



DOLDEN WALLACE FOLICK <sup>LLP</sup>

# Insurance Law Update

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## DELAY IN COMMUNICATING NEGATIVE COVERAGE DECISION SPARKS PUNITIVE DAMAGES AWARD: *SIDHU V. WAWANESA MUTUAL INSURANCE COMPANY*, 2011 BCSC 1117



On August 17, 2011, the British Columbia Supreme Court released a decision which all insurers would be wise to review in relation to their claims handling procedures. This judgment is an important reminder to all insurers of the great importance of fairly investigating claims and communicating negative coverage decisions to insureds in a timely manner.

### FACTS AND BACKGROUND

The insureds had purchased a fire insurance policy from Wawanesa Insurance. In February 2005, the insured's home was destroyed by fire. Investigations suggested that the fire had been deliberately set. During the initial investigation, inconsistent statements were made by one of the insureds that led the insurer to believe that he had deliberately started the fire. In March 2005, the insurer determined that further investigations were needed before denying the claim. However, the insurer failed to complete these investigations and failed to communicate any coverage decision to the insureds or deliver any proof of loss form.

In 2007, the insureds brought an action for coverage. The insureds claimed that they were not responsible for starting the fire and alleged that the insurer acted wrongfully, in bad faith and had been heavy handed and disrespectful in its denial of the claim. The insureds sought aggravated and punitive damages.

### DECISION

Despite some "less than convincing" evidence from the insured suspected of starting the fire, the Court concluded that the insurer had failed to prove on a balance of probabilities that the insureds



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were responsible for starting the fire. The insureds were therefore entitled to coverage under their insurance policy.

In addressing the insured's claim for punitive damages, the Court concluded that the insurer did not investigate or assess the claim in a fair or reasonable manner. The initial meeting between the insurer's investigators and the insureds involved a type of "cross examination" of the insureds and the tone was characterized by the Court as "accusatory". More importantly, after the insurer determined that they wished to obtain further statements before denying the claim, they failed to follow through and complete these investigations. Further, a miscommunication between the insurer and its investigator and adjuster resulted in the insureds not being provided with a proof of loss form until after litigation had already been commenced.

In addition to the concerns over the investigation of the claim, the lack of communication between the insurer and insured was crucial to the Court's assessment of punitive damages. The Court was troubled by the fact that the insurer did not inform the insureds that it would be denying their claim until the insureds had already sued to enforce the policy. The Court concluded that the insureds had been "left in the lurch" for almost two years without the insurer concluding their investigation, communicating to the insureds their concerns that the fire had been deliberately set, providing them a proof of loss, or providing any financial assistance. The "enormous" delay in completing the investigation and communicating the negative coverage decision to the insured was found to be unexplained and unfair to the insureds. The delay in properly assessing the claim and reporting to the insureds "*left a serious cloud over their heads for far too long*".

The Court awarded \$50,000 in punitive damages to the insureds, an amount intended to reflect the denunciation required of the insurer's conduct.

## IMPLICATIONS FOR INSURERS

The implications of this decision are clear – insurers must not only undertake effective and fair investigations before denying a claim but must also promptly communicate their negative coverage decisions to the insured. Failure to do so can result in a finding of "bad faith" and an award for punitive damages.



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