

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Oraniewicz v. Intact Insurance Company*,
2023 BCSC 400

Date: 20230316
Docket: 52522
Registry: Kamloops

Between:

Janusz Oraniewicz

Plaintiff

And

Intact Insurance Company

Defendant

Corrected Judgment: The text of the judgment was corrected on the front page on
March 24, 2023.

Before: The Honourable Mr. Justice Hori

Reasons for Judgment

Appearing on his own behalf:

J. Oraniewicz

Counsel for the Defendant:

D.J.E. Bilkey, K.C.
B. Morrow
C. Manning

Place and Date of Trial:

Kamloops, B.C.
November 16-19, 2021, November
22-24, 2021, May 30-31, 2022,
June 1-3, June 6-7, 2022
and September 21-23, 2022

Place and Date of Judgment:

Kamloops, B.C.
March 16, 2023

Nature of the Plaintiff's Action

[1] The plaintiff, Janusz Oraniewicz, brings this action against the defendant, Intact Insurance Company ("Intact"), pursuant to a policy of insurance.

[2] Intact issued a policy of insurance to Mr. Oraniewicz that included indemnification for business losses sustained by Mr. Oraniewicz as a result of fire (the "Policy"). Mr. Oraniewicz claims insurance proceeds under the Policy, as well as damages for breach of the insurer's duty of good faith and fair dealing.

Background

[3] Mr. Oraniewicz owned and operated a restaurant and hotel known as the Mozart House Inn in the City of Kimberley, British Columbia. Pursuant to the terms of the Policy, Intact agreed to indemnify Mr. Oraniewicz for:

- a) loss and damage to the building from which Mr. Oraniewicz operated his business (the "Building Loss");
- b) loss and damage to the equipment, stock and contents located within business premises ("Loss of Contents"); and
- c) loss associated with business interruption ("Loss of Profits").

[4] When Intact issued the Policy, Mr. Oraniewicz was indebted to National Holdings Ltd. ("National Holdings") under the terms of a debenture registered against the business premises as a first financial charge.

[5] Mr. Oraniewicz was also indebted to Pioneer West Mortgage Investment Corporation ("Pioneer West") which held a second mortgage on the business premises.

[6] Due to National Holdings' financial interest in Mr. Oraniewicz's business, the Policy named National Holdings as the first loss payee. The Policy also included a Standard Mortgage Form G010 ("Standard Mortgage Form") and provided that it applied to the buildings only.

[7] Similarly, the Policy named Pioneer West as the second loss payee with the Standard Mortgage Form made applicable to the buildings only.

[8] National Holdings registered its debenture against title to the business premises on October 5, 2011. Pioneer West registered its mortgage against the premises also on October 5, 2011, as a second financial charge behind the debenture held by National Holdings.

[9] On May 14, 2015, a fire damaged Mr. Oraniewicz's business premises. The fire caused damage to the building, as well as damage to the equipment and other contents in the building. As a result of the fire, Mr. Oraniewicz also sustained a loss of profits from being unable to carry on his business.

[10] Intact became involved in this insurance claim shortly after the fire and retained an insurance adjuster to adjust the claim. However, as a result of Mr. Oraniewicz's dissatisfaction with the first adjuster, Intact retained an alternate adjuster to adjust the claim and to work with Mr. Oraniewicz.

[11] Intact retained an accountant to assess the Loss of Profits. It also retained a property loss assessment company to assess the depreciated repair and restoration costs for the assets damaged in the fire.

[12] Within weeks of the fire, Intact advanced funds to Mr. Oraniewicz for his Loss of Profits. These payments continued until October 2015. During this period of time, Mr. Oraniewicz received a total of \$24,131 in insurance monies for Loss of Profits from Intact.

[13] For various reasons, the parties did not achieve any resolution of Mr. Oraniewicz's insurance claim for many years. The reasons for the lengthy process included the following:

- a) uncertainty as to whether Mr. Oraniewicz wished to repair the property or receive a cash settlement;
- b) a foreclosure proceeding commenced by National Holdings;

- c) issues created by the involvement of the first and second loss payees under the insurance;
- d) a Requirement to Pay issued by the Canada Revenue Agency attaching insurance monies payable to Mr. Oraniewicz;
- e) the plaintiff and Intact’s inability to agree on the value of the insured loss; and
- f) Intact’s reliance on a mandatory dispute resolution procedure to decide the value of the insured loss.

[14] Eventually, on February 10, 2017, Intact settled the claim of National Holdings. On February 17, 2017, Intact paid the Canada Revenue Agency.

[15] Intact received a proof of loss from Mr. Oraniewicz on April 12, 2017 and the parties completed the dispute resolution process on February 15, 2021.

[16] The dispute resolution process resulted in an agreement that the total value of Mr. Oraniewicz’s insurance claim was \$249,490.72.

[17] Once the value of the insured loss was determined by agreement, Intact had paid out more for the loss than the agreed upon value. By that time, Intact had paid:

Loss of Profits paid directly to Mr. Oraniewicz	\$24,131.00
Canada Revenue Agency	\$25,513.29
National Holdings	\$224,486.71
Total:	\$274,131.00

[18] Based on the values established by the dispute resolution process, Mr. Oraniewicz received no additional funds from the Policy after the completion of the process.

Issues

[19] While it is difficult to determine exactly what Mr. Oraniewicz claims in this action, I have defined the issues as follows:

- a) whether the insured values established by the dispute resolution process are binding on Mr. Oraniewicz and, if not, what is the appropriate value;
- b) whether Intact overpaid National Holdings under the first loss payee provision of the Policy;
- c) whether Intact caused the lengthy delay in resolving the insurance claim and, if so, whether the delay caused Mr. Oraniewicz additional loss; and
- d) whether Intact breached its duty of good faith and fair dealing and, if so, what damages flow from that breach.

The Dispute Resolution Values

[20] The *Insurance Act*, R.S.B.C. 2012, c. 1 [IA] incorporates conditions into every policy of insurance. Section 29 of the IA refers to those conditions as “Statutory Conditions”. Accordingly, the Policy is subject to the terms of the Statutory Conditions set out in s. 29 of the IA.

[21] In this case we are concerned with Statutory Condition 11 which provides as follows:

- (1) In the event of disagreement as to the value of the insured property, the value of the property saved, the nature and extent of the repairs or replacements required or, if made, their adequacy, or the amount of the loss or damage, those questions must be determined using the applicable dispute resolution process [including appraisal] set out in the *Insurance Act*, whether or not the insured's right to recover under the contract is disputed, and independently of all other questions.
- (2) There is no right to a dispute resolution process under this condition until
 - (a) a specific demand is made for it in writing, and
 - (b) the proof of loss has been delivered to the insurer.

[22] Section 12 of the *IA* establishes the dispute resolution process for Statutory Condition 11. Once the insurer receives a proof of loss from the insured, either party may engage the dispute resolution process by giving written notice to the other party. The process then requires each party to appoint a representative and those representatives to appoint an umpire.

The process requires the parties' representatives to determine the matters in dispute by agreement. However, if the representatives cannot agree, then they are required to submit their differences to the umpire.

[23] Intact gave written notice to Mr. Oraniewicz of its intention to engage the dispute resolution process by a letter dated March 27, 2016. Since Intact had not received a proof of loss from Mr. Oraniewicz by that time, Intact made the notice effective upon the delivery of a proof of loss.

[24] Mr. Oraniewicz delivered his proof of loss to Intact on April 12, 2017, and the parties eventually appointed their respective representatives to determine the value of the insured property.

[25] The dispute resolution process under the *IA* resulted in an agreement on the value of the insured loss. Intact's representative confirmed the agreement in writing by a letter dated February 17, 2021 to the representative for Mr. Oraniewicz. Both representatives signed the letter indicating their agreement to the settlement figures.

[26] The agreed upon value of the insured loss was as follows:

Building Loss (net of a \$1,000 deductible):	\$151,902.81
Loss of Contents (including chattels):	\$51,346.91
Loss of Profits:	\$46,241.00
TOTAL:	\$249,490.72

[27] In my view, the agreement on the value of the loss is a final agreement that is binding upon both Intact and Mr. Oraniewicz. Each of the parties chose their

respective representatives to represent their interests in the dispute resolution process. In accordance with that process, the parties' representatives arrived at an agreed upon value for the insured loss.

[28] There is nothing in the evidence that persuades me that the process was improper or that there is any reason to set aside the agreement.

[29] Accordingly, I find that the value of the insured loss is the value agreed upon by the parties in the dispute resolution process.

Settlement with National Holdings

[30] As of the date of the fire, Mr. Oraniewicz was indebted to National Holdings. He became indebted to National Holdings in October 2011, when he received a loan of \$342,000.

[31] National Holdings took security for the loan in the form of a debenture. As security for payment of the loan, the debenture charged the following:

- a) the business premises;
- b) all inventory, equipment, fixtures, furniture, implements and chattels; and
- c) all revenues, incomes, book debts and accounts receivable.

[32] National Holdings commenced foreclosure proceedings on the business premises on March 12, 2015. The foreclosure resulted in National Holdings obtaining an order nisi on June 29, 2015. On December 12, 2016, the court approved the sale of the business premises for a purchase price of \$174,000.

[33] After National Holdings commenced foreclosure proceedings, it placed fire insurance on the business premises with Chubb Insurance. While Mr. Oraniewicz was dealing with Intact on the first fire loss, a second fire caused further damage to the business premises.

[34] The terms of the debenture held by National Holdings required Mr. Oraniewicz to insure “all property and assets charged” by the debenture against loss by fire. It also required any insurance policy arranged by Mr. Oraniewicz to name National Holdings as a first loss payee or an additional insured.

[35] The Policy specifically named National Holdings as the first loss payee. In addition, the loss payable clause included a condition that the Standard Mortgage Form was “applicable to the Buildings Only”.

[36] Intact settled National Holdings’ claim against the insurance proceeds on February 9, 2017, by agreeing to pay \$224,486.71. The settlement amount was a global figure that included insurance monies payable for the Building Loss, Loss of Contents and Loss of Profits.

[37] The first complaint by Mr. Oraniewicz is that Intact paid insurance funds for Loss of Contents and Loss of Profits to National Holdings. Mr. Oraniewicz submits that since the Standard Mortgage Form is “applicable to the Buildings Only”, Intact should have paid only the Building Loss portion of the insurance proceeds to National Holdings. Ultimately, Intact and Mr. Oraniewicz agreed that the Building Loss value was \$151,902.81.

[38] The wording of the loss payable clause in the Policy is:

Loss, if any Payable to:	Loss Payee/Payable	National Holdings Ltd. 1090 West Georgia Street Suite 850 Vancouver, BC V6E 3V7 1stly Standard Mortgage Form G010 is applicable to Buildings Only
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[39] The Standard Mortgage Form is a provision in the Policy that limits Intact’s ability to deny payment of insurance proceeds to National Holdings.

[40] In my view, the wording of the loss payable clause in the Policy is clear. National Holdings is a loss payee under the Policy in two separate capacities.

[41] Firstly, the Policy makes National Holdings a loss payee pursuant to an “open loss payable clause” as defined by the Appeal Division of the Nova Scotia Supreme Court in *Trans Canada Credit Corp. Ltd. v. Royal Insurance Co. of Canada* (1983), 149 D.L.R. (3d) 280 (N.S.C.A.). An open loss payable clause identifies the party who may collect insurance proceeds.

[42] Secondly, National Holdings is a loss payee pursuant to the Standard Mortgage Form which is specifically applicable to the insurance proceeds related to the building.

[43] The Appeal Court in *Trans Canada Credit Corp. Ltd.* described the “open loss payable clause” at 286 by citing the following passage from *MacGillivray & Parkington on Insurance Law: relating to all risks other than marine* (London: Sweet & Maxwell, 1975) (6th ed.) at 764, para. 1833:

...Such a clause does not make the mortgagee an insured, but it does operate as an assignment of the right to receive the policy moneys. Thus the insurer cannot pay the mortgagor or agree to apply part of the policy moneys towards rebuilding without the mortgagee's consent and, if he does so, he may be liable to pay twice over. On the other hand, being a mere assignee, the mortgagee's claim is liable to be defeated by any act of the mortgagor which would entitle the insurer to deny liability; if the mortgagor is guilty of non-disclosure, deliberately causes the loss, or even deprives the insurer of his rights of subrogation, the mortgagee's rights will be defeated.

[44] At 286, the Court continues:

[14] In my view a mortgagee has an independent right of action to recover the proceeds payable under the policy although no separate contract was made with the mortgagee under the open loss payable clause as used in the policy.

[45] In contrast, a standard mortgage clause is a separate contract between the mortgagee and the insurer. The standard mortgage clause preserves the validity of the insurance policy as it applies to the lender regardless of any act or omission on the part of the mortgagor. This interpretation of the standard mortgage clause is

consistent with the wording of the Standard Mortgage Form referred to in the Policy. The substantive clause in the Standard Mortgage Form is as follows:

BREACH OF CONDITIONS BY MORTGAGOR OWNER OR OCCUPANT -

The insurance and every documented renewal thereof – AS TO THE INTEREST OF THE MORTGAGEE ONLY THEREIN – is and shall be in force notwithstanding any act, neglect, omission or misrepresentation attributable to the mortgagor, owner or occupant of the property insured, including transfer of interest, any vacancy or non-occupancy, or the occupation of the property for purposes more hazardous than specified in the description of the risk:

[46] Accordingly, the correct interpretation of the Policy is that National Holdings is the first loss payee under the Policy and, as such, is an assignee of all insurance proceeds including payments for Loss of Contents and Loss of Profits. However, Intact could deny payment to National Holdings for Loss of Contents and Loss of Profits if Mr. Oraniewicz committed any act of default that deprived him of coverage under the Policy.

[47] On the other hand, pursuant to the Standard Mortgage Form, Intact could not deny payment of the insurance proceeds related to the Building Loss to National Holdings even if Mr. Oraniewicz defaulted under the Policy.

[48] In this case, Intact has not alleged that the conduct of Mr. Oraniewicz had deprived him of insurance coverage. Therefore, Intact was required to pay the insurance proceeds for Loss of Contents, Loss of Profits and Building Loss to National Holdings as a loss payee under the Policy.

[49] Accordingly, the insurance funds paid by Intact to National Holdings under the Policy were appropriate.

[50] The second complaint by Mr. Oraniewicz is that Intact paid more to National Holdings than was payable under his loan. Mr. Oraniewicz submits that his debt to National Holdings was less than \$224,486.71 because:

- a) his initial borrowing from National Holdings was \$342,000;

- b) the court approved the sale of his business premises for \$174,000 in the foreclosure proceeding; and
- c) National Holdings received insurance monies from Chubb Insurance for losses caused by a second fire.

[51] I am not satisfied that Mr. Oraniewicz's indebtedness to National Holdings was less than the settlement amount.

[52] While the initial borrowing was \$342,000, the loan history delivered by National Holdings to Intact shows that by June 3, 2016, Mr. Oraniewicz's indebtedness had grown to \$403,513.73.

[53] Further, there is no evidence from which I can determine the amount of the net sale proceeds applied to Mr. Oraniewicz's debt after the sale of the premises. The sale price may have been \$174,000, but the net amount available to apply to the indebtedness is the relevant figure in this analysis. Without this figure, Mr. Oraniewicz has not satisfied me that Intact paid more than the amount he owed to National Holdings.

[54] Similarly, with respect to the Chubb Insurance proceeds, Mr. Oraniewicz has not presented any admissible evidence to establish the nature of the interest insured by Chubb Insurance, the amount of the insurance proceeds paid to National Holdings and the treatment of those insurance proceeds by National Holdings. Without this evidence, Mr. Oraniewicz has not fulfilled his onus to prove that Intact paid more to National Holdings than he owed.

Delay

[55] Mr. Oraniewicz claims that the conduct of Intact delayed the final resolution of his insurance claim which resulted in additional losses to him. In particular, Mr. Oraniewicz relies on delays that are associated with the following factors:

- a) Intact did not provide him with a proof of loss in a timely manner;

- b) Intact did not explain his options with respect to repairing the building or taking the actual cash value; and
- c) Intact prolonged the process by engaging the dispute resolution process.

Proof of Loss

[56] In a letter dated May 19, 2015, Intact’s claim representative, Charlene Smith, provided Mr. Oraniewicz with general information about the claims process. Ms. Smith also enclosed a blank proof of loss with her letter.

[57] Mr. Oraniewicz claims that he did not receive Intact’s letter of May 19, 2015, so he did not receive the proof of loss. Mr. Oraniewicz suggests that because he did not receive Intact’s letter, he could not provide a proof of loss in a timely fashion.

[58] Mr. Oraniewicz criticizes Intact for sending this letter by regular mail and not by registered mail. He submits that the proof of loss form is such an important document that Intact should have sent it by registered mail.

[59] In my view, whether Intact sent the letter by regular mail or registered mail is not of any significance. Even if Mr. Oraniewicz did not receive the proof of loss enclosed with Intact’s letter of May 19, 2015, he received another copy of the proof of loss form with a letter from Intact dated August 18, 2015.

[60] Further, notwithstanding having received the proof of loss document in August 2015, Mr. Oraniewicz did not execute a completed proof of loss until June 15, 2016, and did not forward the executed proof of loss to representatives of Intact until April 12, 2017.

[61] Accordingly, I find that even if Mr. Oraniewicz did not receive Intact’s letter of May 19, 2015, that did not cause any delay in the process and did not cause any prejudice to Mr. Oraniewicz.

Repair Cost vs. Cash Value

[62] Mr. Oraniewicz claims that Intact did not communicate with him about the claims process. In particular, he claims that he suffered prejudice arising from delay because Intact did not explain the options available to him between accepting the repair costs for the building or the actual cash value.

[63] However, the evidence is that on August 18, 2015, Charlene Smith sent a letter to Mr. Oraniewicz, National Holdings and Pioneer West. In that letter, Ms. Smith explained that under the Policy the insureds could elect to take a cash settlement based on the actual cash value or repair the building. The letter goes on to explain the difference between the repair cost option and the actual cash value.

[64] Mr. Oraniewicz initially testified that it was hard to say whether he received Intact's August 18, 2015, letter. However, later in his evidence, Mr. Oraniewicz denied receiving the letter from Intact. He then stated that he did not remember receiving the letter but that if it can be proven that it was sent to him, then he would accept that he received it.

[65] Ms. Smith testified that she wrote the letter of August 18, 2015, and that she sent it to the recipients, which included Mr. Oraniewicz.

[66] In any event, Mr. Oraniewicz acknowledged that he received a letter from counsel for National Holdings dated August 27, 2015. Enclosed with that letter was Intact's letter of August 18, 2015.

[67] Therefore, I am satisfied that Mr. Oraniewicz received the Intact letter of August 18, 2015.

[68] Further, in the August 27, 2015 letter from counsel for National Holdings, counsel advised Mr. Oraniewicz that National Holdings was willing to have the building repaired, provided that a receiver-manager supervised the repairs. Counsel also advised Mr. Oraniewicz that if the repair conditions were not acceptable, National Holdings would take the actual cash value.

[69] Mr. Oraniewicz did not respond to counsel for National Holdings. Therefore, on September 4, 2015, counsel sent a follow up letter to Mr. Oraniewicz. In that letter counsel requested a reply to their previous correspondence and advised Mr. Oraniewicz that if they did not receive a response, National Holdings would take the actual cash value payment of \$126,000.

[70] Mr. Oraniewicz did not respond to the letter from Intact or the letters from National Holdings' counsel.

[71] Mr. Oraniewicz is somewhat inconsistent with respect to whether he understood the contents of the letters. At one point in his testimony, Mr. Oraniewicz claimed not to have understood the terms of the offer presented by National Holdings or what was meant by actual cash value. However, later in his testimony he claimed to have analyzed all the letters he received and understood what they said.

[72] In any event, having received this correspondence, Mr. Oraniewicz simply did not respond. He did not ask for clarification. He had retained a lawyer by the middle of 2015 but there is no evidence that he consulted her about the correspondence.

[73] Based on the foregoing, I find that Intact provided Mr. Oraniewicz with sufficient information to assess whether to repair the building or take the actual cash value. If he was unable to understand the difference between those options, he certainly had sufficient information to provide to legal counsel for advice.

[74] The information provided by Intact was sufficient for Mr. Oraniewicz to decide which option he preferred, request further information, if necessary, or try to negotiate more favourable terms.

[75] Instead of taking those steps, Mr. Oraniewicz simply did not respond.

[76] Accordingly, any delay that was associated with a failure to choose between repair costs or actual cash value was a delay associated with the inaction of Mr. Oraniewicz.

The Dispute Resolution Process

[77] Statutory Condition 11 provides that any disagreements as to the value of insured property must be determined pursuant to the dispute resolution process set out in the *IA*.

[78] Intact initiated the dispute resolution process under Statutory Condition 11 on March 27, 2017. On that date, counsel for Intact delivered a letter to Mr. Oraniewicz citing Statutory Condition 11 and putting Mr. Oraniewicz on notice that Intact was engaging the dispute resolution process.

[79] The March 27, 2017 letter noted that Intact had not yet received a proof of loss. Therefore, the notice initiating the dispute resolution process was to take effect upon Mr. Oraniewicz delivering a proof of loss to Intact.

[80] Mr. Oraniewicz had executed a proof of loss on June 15, 2016. However, Mr. Oraniewicz did not deliver that proof of loss until April 12, 2017.

[81] On April 20, 2017, Mr. Oraniewicz advised counsel for Intact that he had chosen Gordon Cory as his dispute resolution representative. At that time, the representative for Intact was Fraser Anderson.

[82] Following preliminary discussions between the parties' representatives, Intact sought nominees from Mr. Oraniewicz for an umpire to resolve their disagreements. Intact's efforts to find an acceptable umpire continued into 2018. Notwithstanding repeated requests for names of potential umpires, no response was forthcoming from Mr. Oraniewicz.

[83] Ultimately, on November 7, 2018, Intact filed an application in this proceeding for an order appointing another dispute resolution representative for Mr. Oraniewicz due to a lack of communication from both Mr. Cory and Mr. Oraniewicz, and for an order that Mr. Oraniewicz cooperate with Intact to complete the dispute resolution process under the *IA*.

[84] Following Intact's application, Mr. Oraniewicz changed his dispute resolution representative to Gordon Bibby.

[85] Around the time that Mr. Oraniewicz appointed Mr. Bibby as his representative, Mr. Oraniewicz objected to Mr. Anderson continuing as Intact's representative. As a result of the objection, Intact replaced Mr. Anderson with Brett Hanson as its dispute resolution representative.

[86] During the course of the resolution discussions between Mr. Hanson and Mr. Bibby, Mr. Oraniewicz replaced Mr. Bibby once again with a new representative, Rolf Soler.

[87] Eventually, Mr. Soler and Mr. Hanson were able to conclude an agreement on the value of the insured loss. As indicated earlier, the representatives confirmed the agreement in a letter dated February 17, 2021.

[88] There is no evidence from which I can conclude that Intact improperly initiated the dispute resolution process, or that any of its representatives conducted themselves improperly during the process at all, let alone to the prejudice of Mr. Oraniewicz.

[89] The dispute resolution process is a mandatory process required by Statutory Condition 11. The dispute resolution process could not begin until Mr. Oraniewicz submitted his proof of loss. Mr. Oraniewicz did not submit his proof of loss until April 2017.

[90] Following the delivery of his proof of loss, the actions of Mr. Oraniewicz delayed and prolonged the process. Mr. Oraniewicz generally refused to engage in the dispute resolution process. He did not respond to Intact's requests to nominate an umpire and he replaced his representative twice during the process. The inaction of Mr. Oraniewicz prompted Intact to apply for court orders compelling Mr. Oraniewicz to engage in the process. All of these actions caused delays in resolving the value of the insured loss.

[91] There is no evidence that any delays were caused by the conduct of Intact during the dispute resolution process.

[92] Based on the foregoing, I find that Intact did not materially contribute to any delays in resolving the question of value through the dispute resolution process.

Duty of Good Faith and Fair Dealing

[93] It is now well-established that an insurer owes a duty of good faith and fair dealing to its insured. This duty arises in all aspects of an insured claim. In this case, Mr. Oraniewicz alleges that Intact breached its duty of good faith and fair dealing in adjusting and resolving his claims.

[94] The insurer's duty of good faith and fair dealing is described in *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283 at para. 201:

[201] The following guidelines of good faith emerge from the court's instructive analysis in *Bullock*: (1) an insurer must perform a balanced and reasonable investigation and assessment of the first party claim; (2) it must be prompt in handling and assessing the loss; (3) the insurer must assess the merits of the claim in a balanced and reasonable manner; (4) it must give as much consideration to the interests of the insured as it does to its own interests and is not to do anything to injure the insured's rights to benefits under the policy; and (5) a want of reasonable care in settling a claim suggests an absence of good faith.

[95] Mr. Oraniewicz alleges that Intact breached its duty of good faith and fair dealing on the basis that Intact:

- a) failed to act honestly, promptly and fairly when attempting to resolve the claim;
- b) failed to resolve the claim in a timely manner;
- c) failed to keep Mr. Oraniewicz informed about his claim;
- d) failed to communicate with Mr. Oraniewicz regarding his claim and, instead, communicated directly with National Holdings; and
- e) failed to pay business interruption losses to Mr. Oraniewicz.

Duty to Act Honestly and Fairly

[96] There is no evidence that Intact or its representatives acted dishonestly or unfairly in adjusting this insurance claim.

[97] Immediately upon receiving notice of Mr. Oraniewicz’s fire loss, Intact retained adjusters, restoration contractors and quantity surveyors in order to quantify the insured loss.

[98] When Mr. Oraniewicz raised concerns about the Intact’s adjusters, Intact replaced them. When faced with a Loss of Profits claim, Intact paid insurance funds immediately after the fire to Mr. Oraniewicz before they resolved the claims of National Holdings. When engaged in the dispute resolution process, Intact actively attempted to move the process toward a resolution.

[99] While Mr. Oraniewicz may have had concerns with the positions ultimately taken by Intact, the evidence fails to establish that Intact did not act in a manner consistent with its duty of good faith and fair dealing.

Prompt Resolution

[100] With respect to the allegation that Intact failed to resolve the claim in a timely manner, I have already decided that issue. Based on my previous findings on delay, there is no basis upon which to conclude that any improper conduct on the part of Intact caused the delay in reaching a final resolution to the claim.

Communication

[101] With respect to the allegations that Intact failed to keep Mr. Oraniewicz informed about his claim, I find that this allegation has no foundation in the evidence. Intact assigned insurance adjusters to communicate with Mr. Oraniewicz and to adjust the claim. Those adjusters contacted Mr. Oraniewicz with information when necessary. They also provided Mr. Oraniewicz with their contact information which he could have used at any time to contact them if he so desired.

[102] Mr. Oraniewicz submits that the Intact adjusters were not available to meet with him in person when he wanted to do so. While Mr. Oraniewicz may have preferred more face to face meetings, I do not accept that by being unable to do so on each occasion requested by Mr. Oraniewicz, Intact breached its duty of good faith and fair dealing.

[103] Mr. Oraniewicz also suggests that Intact's adjusters were not responsive to his inquiries in a timely manner. However, there is no evidence that any delays in responding were inordinate or that any delays prejudiced Mr. Oraniewicz. Therefore, there is no basis to conclude that any failure by the adjusters to respond in a timely manner was of such significance that they breached Intact's duty of good faith and fair dealing.

Dealing with National Holdings and the Payment of Loss of Profits

[104] Intact was bound by the Policy to deal with National Holdings on the insurance claim. I have already found that National Holdings was a loss payee and entitled to receive the insurance proceeds. Therefore, the Policy required Intact to deal with National Holdings to resolve their claim to the insurance.

[105] The allegation that Intact wrongly paid the insurance funds for Loss of Profits to National Holdings has no merit. I have already found that those funds were payable to National Holdings.

[106] However, in the claim that Intact breached its duty of good faith and fair dealing, it is a relevant consideration that in order to assist Mr. Oraniewicz, Intact paid him \$24,131 for Loss of Profits shortly after the fire. While the Loss of Profits were payable to National Holdings, Intact did not seek to recover those funds from Mr. Oraniewicz.

[107] Based on the foregoing, I find that Mr. Oraniewicz has not established that Intact breached its duty of good faith and fair dealing in this insurance claim.

Conclusion

[108] Mr. Oraniewicz has not established any of the claims that he has made in this action. Therefore, the action is dismissed.

Costs

[109] If either party wishes to make submissions on the issue of costs, within the next 90 days, they will schedule a date for those submissions. If either party encounters any difficulty in scheduling that date, they may arrange a case management conference to set the date.

“D.K. Hori J.”

HORI J.