

ONTARIO  
SUPERIOR COURT OF JUSTICE

**B E T W E E N:** )  
)  
JENNIFER-ANNE COWLES, JESSE ) *L. Craig Brown*, for the Cowles Family  
COWLES, a minor by his Litigation ) Members as Plaintiffs  
Guardian, Jennifer-Anne Cowles, )  
QUINTON COWLES, a minor by his )  
Litigation Guardian, Jennifer-Anne Cowles )  
and ANNE KELLY )  
)  
Plaintiffs )  
)  
)  
- and - )  
)  
)  
) *J.A. Soule*, for David Balac and Ranko  
DAVID BALAC, RANKO BALAC and ) Balac, as Defendants  
THE AFRICAN LION SAFARI & GAME )  
FARM LTD. ) *Douglas Wright* and *Martin Smith*, for The  
) African Lion Safari & Game Farm Ltd.  
Defendants )

COURT FILE NO.: 98-CV-139448

**BETWEEN:** )  
)  
DAVID BALAC, RANKO BALAC, ) *B. Haines, Esq., Q.C., D. Christie* and *O.*  
SLAVA BALAC and SANDRA BALAC ) *Jasen*, for the Balac Family Members as  
) Plaintiffs  
Plaintiffs )  
)  
)  
- and - )  
)  
)  
AFRICAN LION SAFARI & GAME )  
FARM LTD. and LIBERTY MUTUAL )  
INSURANCE COMPANY )  
)  
Defendants )

COURT FILE NO.: 98-CV-139448A

**BETWEEN:** )  
 )  
 DAVID BALAC, RANKO BALAC, )  
 SLAVA BALAC and SANDRA BALAC )  
 )  
 Plaintiffs )  
 )  
**- and -** )  
 )  
 AFRICAN LION SAFARI & GAME )  
 FARM LTD. and LIBERTY MUTUAL )  
 INSURANCE COMPANY )  
 )  
 Defendants )  
 )  
**- and -** ) *D. Rollo*, for Jennifer-Anne Cowles as  
 ) Defendant-by-Counterclaim and Third  
 JENNIFER-ANNE COWLES ) Party  
 )  
 Third Party )  
 ) **HEARD:** November 19, 2004

2004 CanLII 42936 (ON S.C.)

**MacFarland J.**

[1] The defendant ALS moves for an Order for leave to interview Dr. Wong, one of the plaintiffs' treating physicians.

[2] Dr. Wong treated both of the main plaintiffs at the Hamilton General Hospital on the day of the attack. In a typed consultation report signed by Dr. Wong dated April 22, 1996 contained in the hospital records it is noted:

HISTORY OF PRESENTING ILLNESS: Jennifer was visiting the African Lion Safari with her boyfriend. She was the passenger in a 4 x 4 truck. She was rolled down the window, trying to take a picture and was attacked by a tiger.

[3] The defence wishes to discuss with Dr. Wong the source of his information, if he recalls it and presumably in the event he does not what his usual practice was in obtaining a history in circumstances such as those that existed on April 19, 1996.

[4] Mr. Soule on behalf of Mr. Balac as defendant supports Mr. Wright's application. Mr. Christie on behalf of Mr. Balac as plaintiff supports the plaintiff Cowles in resisting the motion.

[5] Dr. Wong is under subpoena by ALS but he refuses to discuss his evidence with counsel for the defence. He has indicated, I am told, that the *Rules of Professional Conduct* which govern his profession prohibit him from having any discussion absent the plaintiff patient's consent. The plaintiff does not consent.

[6] Mr. Brown argues essentially, that the doctor-patient relationship is one of confidentiality. If the defence wanted to interview Dr. Wong about his note, they ought to have availed themselves of the pre-trial process available under Rule 31.10 and obtained an Order for the examination of a non-party. Instead they move for such an Order two weeks after the trial has been underway. In fairness to the defence, Mr. Wright did alert the court and counsel about a week ago that he would be seeking such an Order.

[7] This record has been available for some eight and one half years. It was produced early on in the lawsuit and has literally been in the possession of the defence for years.

[8] The central issue in this case is liability. While there are a multitude of issues raised on the record among the parties in relation to damages and other aspects – the real dispute is whether the window(s) had been deliberately put down by the plaintiff or plaintiffs prior to the attack OR whether they came down through inadvertence during the attack.

[9] Both main plaintiffs have completed their evidence and stated that the windows were fully rolled up when they entered the tiger reserve.

[10] It will be seen at once, the potential importance of Dr. Wong's note. The admissibility of that note will be the subject of a further motion following the release of these reasons.

[11] The information the defence seeks is not related to the plaintiff's treatment *per se* nor to the state of her health at any time. It is merely in relation to a statement she may have made about how the accident occurred to one of her treating physicians on the day of the accident. Were Dr. Wong merely a bystander who heard the plaintiff make such a statement, clearly the defence could have interviewed such a witness and wouldn't need the plaintiff's permission to do so. The difficulty here arises by reason of Dr. Wong's status as a treating physician.

[12] Each case must be considered on its own facts. It is important that the trial is already in progress at the time this application is made. I do not know and cannot know now whether in providing information about the statement, Dr. Wong would be obliged to reveal information of a confidential nature.

[13] In my view it is simply too late in the day for such an Order and the motion is dismissed.

[14] The defence of course are at liberty to call Dr. Wong if so advised, and question him in relation to the circumstances surrounding the making of the note.

**Released:** November 19, 2004

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MacFarland J.