiff pursuant to a statutory workers' compensation scheme.

(2) A party may serve upon any person who is not a party, interrogatories to be answered by that person, or if that person is a body corporate, partnership or association, by an officer or agent thereof, and subject to Rule 225, the person shall answer each interrogatory to the best of his personal knowledge and, if necessary, by adding any explanatory information, provided the party shall serve a copy of the interrogatories and answers upon any adverse party forthwith upon receipt of the same.

224. (1) Interrogatories shall relate to the same matters as may be dealt with by an examination for discovery under Rule 205. Nothing in these Rules prevents a party who has served written interrogatories on an adverse party from proceeding with an examination for discovery against that party, or if he has so proceeded with an examination for discovery, from serving written interrogatories upon that party.

(2) Unless the court otherwise orders to protect a party or person interrogated from annoyance, expense, embarrassment or oppression, the number of interrogatories or sets of interrogatories to be served is not limited.

(3) Unless the court otherwise orders, the interrogatories may be served at any time after the pleadings are closed within the meaning of Rule 101.

(4) Where interrogatories are to be served on two or more persons or are required to be answered by an officer or agent of a person, a note at the end of the interrogatories shall state which of the interrogatories each person is required to answer.

225. (1) Unless the court otherwise orders, interrogatories shall be answered separately and fully under oath as in Form 16, and the answer shall be served on the party giving the interrogatories within 15 days of their receipt.

(2) An objection to answering any interrogatory may only be taken on the ground of privilege or that it is not relevant to the subject matter involved in the proceeding, and the objection shall be made in the affidavit in answer.

226. If a person on whom interrogatories have been served fails to answer any one or more of them or answers insufficiently, the court may, upon such terms as are just, make an order requiring

8 On the present application, the defendants seek, v/a written interrogatories, details of the compensation payments being made by the Workers' Compensation Board to the plaintiffs. The plaintiffs object to these interrogatories, on the ground that they are "not relevant to the subject matter of the proceeding".

9 Specifically, of the written interrogatories addressed to the plaintiffs, the plaintiffs object to the following questions on the ground of relevancy:

[To the plaintiff Desrochers]

1. *What sums of money were paid by the Workers' Compensation Board of the Northwest Territories to the Administrator of the Estate of Sandra Lee Desrochers or to the benefit of the Estate, with respect to the funeral and burial expenses referable to the death of Sandra Lee Desrochers?*

...

7. *What is the present total of the widower's benefits that you have received from the Workers' Compensation Board as the result of the death of your wife? Is it your understanding that benefits will continue to be paid monthly for the rest of your life as long as you remain unmarried?*

8. *Do you have the right to require the Board or to request the Board to commute future payments?*

9. *Would a request to commute future payments receive favourable consideration if the total amount of the past payments was tendered?*

10. *If the total amount of the past payments of widower's benefits to Gerald Desrochers was to be paid now, would that money belong to Gerald Desrochers or to the Board?*

11. *Provide an accurate schedule of the date of each widower's benefit and the amount received by Gerald Desrochers to date.*

27. Has the Trustee incurred any charges or costs as expenses in connection with any of its administrative duties or services rendered to Jason Jones?

28. Provide an accurate schedule of the dates and the amounts of each payment made by the Board and received by the Trustee or Jason Jones to date.

...

30. Which of the named plaintiffs makes the claim for those payments?

...

33. Do you have the right to require the Board or to request the Board to commute future payments?

34. Would a request to commute future payments receive favourable consideration if the total amount of the past payments was tendered?

35. What is the present capitalized value of the future payments of the pension awarded by the Workers' Compensation Board to Jason Patrick Jones?

36. What other amounts or payments have been paid to or for the benefit of Jason Jones as a result of the death of Sandra Lee Desrochers, either directly or through the office of the Trustee?

10 The written interrogatories served on the Workers' Compensation Board (represented on this application by the plaintiffs' counsel) pursuant to Rule 223(2) are to the same effect as those above enumerated, and the Board makes the same objection, i.e. lack of relevancy to the subject-matter of this litigation.

11 It is submitted on behalf of the defendants that the answers to these questions are indeed relevant on the issue of the losses or damages suffered by

14 It is asserted that the sought-after information will assist the defendants' actuary in preparing his expert evidence for trial — yet it has not been demonstrated how that is so. What specific part of the actuary's assumptions or calculations, in offering an opinion on the losses and damages suffered by the plaintiffs, will include the amount of the workers' compensation payments received by the plaintiffs? The answer is not obvious to a layman, and no evidence has been presented to demonstrate its germaneness.

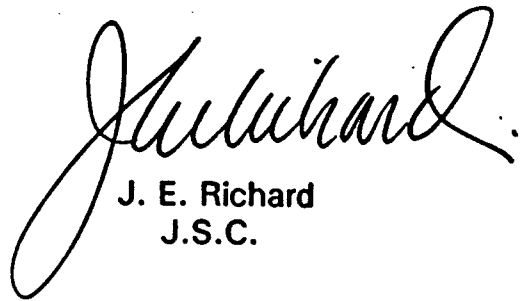
15 It would appear, therefore, that neither the plaintiffs nor the Workers' Compensation Board can be compelled to disclose this information to the defendants pursuant to the Rules of Court which govern the conduct of this litigation.

16 No case authority, in this jurisdiction or any other, has been cited by counsel in support of the proposition that this information — which, at face value, is a private matter between the Board and the plaintiffs — should be made available by court order to the defendants as a pre-trial aid in settlement negotiations or indeed at trial. Nor has any opposing authority been cited by plaintiffs' counsel.

17 In Ontario, the Rules of Civil Procedure were amended a few years ago to compel disclosure of an insurance policy at the examination for discovery stage, even though the policy is not relevant to any issue between the parties to the

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This ruling does not, of course, bind the trial judge on any question of admissibility of evidence that may arise during the course of the trial.



J. E. Richard
J.S.C.

Dated at Yellowknife, Northwest Territories
this 31th day of March, 1995

Counsel for Plaintiffs: Adrian Wright

Counsel for Defendants: Virginia Schuler QC
E. M. Lane

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**Reasons for Judgment of the
Honourable Mr. Justice J.E. Richard**

