IN FACT AND IN LAW

Damage Insurance

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Beware of Allegations of Fraud in Insurance:
Words Fly Away, Writing Remains!

By Bernard Larocque

Armando Aznar J. of the Court of Québec recently rendered a harsh judgment against an insurance company.[1] Although the amounts at stake were minimal, the decision may have a significant impact on insurers. This is one of the rare judgments where an insurer was ordered to pay exemplary and moral damages for having made allegations in the pleadings based on unjustified suspicions resulting in damages to the integrity and honesty of its insured.

The Facts

On May 7, 2002, the vehicle of Wawanesa's insured was damaged and several items it contained (golf bag, sound system, etc.) were stolen. The claim as presented by the insured amounted to $7,101.04.

After an investigation and statutory examination by an attorney hired by Wawanesa, the latter refused to pay the claim, initially alleging a false declaration with respect to the loss and the insurance claim.

The insured therefore instituted proceedings against his insurer, claiming material loss suffered as a result of the theft as well as an amount of $15,000 as punitive and exemplary damages and an amount of $5,000 for damage to his reputation and moral damages. He claimed, among other things, to have suffered harm as a result of the defendant's refusal to compensate him as he was considered by insurers to be a bad risk following the loss.

In its defence, the insurer put forward several grounds for refusing the plaintiff's claim. It alleged contradictions in his version of the facts, exaggerations as to the value of the property, the insured's financial problems at the time of the loss, including the fact that he had borrowed money from his father and that he had not yet been released from bankruptcy. The insurer also claimed that the insured had tried to settle his claim quickly which, in its view, showed that the insured had grossly exaggerated his claim, as he was prepared to accept a lower settlement.

In conclusion, Wawanesa argued the following in its defence:

> **[Translation] "The defendant's investigation showed that the plaintiff's claim was poorly stitched together and that he was not the victim of the alleged loss;"** [2]

The Decision

The Evidence

The judge dismissed each and every ground relied upon by the insurer. He held, firstly, that the vehicle of the insured was in fact damaged and that the property it contained had been stolen.

Furthermore, he held that nothing in the evidence offered by Wawanesa could justify its allegation that the plaintiff had not been the victim of the loss. The court added that the allegation was not based on any evidence which would allow the insurer to reasonably question the occurrence of the events and the good faith of the insured.

The exaggerations, contradictions and implausibility raised by Wawanesa in its defence were not supported by any witness or serious material element of proof. The same applied to the allegations to the effect that the insured was having financial difficulties.

Punitive and Moral Damages

In addition to ordering Wawanesa to pay the amount of the claim under the insurance limits, he ordered the insurer to pay $5,000 as punitive damages and $2,500 as moral damages.

The judge relied on sections 4 and 49 of the *Charter of human rights and freedoms* [3], which read as follows:

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[1] *Tellier* v. *Wawanesa*, AZ-50310003, April 12, 2005, Court of Québec, the Honourable Judge Armando Aznar

[2] Id., p. 3, par. [11]

[3] R.S.Q. c. C-12

"4. Every person has a right to the safeguard of his dignity, honour and reputation.

49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages."

The judge held that the insurer's attitude following the filing of the claim was based on unjustified suspicions causing damages to the integrity and honesty of the insured. He added that the total absence of proof presented by Wawanesa was unfounded and outrageous. Finally, the allegation that the insured's claim was "poorly stitched together" was made, in the judge's words, [Translation] "with such recklessness that it was the equivalent of malice since there was no reasonable and probable cause to do so".

With respect to moral damages, the insurer's decision (which the judge described as being abusive) to deny the claim resulted in the insured experiencing many problems and difficulties, such as having to insure his vehicle at a substantially higher rate and undertake a legal battle, which, according to the judge, justified the granting of an amount of $2,500.

This judgement is harsh against the insurer, but such severity is nothing new when careless words slip into pleadings.

If a party does not succeed in convincing the court that it had reasonable grounds to believe in the truth of the allegations it puts forward, it may be ordered to pay damages. It is therefore essential to have enough significant elements allowing to come to the conclusion that an insured exaggerated his claim, or even committed an intentional fault. If the facts alleged are insignificant or appear benign, the court will take severe action if the plaintiff can prove damages.

The following quote, dating back over 120 years, is still very relevant:

[Translation] "Either the party who has a defence to make, based on allegations of fraud, can prove them or it cannot; we must assume that it has normal discretion and prudence, and is able and prepared to ensure its means of defence in advance. If it can prove them, it can boldly allege them, and its opponent will bear the consequences; if it cannot prove them, why make such allegations? It is a pure loss for the case, it is useless [...] it is slander [...]." [4]

Before alleging in pleadings that an insured has attempted to defraud his insurer by exaggerating his claim or making a false declaration, one must be very careful. Although the ink may have long dried, the legal proceedings remain…

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[4] *Pacaud* v. *Price*, (1870) 22 B.R. 281, at p. 289, Taschereau J. dissenting in review but confirmed by the majority of the Queen's Bench, p. 296. For more details on the subject, see Odette JOBIN-LABERGE, "*La responsabilité civile des avocats pour la diffamation dans les actes de procédure*" in Développements récents en droit civil (1993), Service de la formation permanente, Québec Bar, 1993, Les éditions Yvon Blais inc., 1993, p. 21.

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