KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 223**

Date: **2024 12 31**
File No.: QBG-RG-03273-1994
Judicial Centre: Regina

2024 SKKB 223 (CanLII)

BETWEEN:

LLOYD HERBERT STILBORN, CORRINNE CECILIA STILBORN, ROWLAND HILL POULTRY, DOROTHY EDITH SCHLUFF AND FINNIE HOLDINGS INC.

PLAINTIFFS

\- and -

DWIGHT DUNN AND DUNN REALTY & INSURANCE LTD.

DEFENDANTS

CORRECTED JUDGMENT: The text of the original judgment has been changed *per* the corrigendum released January 23, 2025. (A copy of the corrigendum is appended to this corrected judgment.)

Counsel:

Mark T. Persick and Konstantinos L. Stamatinos — for the plaintiffs
David E. Thera, K.C. and Amy Banford — for the defendants

JUDGMENT — NORBECK J.
December 31, 2024

I. INTRODUCTION

[1] On October 17, 1994, the plaintiffs caused a statement of claim [Claim] to be issued against the defendants. The plaintiffs claim the defendants maliciously and purposely published false statements about the plaintiffs. The plaintiffs claim general, special, aggravated, and mental distress damages.

[2] Dwight Dunn [Dunn] and Dunn Realty & Insurance Ltd. [Dunn Realty] deny the Claim, asserting that the statements made were all true or substantially accurate and rely on the defence of qualified privilege.

2024 SKKB 223 (CanLII)

[3] Lloyd Herbert Stilborn [Lloyd], Corrinne Cecilia Stilborn [Corrinne], Finnie Holdings Inc. [Finnie Holdings], and Rowland Hill Poultry [Rowland Hill] are the remaining plaintiffs; Dorothy Edith Schluff [Dorothy] discontinued her claim in 2014. Corrinne died in 1998. The plaintiffs suggested that Lloyd represents Corrinne's estate, but her claim is insignificant. Neither party addressed the issue of whether Corrinne's claim continued after her death. Rowland Hill is now a partnership comprised of Lloyd and his wife, Joy Stilborn [Joy].

[4] Dunn was a licensed insurance broker and partner at Dunn Realty, an insurance brokerage company in Wolseley, Saskatchewan. I often refer to Dunn and Dunn Realty interchangeably when discussing the Claim against them.

[5] Often, I reference individuals by their first or last name alone, partly due to the number of parties who share the Stilborn name. I mean no disrespect in doing so.

II. BACKGROUND

[6] Lloyd began farming in 1968, joining his father and five brothers. He purchased land and expanded the farming operation. In the 1980s, Lloyd and his brothers built a concrete hog barn and a concrete poultry barn.

[7] The Stilborn farm was set on approximately 20 quarter sections and produced grain, hogs, and chickens. Lloyd's, Corrinne's, and one brother's residences were all nearby.

[8] When Lloyd became involved with the farm, his father had approximately 12,000 chickens. Lloyd doubled the chickens in the 1980s, planning to expand his flock

further. Lloyd and his brothers produced 3,600 to 6,000 hogs yearly and bred, showed, and sold Simmental cattle.

[9] In approximately 1988, Lloyd's previous insurance broker retired. Lloyd, speaking on his own behalf and on behalf of family members and agricultural operations, was looking to move to a new broker. At that time, he decided to work with Dunn and Dunn Realty. While Lloyd and his family held numerous insurance policies, the current litigation generally involves four insurance policies:

(a) Hog barn/feed mill operation – Saskatchewan Government Insurance [SGI] policy #S7333583-8 [hog barn/feed mill policy]

(b) Poultry operation (Finnie Holdings) – SGI Policy #S7329031-4 [poultry policy]

(c) Lloyd and Joy's farm home – Saskatchewan Mutual Insurance [SMI] policy [farm home policy]

(d) Corrinne's home – Wawanesa Insurance [Wawanesa] Policy #F2267802 [Corrinne's home policy]

[10] The hog barn/feed mill policy was lapsed by Lloyd and his brothers in 1989.

[11] Around that same time, Lloyd and his brothers entered a farm debt review process to sell assets and pay off farm debts. Lloyd indicated that his brothers wished to be released from farming operations to move on to a different venture, but they could not agree on prices, so they willingly entered the farm debt review process. The hog inventory was sold, and the land was surrendered to the Agricultural Credit Corporation [ACC].

[12] The Saskatchewan Wheat Pool commenced legal action, but it is unclear

2024 SKKB 223 (CanLII)

who the action was against, and the Bank of Montreal entered a default judgment against Lloyd for $426,666.18.

[13] Dorothy re-acquired the property from ACC, and SGI insured the feed mill portion of the hog barn. SMI cancelled the farm home policy in 1992, mid-term. The reasons for the cancellation are unknown, but there is a reference to unspecified underwriting reasons.

2024 SKKB 223 (CanLII)

[14] The plaintiffs allege that Dunn published four defamatory documents:

(a) July 23, 1992 memorandum from Dunn to Donna Taylor [Taylor] at SGI Agro regarding policy S7333583-8 (hog barn/feed mill policy) marked "CONFIDENTIAL" [Dunn/Taylor Memo]. It states:

> We have advised the insured that SGI has declined to renew the above effective 17/07/92.
>
> Donna, I have also requested that the insured give me a signed cancellation for his Wawanesa Policy which was in his mother's name.
>
> Finally, I have asked the insured to sign a cancellation for his only other remaining policy through our office, namely A7323675-4 Finnie Holdings.
>
> I do suggest that this last cancellation be effective on renewal 01/11/92. What are your thoughts?
>
> For your info I am enclosing a copy of the memo I sent to Wawanesa. As you can see, I no longer consider this insured to be an acceptable insurance risk.
>
> Feel free to call if you have any questions.
>
> [Emphasis in original]

(b) Memorandum to Wawanesa attached to the July 23, 1992 memorandum to Taylor. It references Wawanesa Policy

#F2267802 (Corrinne's home policy) [Wawanesa Memo]. It states:

> I enclose a signed cancellation for the above account for short rate cancellation for 47 days = 23% earned = $217.35. We collected the short rate amount.
>
> There has been an enormous amount of problems with the account due to the involvement of the insured's son Lloyd Stilborn. During the last 6 years, Lloyd has had power of attorney (as so he says) for his mother Corrine [*sic*].
>
> During that time, Lloyd has hired lawyers to challenge a B.I. claim settlement on his SGI hog barn policy. He is in addition currently suing Canadian [unintelligible] over a dispute involving about a $15,000 fire damage to his house. We subsequently replaced Lloyd's homeowners policy with Sask Mutual and they cancelled midterm as per the policy statutory conditions. Finally upon renewal on July 17/92 SGI declined to renew the hogbarn (no)/feedmill risk.
>
> The insured and his brothers recently had assets seized by ACS and have just recovered most of their form operation after going through the farm debt review process.
>
> In view of the above and the insured's failure to pay his farm renewal premium within 30 days of renewal, we decided to force the issue.
>
> Accordingly we have notified the insured that we will no longer serve as his insurance broker.
>
> We felt that you should know our reasons for this decision and with these facts in mind it may help you with you underwriting decision in the likely event that you receive a submission from another broker.
>
> Thank you.
>
> [Emphasis in original]

(c) October 28, 1992 letter from Dunn to Lloyd referencing SGI policy #S7329031-4 (poultry policy) [Dunn's Letter]. It encloses a facsimile from Taylor, who declined the renewal of the poultry policy "… as he no longer meets our underwriting standards."

2024 SKKB 223 (CanLII)

Dunn's Letter states:

> Dear Lloyd,
>
> Further to our telephone conversation of this morning, enclosed please find a copy of a fax from SGI dated October 27/92 wherein they decline to renew Finnie Holding Co. Ltd policy #S7329031-4 for the term of November 1, 1992 through November 1, 1993.
>
> We are pleased that you were able to obtain alternate coverage with Mr. Tarita at Reed Stenhouse whom you advise has arranged terms through Simcoe & Erie. It is indeed your good fortune that Simcoe & Erie has offered coverage given the extent of your claims history, the midterm cancellation by one insurer, the refusal to renew another, and your current litigation against still another company. We commend Mr. Tarita for arranging coverage for you under such difficult circumstances.
>
> Mr. Tarita's offer to provide coverage for less than half our SGI premium is also greatly to your advantage and we are please to hear of your good fortune. Given that Simcoe & Eire appear to have such an accommodating underwriting philosophy, it is apparent that we should invite them into our office.
>
> Thank you for allowing us to have been of service in the past.
>
> Yours truly,
>
> G. Dwight Dunn CAIB, CIB (Sk)
> president

(d) October 28, 1992 letter from Dunn to Simcoe Erie Insurance Group [Simcoe] [Simcoe Letter]. Dunn encloses Dunn's Letter and states, "The letter is self-explanatory. If your company is interested in doing business with a brokerage who believes in thorough field underwriting and careful selection of prospects, feel free to give us a call."

All four documents collectively [Dunn's communications].

2024 SKKB 223 (CanLII)

III. EXPERT WITNESSES

[15] Both parties tendered expert witnesses to provide opinion evidence.

[16] After reviewing each proposed expert's *curriculum vitae* and hearing from counsel, I determined each proposed expert possessed the necessary education, training, and experience to provide opinion evidence. Each proposed expert certified they knew the duty of expert witnesses under Rules 5-37(1) and (2) of *The King's Bench Rules* and prepared their reports in compliance. I accepted that their evidence may assist the Court and noted that neither party objected to the other's proposed experts.

(a) Marc Hoffart

[17] The plaintiffs tendered Marc Hoffart [Hoffart] as an expert witness to calculate the potential losses sustained by Lloyd and Rowland Hill.

[18] Hoffart's updated expert report dated March 12, 2023, was filed with the Court as an exhibit at trial. His report describes Lloyd's operations as including a poultry facility, a feed plant, and a grain farm near Melville, Saskatchewan.

[19] Hoffart was to assume that Dunn's communications had rendered Lloyd uninsurable and, therefore, unfit to obtain financing to execute his planned expansion and that Lloyd was uninsurable until 2002.

[20] Hoffart states that in 1992, Lloyd's poultry operation comprised 26,000 square feet of facilities and 24,037 bird quota, which doubled by 2003 to 49,037. Hoffart understood that Lloyd had planned a significant expansion of the poultry operation for an additional 200,000 bird quota and that construction was required to accommodate. Hoffart understood that expanding his poultry operation would cost Lloyd $2,350,000.

[21] Hoffart further understood that Lloyd was in the process of executing the

2024 SKKB 223 (CanLII)

expansion plan and had been in discussions with the Canadian Imperial Bank of Commerce [CIBC] and other lenders. On cross-examination, Hoffart confirmed that Lloyd did not provide a bank proposal or loan approval for the expansion; he took Lloyd's word.

[22] Hoffart confirmed that Lloyd provided the poultry expansion numbers and the plan to convert the hog barn to a poultry barn. He reviewed historical information and tax returns and considered previous performance to predict the losses.

[23] Hoffart calculated the loss period as being from September 1, 1992 (the anticipated start date for the expansion), to December 31, 2004 [loss period]. It is unclear why the loss period extended to the end of 2004 when Lloyd obtained insurance in 2002. In any event, the analysis of damages was described in three categories:

(a) Poultry expansion – lost potential operating profits:

Assuming Lloyd maintained full ownership, borrowed money from a financial institution, and staggered the expansion, his projected lost profit is $4,120,733.

If Lloyd instead entered a partnership to secure financing and retained 51% ownership, his estimated profit loss is $3,023,377.

(b) Farming losses due to lack of manure:

Hoffart estimated a total manure loss of $525,057. He noted that the estimate was conservative because it was based on conventional pricing and did not consider the additional value provided to an organic farming operation.

(c) Quota value – lost capital appreciation:

2024 SKKB 223 (CanLII)

> Hoffart explained that by the time insurance was obtained and Lloyd could obtain financing for the expansion, the market value of the birds had increased significantly. He calculates the lost capital appreciation as $4,825,000.

2024 SKKB 223 (CanLII)

[24] Hoffart concludes that Lloyd's total loss incurred during the loss period was $9,279,602 to $9,470,790.

(b) Mark Szekely

[25] The defendants tendered Mark Szekely [Szekely] as an expert witness to give opinion evidence on the quantification of economic loss and reply to Hoffart's opinion.

[26] Szekely's November 22, 2019, report was entered as an exhibit at trial. He explained that Hoffart's report was problematic because Lloyd provided the prices for animals and quotes for construction costs, and Hoffart could not or did not independently verify the numbers.

[27] Szekely was skeptical of Hoffart's assumption that Lloyd would find a willing investor injecting $2,350,000 over 10 years to recover only $2,124,000. He was doubtful that an investor would agree to such terms.

[28] Szekely comments on Hoffart's first scenario, with Lloyd retaining full ownership and securing traditional financing. Lloyd needed to secure $2,350,000 for the expansion in 1992 but could not comment on whether financing would have been available. If Lloyd could not secure the funding, none of the losses in Hoffart's report would apply.

[29] Szekely identifies the bird sale price as a concern as Hoffart relied on a purchase price of $4 per bird from 1992 to 2004, but Lloyd was able to purchase birds

at $5.10 per bird in 1992. Assuming the purchase price is lower, the operating profit loss calculated by Hoffart will increase.

[30] Szekely noted that Hoffart's manure loss calculation did not account for any transportation or other costs, and he assumes the cost of conventional fertilizer was the same in 1992 as in 2004. If conventional fertilizer prices were lower in 1992 than in 2004, Hoffart's calculations would have to be adjusted accordingly.

(c) Judy McCuskee

[31] The defendants tendered Judy McCuskee [McCuskee] to give opinion evidence as an expert in property and casualty insurance, including insurability of personal and business operations and the factors a reasonable insurer would consider when assessing insurability during the timeframe relevant to this lawsuit.

[32] McCuskee is a Canadian Certified Insurance Broker and has been a Saskatchewan-licensed general insurance broker for 37 years. Before owning her insurance brokerage, McCuskee worked for SGI for nine years, partly as the Director of Technical Underwriting (Loss Prevention, Product and Rating Development, Reinsurance).

[33] McCuskee's revised expert opinion report, dated March 3, 2023, was entered as an exhibit at trial.

[34] McCuskee explained a significant shift in farming in the 1980s and 1990s from small operations to intensive livestock operations [ILO]. The result of this shift from the insurance industry perspective was a much larger operation with different and more significant liability risks.

[35] McCuskee further explained that the shift resulted in a lack of capacity; only a few insurance companies were willing to write enough risk to cover what the

2024 SKKB 223 (CanLII)

farmers needed. That led to loss prevention inspections and subscription policies. She described a subscription policy as one where more than one insurer would insure a portion of the risk. In a subscription policy, each insurer contracts with the insured.

2024 SKKB 223 (CanLII)

[36] McCuskee testified that farmers had trouble obtaining insurance coverage, and SGI developed reinsurance and a loss prevention process for these specialty farms. McCuskee explained that reinsurance is where an insurance company accepts a risk and has other companies transfer a portion of that risk. Practically speaking, one company would provide the insurance contract, but different insurers would be behind the scenes.

[37] McCuskee explained that significant farm losses, financial problems on the farms, and volatility in the market for farm products contributed to instability in the insurance industry. Some insurers backed out of the ILO and farming insurance market. McCuskee's report notes that poultry, hog, and feed mill operations would generate a "hard no" or "decline" from many insurers from 1990 to 2000.

[38] McCuskee testified that when considering underwriting an insured, an insurer would consider their claim history, whether there are any claims at all, size of the claims, ease of settlement, compliance with the policy, loyalty, whether insurance was cancelled, declined, or not renewed by the previous insurer, misrepresentation, and broker's recommendation. Some companies would quote the insurance coverage, then check the history and potentially cancel if they chose not to insure. Others would check the history first and then quote the coverage.

[39] McCuskee testified that most insurance applications ask the person if they have been declined or refused renewal. If the answer is yes, an explanation is required. If the information is not disclosed, it could result in denial of a claim, cancellation, or refusal to write the policy. In para. 24 of her report, McCuskee states:

> 24. Having insurance cancelled is a very large barrier to obtaining coverage; having renewal of coverage refused by another insurer or insurance refused is serious but less of a barrier depending on the situation. Non-disclosure of either claims or cancellations/non renewals often leads to an automatic decline of future coverage. Multiple claims and claims which were contentious generally lead to a review but depend on the specific situation.

2024 SKKB 223 (CanLII)

[40] In considering the impact of Dunn's correspondence on Lloyd's ability to obtain insurance, McCuskee reviewed Lloyd's insurance history and assessed the risk's desirability in the marketplace context at the time. She identified four properties: Corrinne's farm home, Lloyd and Joy's farm home, the poultry barn and outbuildings, and the hog barn with feed mill and outbuildings [Stilborn properties]. While each has a separate policy, she confirmed that the policies on Lloyd and Joy's home and Corrinne's home were farm policies and would have been underwritten by the insurer's farm departments (para. 30).

[41] McCuskee notes 15 claims on the Stilborn properties over 10 years between 1983 and 1992. She indicates that most of the claims were smaller but describes the number as "extraordinary" even considering it was four properties. In her opinion, Lloyd's claims numbered approximately three times the average in the 1980s. She avers that several of the claims were on the subscription policies.

[42] McCuskee confirms that the January 11, 1990, fire loss to Lloyd and Joy's farm home would render their insurance policy unprofitable. The wind claim against Corrinne's home from June 8, 1985, would be a break-even prospect. On two of the most significant claims, Lloyd sued the insurers. A 1987 hog death claim was still in dispute in 1999, and she was unaware of how a 1992 tractor claim was resolved.

[43] McCuskee concludes that the refusal of insurance coverage on the Stilborn properties resulted from misleading and incomplete information reported by Lloyd that was quickly identified as such by the potential insurers. In para. 122 of her report, she states:

> 122. Unfortunately for Mr. Stilborn, if the brokers he approached complied with his request and submitted misleading information to insurers such as that provided in this instance, insurers would have compared this information to their records and identified continuing misrepresentation. This effectively extends the 'recovery period' he would endure before getting another chance. Repeated inquiries with different brokers and possibly different information would exacerbate this problem.

[44] Further, McCuskee opined that it would have been difficult for a broker to find coverage for the Stilborn properties in 1995, given Lloyd's prior insurance record and the misleading and incomplete information he provided years earlier.

[45] On cross-examination, McCuskee testified that dairy was the most desirable farm operation from an insurer's perspective because it is so heavily regulated, and there are issues with supply chain management. Following dairy was poultry; operations with a regular disinfection cycle, wiring in conduits, and a regular flush cycle – as Lloyd had – would be desirable attributes for a poultry operation.

[46] Regarding the feed mill, McCuskee testified that it was an exception to insure just the feed mill portion of the hog barn. She stated it was unusual to segregate that portion from the barn because the insurer would not know if the larger structure was maintained regularly.

[47] McCuskee was confused about Corrinne's home policy and whether Lloyd held a power of attorney [POA] for her. She would have asked for a copy of the POA or at least Lloyd's signature with a statement that he held a POA for Corrinne.

[48] McCuskee testified that Corrinne was insurable on her own. It appeared that Corrinne was lumped in with Lloyd's insurance matters when he acted for her, and the reluctance to insure Lloyd carried over to Corrinne.

[49] On cross-examination, McCuskee characterized Dunn's Letter and the Simcoe Letter as "snarky"; she would not recommend that brokers send such a letter to

2024 SKKB 223 (CanLII)

clients, and the tone was unnecessary. McCuskee testified that Dunn's communications are an example of what not to do in an ethics class. However, she confirmed that the underwriting information was important, but Lloyd and Dunn's poor relationship got in the way.

[50] On further cross-examination, McCuskee testified that Lloyd's situation had too many factors. Looking at the whole insurance package, everything would be weighed, and the poultry barn, hog barn, and feed mill were undesirable risks. Take that with the many other issues; she was not surprised coverage was declined. In her view, Dunn's communications played no role in Lloyd's inability to obtain insurance.

IV. WITNESSES

(a) Lloyd Stilborn

[51] Lloyd was 69 years old at the time of trial and lived on a farm near Lemburg, Saskatchewan.

[52] After he began farming with his brothers, Lloyd purchased land, expanded the farming operation, and built a feed plant attached to his hog barn. Lloyd testified that the advantage of doing so maximized the cost-benefit for the crops he produced and removed the need to purchase feed from others to sustain his animals. In the 1980s, Lloyd and his brothers built a concrete hog barn designed by one of Lloyd's brothers.

[53] The hog barn was insulated and had a sloped floor below the slatted floor that housed animals. This allowed manure to fall through the slats and be flushed into outside tanks. Because of this system, Lloyd saw an economic benefit in repurposing manure as fertilizer for his grain operation.

[54] A few years later, Lloyd and his brothers built concrete poultry barns with

2024 SKKB 223 (CanLII)

a similar insulated wall design high enough to allow heavy equipment to scrape chicken manure from the floor and into holding tanks. Lloyd testified that the hog and poultry barns had pressurized sprinkler systems, exterior hydrants, and remote monitoring systems and did not require any open flame to heat the buildings. Lloyd further testified that firefighting equipment was on site.

[55] Lloyd testified that the Stilborn farm was set on approximately 20 quarter sections and produced grain, hogs, and chickens. His residence, Corrinne's residence, and a brother's residence were all nearby, within view of the poultry and hog barns. Lloyd further testified that they carried approximately 25 SGI insurance policies between the Stilborns.

[56] In 1968, Lloyd's father had approximately 12,000 chickens. Lloyd doubled the chickens in the 1980s and testified that he had planned to expand his flock further.

[57] Corrinne lived a quarter mile east of the Stilborn poultry barn and owned some grain lands. Lloyd described Corrinne as a full partner in the farm operation. Around the mid-1980s, Lloyd's brothers, John Stilborn and Ken Stilborn, decided to leave the farming operation. A farm debt review mediation process involving the ACC was underway. The Stilborn brothers sold off three-quarters of the land, depopulated the hog barn, and sold the hogs to pay the debt.

[58] Lloyd testified that before partitioning the farm, the feed plant was profitable, the hog operation broke even, and the poultry operation provided significant income. The hog barn was depopulated, and debt was paid from the proceeds of hog sales. Lloyd testified that separating and valuing assets was complex. At times, the brothers agreed on the value of certain assets, and where they could not agree, the asset would be placed on the open market to obtain a value, with the family farm retaining the right of first refusal.

2024 SKKB 223 (CanLII)

2024 SKKB 223 (CanLII)

[59] Dorothy assisted in the family farm transition. The farmland was transferred to ACC and the Bank of Montreal, with Lloyd retaining the right of first refusal. Lloyd purchased back almost all of the land, while Corrinne and Dorothy owned the remainder.

[60] In 1986, Lloyd incorporated Finnie Holdings, separating the poultry operation from the rest of the farm to facilitate Rowland Hill, a joint venture with Richard and Anne Barnsley [Barnsleys]. Lloyd testified that the Barnsleys provided a cash injection in exchange for tax credits and partnership income.

[61] Lloyd and one of his brothers remained responsible for the guarantees to the Bank of Montreal, initially signed by Lloyd and his brothers. Lloyd testified that the debt was paid voluntarily.

[62] In the later 1980s, Lloyd's insurance broker retired, and he retained Dunn and Dunn Realty to handle his insurance matters. Lloyd testified that he went to Dunn in 1988, resulting in his facilities being inspected for insurance. In Lloyd's view, the only issue was that the fire department in Lemburg was some distance away. Lloyd was unconcerned because he had his firefighting equipment and a hired hand. He lived two miles away, was on call, and was available to them anytime.

[63] Lloyd testified that he had offers from other brokerages for his business, but he wanted to move away from SGI, and Dunn offered to find insurance elsewhere. Because he had moved brokerages, his insurance application was new. Due to their financing the poultry operation, Royal Bank of Canada [RBC] required full loss insurance payable to them.

[64] Lloyd testified that he understood Dunn was "beating the bushes" for better insurance rates because of Lloyd's instruction to avoid SGI.

[65] Lloyd testified that he decided to move away from Dunn and instructed

Dunn to let the hog barn/feed plant policy lapse. SGI did not decline to renew; the policy should have been lapsed. Further, he asked SMI to cancel the farm home policy.

[66] He could not recall if SGI asked him to confirm his intentions to lapse the policy.

[67] Lloyd testified that his instruction to Dunn to collapse the hog barn/feed mill policy corresponded with his brother leaving the farming operation. Lloyd further testified that there were no claims against the hog barn in 1989, but a claim one year earlier, when a hired hand was bit by a hog and another where a grain auger started on fire.

[68] Lloyd testified that he lost confidence in Dunn, partly because Dunn could not find other insurance underwriters besides SGI. Lloyd believed Dunn pressured him to maintain unnecessary insurance coverage to collect the annual premiums. Mark's Agencies and Reed Stenhouse presented other underwriter options.

[69] Lloyd testified that he initially trusted Dunn and did not always review the application forms completed by Dunn's office. He later noted errors in the applications, such as a reference to Mennonite Mutual declining to renew the hog barn/feed mill policy, a reference to Lloyd claiming bankruptcy in 1991, and a reference to Wawanesa when it should have stated SGI. Lloyd stated that he had not declared bankruptcy and that SGI, not Wawanesa, insured his feed plant. Lloyd found other errors or inconsistencies in the documents prepared by Dunn.

[70] SGI required further inspections of his operations, and Lloyd could not understand why. A handwritten note in the SGI records dated June 17, 1992, notes:

> … Arlene will contact client & advise asap – to see if plant is in operation or what – also, if not operating, what does he intend to use plant for when he does start – Waynes report indicated alligators.

[71] Lloyd admitted he was uncooperative when Wayne Flavel [Flavel]

2024 SKKB 223 (CanLII)

arrived to inspect the hog barn on behalf of SGI. When asked about his interest in raising alligators, Lloyd admitted that he was upset that Flavel had attended his property and was being sarcastic or joking when he told Flavel he was considering alligators.

[72] Lloyd was questioned about his interest in raising chinchillas. He confirmed that in 1992 or so, he was considering raising chinchillas, as he was advised that it was potentially lucrative.

[73] Lloyd testified that he prepared a financing proposal for CIBC, which included his long-term plans to repopulate the hog operation and expand the poultry operation. He also spoke to RBC about funding an expansion. Lloyd considered growing mushrooms and other options, and decided to raise chinchillas.

[74] Lloyd alleged that because of Dunn, Corrinne had a claim on her home that was never paid, and she could not get insurance coverage because she was related to Lloyd.

(b) Larry Buhler

[75] Larry Buhler [Buhler] testified on behalf of the plaintiffs.

[76] Buhler had worked for SGI from September 1976 to July 2015, when he retired. He specialized in ILOs, was the personal lines underwriting department manager, and worked most of his career in the SGI underwriting department. Buhler was responsible for the agro department's day-to-day operation, dealing with insurance brokers and others. He was familiar with Dunn and described their relationship as cordial and professional.

[77] Buhler confirmed he had never been trained as an insurance broker but testified to his understanding that a broker would assess a client’s needs and offer various coverages to the client. SGI provided brokers with a rate manual which would

2024 SKKB 223 (CanLII)

allow the broker to find insurance coverage for a client, and if the coverage met the manual guidelines, coverage is bound from the day it was written by the broker. If the SGI underwriters found a discrepancy, it would be corrected, and the broker advised, expecting the broker to inform the client. Any discrepancy could result in cancelled coverage, but that was not always true.

[78] Buhler testified that SGI would review a five-year window for claims history. They would look for the number of claims, types of losses (weather, fire, etc.), and the amount of the loss claimed. If they saw numerous claims, they would contact the broker, raise the deductible, surcharge the rate, or delete coverage.

[79] Regarding buildings and facilities, Buhler testified that SGI would consider what structures exist on the property, the type of building frame (metal or otherwise), whether the structure is portable, and the age and condition. He stated that metal buildings receive the best premium rates, particularly where they were built on a permanent foundation.

[80] Buhler testified that concrete buildings are viewed similarly to metal buildings. SGI would consider the building's fire rating and the location of the nearest fire department.

[81] Buhler testified that a client lapsing a policy would not factor into a potential client's insurability. However, it was a "red flag" if an insurance company cancelled a policy. A mid-term cancellation by an insurance company was considered worse than a situation where an insurance company declined to renew a policy.

[82] Buhler could not recall his involvement with Lloyd or Lloyd's insurance directly but was presented with a letter dated August 30, 1999, addressed to him, enquiring about SGI's declining Lloyd coverage in 1992. Buhler confirmed his handwriting on the letter, indicating that he advised the writer that he was reviewing

2024 SKKB 223 (CanLII)

Lloyd's situation and would get back to him.

[83] Buhler was presented with a letter addressed to him and signed by Lloyd, dated September 14, 1999. He could not recall receiving the letter, nor could he recall a letter he signed dated September 14, 1999, addressed to Lloyd.

[84] Buhler was presented with a letter addressed to Lloyd, dated October 8, 1999, bearing his signature. He could not recall the letter or the specifics of any telephone call he had with Lloyd, referenced in the letter or otherwise. In his letter, Buhler noted that he had reviewed the information surrounding SGI's decision to lapse Lloyd's agro policies in 1992 and was satisfied that Lloyd cancelled or chose not to renew the policies. He notes, "Had we received notice of your intentions, we would not have issued the written notifications of our refusal to renew, and it would not have become a matter of record on your insurance history."

[85] Buhler was presented with a 1992 SGI memorandum from Colleen Lundy. He confirmed she was a supervisor in the SGI agro department but had no memory of the issues mentioned in the memorandum. He did not recall reviewing Lloyd's underwriting file nor what he reviewed before sending the October 8, 1999, letter to Lloyd.

(c) Darwin Brown

[86] The plaintiffs called Darwin Brown [Brown] as a witness.

[87] Brown had worked for Cooperators Insurance [Cooperators] in Foam Lake, Saskatchewan, then moved to their Wynyard, Saskatchewan office, where he worked for five years. In 1999, he took over an agency in Yorkton, Saskatchewan, and worked there until approximately 2005 or 2006. Brown testified that he lost his insurance license after an audit was completed, and two policies were found to have unpaid premiums.

2024 SKKB 223 (CanLII)

[88] Brown testified that Cooperators was not a brokerage; it sold only Cooperators products. He would review insurance applications, assess risk, and approve or deny insurance applications.

[89] Brown testified that his relationship with a client would begin with conversations and the insurance application. He would forward any information collected, and Cooperators would review three to five years of claims history.

[90] Brown confirmed that Lloyd came to him looking for insurance. He attended Lloyd's poultry operation to inspect the condition of the barns, type of construction, housekeeping, and overall insurability. Brown measured the buildings and determined cost guides for replacement value, following which Lloyd applied for insurance for the poultry operation. Brown recalled that Lloyd's building was well-kept and high-quality, and noted the concrete construction.

[91] Brown was presented with Buhler's letter dated October 8, 1999, but did not recall seeing it. He testified that Buhler's letter changed Llyod's status from being uninsurable to insurable, in his eyes. Brown testified that Cooperators eventually underwrote the risk and insured Lloyd in approximately 2000 or 2001.

[92] On cross-examination, Brown was presented with a letter from Dunn to Lloyd, dated March 23, 1992, enclosing a copy of SMI's mid-term cancellation of the farm home policy. Brown was unaware that SMI cancelled the farm home policy in 1992 and testified that the cancellation was a concern.

[93] Brown confirmed that the General Insurance Council Bylaws governed his conduct and licensing requirements. On cross-examination, Brown testified that he believed he owed a duty to both the client and the insurer in his dealings.

(d) Terrace Koback

2024 SKKB 223 (CanLII)

[94] Terrace Koback [Koback] was called as a witness on behalf of the plaintiffs. Koback has worked for Cooperators since April 1997, starting in Yorkton as a sub-agent. He recalled corresponding with Lloyd about insurance matters but did not recall any meetings with him.

[95] Koback was presented with a letter to Lloyd, dated September 23, 1999, bearing his signature. In that letter, Koback explained that Cooperators refused to ensure Lloyd because a previous insurer had declined coverage.

[96] On September 19, 2000, Koback wrote to Lloyd to advise that Cooperators was prepared to quote on his farming operation after inspecting his farm. Koback testified to attending Lloyd's farm and noted no concerns and low risk to insure.

[97] On October 11, 2000, Koback responded to Lloyd's enquiry about why Cooperators changed their minds about their willingness to quote Lloyd's farm. Koback advised that they were willing to look at his property for several reasons and confirmed they considered Buhler's October 8, 1999, letter.

[98] On cross-examination, Koback confirmed it was their usual practice to speak to a client's previous insurer for their insurance history. Koback was unaware that SMI had issued a mid-term cancellation of the farm home policy in 1992.

(e) Monte Clements

[99] The plaintiffs called Monte Clements [Clements] as a witness.

[100] Clements described his current occupation as a landlord and "dad". He previously worked for Protax Consultants, a tax firm he created with another person.

[101] Clements testified that he prepared tax returns for Lloyd, Joy, Dorothy, and Lloyd's brother, Thomas. Clements could not recall having prepared tax returns for Corrinne.

2024 SKKB 223 (CanLII)

[102] Clements was introduced to Lloyd through the Barnsleys, who he understood were involved in a joint venture with Lloyd. Clements recalled attending Lloyd's farm and being impressed by Lloyd's poultry farm operation.

[103] Clements testified he advised Lloyd and the Barnsleys on their joint venture and how to maximize their tax credits. Clements testified to his understanding of how the tax credits worked then and testified he had spoken with Lloyd and the Barnsleys about expanding the poultry operation.

[104] Clements testified that plenty of individuals needed tax credits or tax relief and had money to invest in ILOs, chinchillas, or the like. In his view, endless investors were willing to buy into such ventures.

[105] On cross-examination, Clements confirmed that he had spoken with Lloyd about raising chinchillas and potentially other fur-bearing animals only.

[106] On further cross-examination, Clements was asked about the potential investors he spoke about; he pointed to the Barnsleys as an example but could provide no other examples.

(f) Dwight Dunn

[107] A consent order was issued on May 31, 2022, granting the defendants leave to read into evidence all or part of Dunn's answers during questioning on February 13, 1996, and May 9, 1996. Due to Dunn's health issues at the time of trial, he could not testify on his own behalf and on behalf of Dunn Realty. Both parties read the portions of Dunn's questioning transcripts onto the Court record.

[108] Dunn was a licensed insurance broker and partner at Dunn Realty, and had been an insurance broker since 1978. His relationship with Lloyd began in late 1988, and he recalled that the premiums for Lloyd's insurance portfolio were

2024 SKKB 223 (CanLII)

approximately $15,000 annually. Lloyd acted on behalf of himself and other family members when dealing with their insurance affairs. Dunn confirmed that he had never been given a POA for Corrinne.

[109] Dunn acknowledged that he knew Lloyd did not want to be insured by SGI due to his dissatisfaction with prior claims and high premiums.

[110] Dunn acknowledged that he and Lloyd were not on good terms but could not recall the timing of when that arose.

[111] In Dunn's view, Lloyd's involvement in any of the Stilborn insurance policies was affecting the overall insurability of the risks. Dunn's comments regarding why he wrote to Wawanesa were confusing, and questioning confirmed that Wawanesa was only insuring Corrinne's home.

[112] Dunn's recollection of the insurance cancellation process was confusing, as was his understanding of the process to fire a broker.

[113] Dunn confirmed that he had not dealt with Simcoe until he learned that Lloyd had replaced Dunn and found a new underwriter. He stated that he did not believe he had done anything wrong when he sent the Simcoe Letter.

[114] Dunn confirmed that in the normal course, they would not discuss their client's affairs with someone they were not trying to buy insurance from. However, Dunn advised that he had a duty to the whole industry to inform insurers of material changes in risk.

[115] Dunn stated he believed the material facts had not been presented to Leo Tarita [Tarita], Lloyd's broker at Reed Stenhouse, or Simcoe. He was not angry when he wrote the letter to Simcoe but felt he had a duty to the industry to convey a material change in risk. He believed Lloyd did not provide full disclosure.

2024 SKKB 223 (CanLII)

V. ISSUES

[116] The following issues arise:

(a) Are Dunn's communications defamatory?

(b) What are the appropriate damages?

VI. LEGAL FRAMEWORK

[117] The parties agreed on the law. To succeed in a defamation claim, the plaintiffs must prove three elements:

(a) That the words are defamatory;

(b) That the words are defamatory to the plaintiff; and

(c) That the words were published to a third party.

[118] If the plaintiffs prove all three elements, the law assumes the words are false, and damages are presumed. The onus then shifts to the defendants (*WIC Radio Ltd. v Simpson*, 2008 SCC 40 at para 1, [2008] 2 SCR 420).

[119] The defendants agree that Dunn's communications exist and that they were published to third parties. The remaining elements are in dispute: whether the communications were defamatory and whether they were defamatory to the plaintiffs.

[120] The Supreme Court of Canada [SCC] defines defamation as follows (*Botiuk v Toronto Free Press Publications Ltd.,* [1995] 3 SCR 3 at para 62):

> 62 For the purposes of these reasons, it is sufficient to observe that a publication which tends to lower a person in the estimation of right-thinking members of society, or to expose a person to hatred, contempt, or ridicule, is defamatory and will attract liability. See *Cherneskey v Armadale Publishers Ltd.,* [1979] 1 S.C.R. 1067, at p. 1079. What is defamatory may be determined form the ordinary

2024 SKKB 223 (CanLII)

> meaning od the published words themselves or from the surrounding circumstances. In *The Law of Defamation in Canada* (2nd ed. 1994), R.E. Brown stated the following at p. 1-15:
>
> > [A publication] may be defamatory in its plain and ordinary meaning or by virtue of extrinsic facts or circumstances, known to the listener or reader, which give it a defamatory meaning by way of innuendo different from that in which it ordinarily would be understood. In determining its meaning, the court may take into consideration all the circumstances of the case, including any reasonable implications the words may bear, the context in which the words are used, the audience to whom they were published and the manner in which they were presented.

[121] I am guided by the case law presented by the parties as well as the SCC's comments in *Grant v Torstar Corp*., 2009 SCC 61 at paras 27-28, [2009] 3 SCR 640:

> [27] I will first examine the current law, and then consider the arguments for and against change.
>
> <u>(1) The Current Law</u>
>
> [28] A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed, though this rule has been subject to strong criticism: see, e.g., [Smolla, Rodney A. "Balancing Freedom of Expression and Protection of Reputation Under Canada's *Charter of Rights and Freedoms*", in David Schneiderman, ed., *Freedom of Expression and the Charter*. Scarborough, Ont.: Thomson Professional Publishing Canada, 1991, 272] at p. 282. (The only exception is that slander requires proof of special damages, unless the impugned words were slanderous *per se*: R. E. Brown, *The Law of Defamation in Canada* (2nd ed. (loose-leaf)), vol. 3, at pp. 25-2 and 25-3.) The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

VII. ANALYSIS

[122] The defendants took issue with Lloyd's credibility and urged the Court to consider his evidence cautiously. They state that Lloyd was uncooperative during cross-

2024 SKKB 223 (CanLII)

examination and resisted providing direct answers. Instead, he made self-serving dissertations on topics often unrelated to the question. Some examples are:

(a) On day one, Lloyd said he lived on the farm in March 1992. On day two, he stated he moved to Melville in February 1992. They opine that this was to line up with his upcoming attempt to explain away SMI's cancellation of the farm home policy.

(b) On day two, Lloyd asked to address the Court. He stated that he reviewed his testimony with Joy and wished to revise his testimony to say that he had not faxed an actual policy cancellation to SGI despite adamantly and repeatedly stating such the previous day. Instead, Lloyd said he sent SGI a letter by mail or registered mail, asking SGI to let his policy lapse. The defendants say this is inconsistent with Lloyd's August 13, 1992, letter to RBC, in which he tells RBC that he had faxed the signed policy cancellations to SGI and gave Dunn the originals. They say both versions of his testimony contradict Lloyd's letters to Buhler.

(c) Lloyd's evidence at trial was inconsistent with his evidence from oral questioning. When he explained SMI's policy cancellation during questioning, Lloyd stated he was unaware of why SMI cancelled mid-term. At trial, Lloyd testified that he told SMI to cancel the policy. Also, at trial, Lloyd stated that he planned to expand the poultry operation to 200,000 birds. During questioning, he said he was claiming $30,000 per year in damages based on the expansion of the operation by 24,000 birds.

(d) The trial documents contradicted Lloyd's evidence at trial. The defendants gave the example of Lloyd testifying that Flavel

2024 SKKB 223 (CanLII)

attended his property on October 25, 1991, unannounced. Mr. Flavel's file note states that the visit was scheduled so Lloyd could be present.

(e) Some of Lloyd's documents were suspicious and inauthentic. The defendants question why Lloyd would write a letter to his sister, particularly after a telephone call. It seemed overly formal and pointed to the self-serving nature of the letter. The defendants noted letters are typed in different fonts using different logos for Rowland Hill. In a letter to Canadian Insurance dated November 20, 2000, Lloyd signs the document but does not use any letterhead. Lloyd's August 13, 1992, letter to RBC was compared to his letter dated August 1, 1992, also to RBC. The August 1, 1992, letter purports to respond to a letter from RBC. However, Lloyd testified that the August 13, 1992, letter was also a response to the same RBC letter, yet it was produced by the plaintiffs in 2014. The two letters, purportedly written 12 days apart and responding to the same RBC letter, have different fonts and post office numbers for Lloyd's contact, and the letterhead differs. The defendants argued that Lloyd's signature was markedly different on the two documents.

[123] The plaintiffs argue that over time, memories fade and technology changes. Minor, insignificant details should not be scrutinized; little can be taken from the different letterheads or fonts. Technology at the time was such that it was not common for everyone to have computer access. Minor mistakes are to be expected.

[124] Further, the plaintiffs argued that it was plausible that some documents were lost or there was a delay in locating them. Similarly, it is conceivable that

2024 SKKB 223 (CanLII)

signatures would change over time, and the minor issues raised by the defendants do not add up to negate Lloyd's testimony.

[125] Lloyd's evidence was challenging to follow, and he rarely answered direct questions. It was troubling that Lloyd was adamant about his process of cancelling the hog barn/feed mill policy, only to return the next day after speaking with Joy, who was present in the courtroom, and change this evidence. Lloyd's evidence regarding whether he sought to lapse that policy or SGI declined to renew was confusing, and he contradicted himself. The Rowland Hill documents were problematic due to the different fonts, letterhead, and signatures.

[126] The SGI non-renewal or cancellation issue was the subject of much evidence and trial time. Considering the documents and *viva voce* evidence, the likely sequence of events concerning the SGI non-renewal or cancellation is as follows.

[127] Lloyd and Dunn met on July 21, 1992. The meeting was described as acrimonious. During the meeting, Lloyd signed a cancellation of Corrinne's home policy, effective immediately. Lloyd also signed a cancellation of the poultry policy, but it was undated. In my view, that signalled that he did not want the policy to be cancelled immediately. I accept that Lloyd's instructions were to keep the SGI policy active until he could confirm coverage with an alternate insurer. This is consistent with Dunn's evidence and makes sense.

[128] On July 29, 1992, Taylor wrote to Dunn advising that SGI would cancel the policy once they received a signed cancellation; otherwise, they would perform a review before renewal. SGI did not receive the signed cancellation, so they performed the review, and Lloyd was uncooperative. That resulted in SGI declining to renew the hog barn/feed mill policy.

[129] As noted previously, it is unclear whether Lloyd took the appropriate

2024 SKKB 223 (CanLII)

steps to communicate his desire to lapse the SGI policy. Lloyd's testimony on this point was unclear, contradictory, and inconsistent. I accept that he told Dunn to let the SGI policy lapse, but neither took appropriate steps to make it happen. However, it matters not because SGI's declining to renew the hog barn/feed mill policy was not the only issue contributing to Lloyd's inability to obtain insurance.

(a) Are Dunn's Communications Defamatory?

[130] The plaintiffs argued that Dunn published words or made statements that lowered Lloyd's reputation in the community, prevented him from obtaining insurance, and caused him losses. The plaintiffs say that Dunn's communications, each considered as a whole, are misleading and calculated to result in a denial of Lloyd's insurance.

[131] If Lloyd establishes all three elements of defamation, the defendants rely on the defences of truth and qualified privilege.

[132] In my view, Dunn's communications are defamatory in that the publication would tend to lower his reputation in the eyes of a reasonable person. Dunn's communications are defamatory to three plaintiffs: Lloyd, Corrinne, and Finnie Holdings. I say this because:

(a) Lloyd is clearly identifiable in each of Dunn's correspondence. The Dunn/Taylor Memo refers to "Stilborn" in the subject line and references "he" and "his". Anyone familiar with the Stilborns, particularly in the insurance industry, would know this refers to Lloyd.

(b) Lloyd's policy numbers are referenced. Taylor could easily cross-reference the two policy numbers to confirm the insured's and Lloyd's association with Finnie Holdings.

2024 SKKB 223 (CanLII)

(c) Finnie Holdings is identified in the Dunn/Taylor Memo and the Simcoe Letter.

(d) Corrinne is identified in the Wawanesa Memo and attached to the Dunn/Taylor Memo. Dunn states that the insured failed to pay his farm renewal premium. Lloyd is incorrectly referenced as the insured, and Corrinne did not fail to pay a premium.

(e) Dunn writes to SGI advising he sought a signed cancellation for "his" Wawanesa policy in "his mother's name". While it is unclear why Dunn is advising SGI of this when SGI has nothing to do with Corrinne's policy, the tone is such that Lloyd acted improperly, manipulatively, or is otherwise a problem.

(f) Dunn states that Lloyd is an unacceptable insurance risk and intimates that he has failed to provide Tarita with information.

[133] Having determined that Dunn's communications are defamatory to Lloyd, Corrinne, and Finnie Holdings, I shall consider the defences raised and damages that may have arisen.

[134] Rowland Hill's claim is dismissed.

(i) Defence of Truth

[135] The defence of truth has also been referred to as the defence of justification. To rely on this defence, the defendants must show the statement was true or substantially true, but "the defence of justification will fail if the publication in issue is shown to have contained only accurate facts, but the sting of the libel is not shown to be true" (*Bent v Platnick*, 2020 SCC 23 at para 107, [2020] 2 SCR 645 [*Bent*]. Further, "partial truth is not a defence" (*Bent* at para 108).

2024 SKKB 223 (CanLII)

[136] The defendants here must show that the main thrust of the words is true, not necessarily that every word is true (*Hodgson v Canadian Newspapers Co.*, [1998] OJ No 2682 (QL) (Ont Ct J) at para 405).

[137] The defendants argue that the statements made by Dunn in the impugned documents are true or substantially true. Concerning the Dunn/Taylor Memo, they reference the lines "SGI has declined to renew" and "… requested a signed cancellation for his Wawanesa policy, which is in his mother's name" as true statements. The defendants further argue that the comment "… suggested cancellation effective November 1, 1992" is a suggestion, not a fact, not defamatory, and also true. Finally, the defendants reference, "I no longer consider this insured to be an acceptable insurance risk," as an honest statement of Dunn's opinion. By then, they argued, SGI had already decided Lloyd was not an acceptable risk to underwrite.

[138] Further, the defendants argue that Dunn's comment in the Dunn/Taylor Memo that "… has had power of attorney (or so he says) for Corrinne" is true or substantially true. Lloyd testified that while he did not have a POA for Corrinne, he was authorized to handle her insurance affairs. The comments "… challenging a BI [bodily injury] claim …" and "… suing Canadian Home …", "… Sask Mutual cancelled midterm …", and "SGI decline to renew …" they say they are all true.

[139] Concerning the Wawanesa Memo, the reference to the "account" appears to reference the group of policies managed by Lloyd. The defendants argue that the term enormous is subjective, but the account had many problems, including SMI's mid-term cancellation, SGI's non-renewal, and non-payment.

[140] The defendants argue the Simcoe Letter's reference to "… your claims history, the midterm cancellation by one insurer, the refusal to renew by another, and your current litigation against still another company" is true and does not appear to have been reported by Lloyd to Tarita, his Reed Stenhouse broker.

2024 SKKB 223 (CanLII)

[141] The plaintiffs argue that the overall of Dunn's communications are untrue or, at minimum, misleading and defamatory.

[142] The plaintiffs further argue that the defamatory meaning is evident in the communications, and Dunn understood and intended the consequences of the communications.

[143] In my view, a recipient of Dunn's communication would not parse the accurate and inaccurate comments in the manner the defendants have. As a broker, Dunn was in a position where the insurer would accept his remarks at face value. After all, Dunn's role was to communicate to insurers the risks and other issues associated with a client or potential client's application.

[144] Regarding the Dunn/Taylor Memo, it is unclear why Dunn requested Lloyd to provide a signed cancellation of Corrinne's home policy and how that information is relevant or appropriate for SGI. It appears SGI requested the signed cancellation, but from whom? SGI's hog barn/feed mill policy had nothing to do with Corrinne. Dunn acknowledged that Corrinne's home policy with Wawanesa is in Corrinne's name alone. Including Corrinne's home policy with Lloyd's SGI business creates a more significant, negative impression of Lloyd and Corrinne. While it is Dunn's opinion that he no longer considers Lloyd (and potentially Corrinne) an acceptable insurance risk, he does not say why or how it includes Corrinne. My comments on the Wawanesa Memo apply to the Dunn/Taylor Memo because the Wawanesa Memo was attached to the Dunn/Taylor Memo.

[145] I find the Wawanesa Memo problematic. In my view, it is inflammatory, confusing, and untrue. Why did Dunn request a signed cancellation of Corrinne's policy from Lloyd? How could Lloyd sign the cancellation on her behalf in any event? It is worded so that it appears Dunn is demanding Lloyd or Corrinne cancel for some negative reason.

2024 SKKB 223 (CanLII)

[146] When Dunn uses the word "enormous" to describe the problems caused by Lloyd, it is exaggerated. Dunn snidely references Lloyd, stating he holds a POA for Corrinne and questions his truthfulness. If Dunn did not believe Lloyd held POA for Corrinne, why was he dealing with Lloyd? In my view, it was Dunn's responsibility to ensure he was dealing with the appropriate party, and if he believed Lloyd had a POA, he ought to have confirmed such. Otherwise, he should have dealt with Corrinne directly regarding her home policy.

2024 SKKB 223 (CanLII)

[147] What Lloyd's litigation history, claims history, and SGI declining the hog barn/feed mill policy renewal has to do with Corrinne is unclear. While SMI's mid-term cancellation of the farm home policy is true, it has nothing to do with Corrinne. Dunn's comments regarding the farm debt review process are misleading. Dunn's comments regarding the "insured's" failure to pay is confusing and untrue. Corrinne's home policy with Wawanesa does not insure Lloyd; from that perspective, the comment is inaccurate. It may even be inaccurate about Lloyd himself regarding his insurance policies.

[148] Regarding Dunn's Letter, I agree with McCuskee that the tone is snarky. While one could parse the accurate comments, the overall tone and tenor are negative and suggestive of impropriety on Lloyd's behalf. Had Dunn's Letter been sent to Lloyd alone, perhaps it would not be included in the impugned correspondence. Dunn appends it to the Simcoe Letter.

[149] On the face of it, the Simcoe Letter is substantially true. Dunn encloses his letter to Lloyd, although he states it is to Finnie Holdings. Why Dunn's Letter is addressed to Lloyd and not Finnie Holdings is unclear, but it is suggestive that Lloyd is the problem regardless of which policy Dunn refers to. When Dunn suggests, "If your company is interested in doing business with a brokerage who believes in thorough field underwriting and careful selection of prospects," he implies that it did not happen

here.

[150] The defendants argued that Dunn's communications were neutral facts, even though some comments were negative. I disagree. Dunn's communications were confusing because Corrinne was lumped in with Lloyd, and the comments to Wawanesa were about Lloyd despite not being the Wawanesa policy holder.

[151] Fair enough that Dunn believed that he had a duty to report a change in risk to the insurers. Still, he would have no other reason to reach out to Wawanesa, Simcoe, and SGI in the manner he did and include the information he did except to warn these three insurers about Lloyd.

[152] I agree that the defamatory meaning of Dunn's communications is apparent, and I agree that Dunn understood or intended certain consequences. However, I do not accept he intended all of the consequences alleged by the plaintiffs.

[153] Under the circumstances, this is not a situation where the defence of truth applies. Dunn's correspondence read as a whole or separately, casts a pall on Lloyd, Corrinne, and Finnie Holdings without separating the issues, the policies, and the policyholders. Dunn has indiscriminately passed information to insurers that is somewhat true but inflammatory, sarcastic, and reckless.

(ii) Defence of Qualified Privilege

[154] I am guided by the SCC's decision, *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 at para 143 [*Hill*], regarding the defence of qualified privilege:

> 143 Qualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself. As Lord Atkinson explained in *Adam v. Ward*, [1917] A.C. 309 (H.L.), at p. 334:
>
> > … a privileged occasion is … an occasion where the person

2024 SKKB 223 (CanLII)

> who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.
>
> This passage was quoted with approval in *McLoughlin v. Kutasy*, [1979] 2 S.C.R. 311, at p. 321.

[155] While a statement may be defamatory on the face of it, it may not attract liability where the defence of qualified privilege protects it. A limited defence applies to situations where the statements are relevant, made honestly and in good faith, and without malice (*RTC Engineering Consultants Ltd. v Ontario*, [2002] OJ No 1001 (QL) (Ont CA) [*RTC Engineering*]). At para 16 of *RTC Engineering*:

> [16] At the heart of the defence of qualified privilege is the notion of reciprocity or mutuality. A defendant must have some interest in making the statement and those to whom the statement is made must have some interest in receiving it. "Interest", however, should not be viewed technically or narrowly. The interest sought to be served may be personal, social, business, financial, or legal. The context is important. The nature of the statement, the circumstances under which it was made, and by whom and to whom it was made are all relevant in determining whether the defence of qualified privilege applies.

[156] The defendants argue that Dunn had a duty to communicate relevant information to Wawanesa and SGI, including his risk assessment. They say Lloyd's statements regarding the reduced premium offered by Simcoe led Dunn to believe they had been misled. McCuskee's expert opinion was that the tone of Dunn's correspondence was snarky, but it provided fair and appropriate underwriting information.

[157] The defendants further argue that Dunn owed a duty to the insurance industry as a whole, and was required to report the information and advise of a material change in risk. Unfortunately, Dunn could not testify at trial and elaborate on this.

[158] The plaintiffs argued that the defence of qualified privilege attaches to the occasion, but this occasion does not give rise to any such defence. They state that

2024 SKKB 223 (CanLII)

Dunn could have presented facts, if anything, but went beyond that. They argue that Dunn's duty to the industry, if any, was to report the facts only.

[159] The SCC considered the defence of qualified privilege in *Bent*, noting at para. 121 when the defence may be defeated:

> [121] … However, the privilege is *qualified* in the sense that it can be defeated. This can occur particularly in two situations: where the dominant motive behind the words was malice, such as where the speaker was reckless as to the truth of the words spoken; or where the scope of the occasion of privilege was exceeded (*Downward* [Downard, Peter A. *The Law of Libel in Canada*, 4th ed. Toronto: LexisNexis, 2018], at s. 1.9.; See also *Hill,* at paras. 145-147; *Botiuk* [*Botiuk v Toronto Free Press Publications Ltd.,* [1995] 3 SCR 3], at paras. 79-80).

[160] It is unclear to the Court that Dunn owed such a duty to the other potential insurers or the industry. While Dunn may have believed he owed that duty, one would expect that if there were such a duty, it would extend to communicating relevant facts. While some of the information he communicated was true, some information was false. His tone and exaggeration made the communications more inflammatory than they otherwise could have been.

[161] I am not satisfied that the defence of qualified privilege protects the impugned communications in these circumstances.

(b) What Are the Appropriate Damages?

[162] Having determined that Dunn's communications are defamatory to Lloyd, Corrinne, and Finnie Holdings and that the defences of truth and qualified privilege do not apply, I must now determine the appropriate damages.

[163] I am troubled by the 28-year delay in moving this action forward. Witnesses such as Corrinne and Tarita have passed away, and documentary evidence is no longer available. Dunn suffers from dementia and could not give evidence in his

2024 SKKB 223 (CanLII)

defence aside from the answers given during examinations for discovery in 1996.

[164] The defendants argued that the overall picture in 1992 is challenging to recreate. The world was different then, and technology was different then. While I agree, I also accept that a trial was challenging for both parties, in large part due to the delay.

(i) General Damages

[165] In *Hill*, the SCC noted that general damages for publishing a false statement are presumed (para. 164). A plaintiff is not required to prove actual damages (*Rutman v Rabinowitz*, 2018 ONCA 80 at para 65, 420 DLR (4th) 310).

[166] However, presumed damages in defamation matters are not always significant, as noted by Justice Sinclair in *Moen v MacKay,* 2024 SKKB 206 at paras 35-56 [*Moen*]:

> [35] Although general damages are presumed from defamatory publications, those damages are not necessarily presumed in significant amounts. For instance, in *Vellacott v Laliberte*, 2012 SKQB 23, 390 Sask R 120, the Court granted the plaintiff general damages in the amount of $5,000. In *Whatcott* [*Canadian Broadcasting Corporation v Whatcott,* 2016 SKCA 17], general damages were reduced to a nominal amount of $1,000. In both of the aforementioned cases, the plaintiffs failed to lead evidence of the extent of publication.
>
> [36] The Court in *Lavallee v Isak*, 2021 ONSC 6661 at para 74, outlined that the functions of general damages in defamation cases are: (i) to console the plaintiff for the distress suffered from the publication of the defamation; (ii) to repair the harm to the plaintiff's reputation; and (iii) to vindicate the plaintiff's reputation.

[167] Indeed, in *Moen*, Justice Sinclair awarded one plaintiff $7,500 in general damages and the other plaintiffs $5,000 in general damages. Justice Sinclair points to *Hill* for the relevant factors in determining appropriate damages:

2024 SKKB 223 (CanLII)

> [37] In [*Hill*], the following factors were cited as relevant in determining the appropriate amount of general damages:
>
> (a) the conduct of the plaintiff;
>
> (b) the plaintiff's position and standing;
>
> (c) the nature of the defamation;
>
> (d) the mode and extent of publication;
>
> (e) the absence or refusal of any retraction or apology;
>
> (f) the conduct of the defendant from the time the libel was published until the conclusion of the case; and
>
> (g) evidence led in aggravation or mitigation of damages.

[168] Damages in the high range may be awarded where it was proven that the defamatory statements were malicious, perverse, and interfered with the plaintiffs' economic interests. For example, the situation in *Duke v Puts*, 2004 SKCA 12, [2004] 6 WWR 208, aff'd, illustrates the pattern of conduct that led the Court to general damages on the high end.

[169] I shall consider each of the *Hill* factors in determining appropriate damages.

1. Conduct of the Plaintiffs

[170] The evidence showed that the relationship between Lloyd and SGI soured before Dunn's communications were published. Admittedly, Lloyd did not want to be insured by SGI. A series of events exacerbated Lloyd's antagonistic relationship with SGI, some of which were caused by Lloyd himself.

[171] It is fair to say that dealing with Lloyd's insurance matters was challenging for Dunn. Lloyd's direction that he did not wish to be insured by SGI was an obstacle Dunn could not overcome.

2024 SKKB 223 (CanLII)

[172] Lloyd's conduct was not perfect. He withheld pertinent information. Lloyd told various brokers and insurers different stories about the SMI cancellation. Lloyd downplayed his claim history and his litigation history against insurers. McCuskee noted the negative repercussions of Lloyd supplying misleading information (McCuskee report at para. 122). The Court has received no direct evidence regarding the conduct of Finnie Holdings except for Lloyd's. Since Lloyd acted on behalf of Finnie Holdings, his conduct affects his personal insurance matters and insurance matters on behalf of Finnie Holdings.

2. Plaintiff's Position and Standing

[173] Lloyd's standing is clear; the impugned communications reference him by name, and he is the main character handling the insurance matters. He claims losses concerning the defamatory communications appropriately.

[174] Corrinne's standing is clear, to some extent. As noted, the Wawanesa Memo references her and makes erroneous comments about Lloyd not paying premiums for his policy when it was her policy. Corrinne has since passed, and neither party has addressed whether her claim continues. The plaintiffs have generally acquiesced that there is no longer a claim on Corrinne's behalf or that her claim is minimal. The plaintiffs did not elaborate on what her claim was.

[175] Finnie Holdings' standing is less obvious, but it does have standing here. I accept the connection between Lloyd and Finnie Holdings and that Finnie Holdings references the poultry operation. However, there was little evidence concerning any losses to Finnie Holdings.

[176] The defendants argue that the remaining plaintiffs' relationship to the alleged losses is unclear and that Lloyd's evidence suggested any losses were his alone. I agree. The evidence at trial was focused on Lloyd and any damages he may have

2024 SKKB 223 (CanLII)

suffered.

[177] Given my finding that Dunn's communications were defamatory to Lloyd and Finnie Holdings and that general damages are presumed, it matters not for general damages that there was little evidence in respect of Finnie Holdings.

3. Nature of the Defamation

[178] My analysis regarding whether Dunn's communications are defamatory applies here.

4. Mode and Extent of Publication

[179] Dunn's communications were directed to Wawanesa, SGI, Lloyd, and Simcoe. They were sent by regular mail; no evidence was provided to support the communications reaching anyone outside the named recipients.

[180] The plaintiffs rely on the *Muzik v Worthington*, 2021 MBQB 263, decision from the Court of Queen's Bench in Manitoba. Significant damages were awarded to the plaintiff for being defamed by publications on CBC's nightly television news broadcast and in a short online article.

[181] The defendants distinguished the CBC decision, noting the situation is markedly different. The defendant there, CBC, is a national broadcaster. They reported the matter in the news and posted it on their website. The impact on the plaintiff there was on a far greater scale than here.

[182] Dunn's communications were published in 1992. They were not posted on the internet or social media, where there is an infinite memory of posted materials. They were not published in the newspaper or the radio, where numerous people could have viewed or heard the communications. There is no evidence Dunn's communications were shared beyond the intended parties to which the communications

2024 SKKB 223 (CanLII)

were addressed.

[183] The publication of Dunn's communications was limited to the named recipients and was not broadcast widely.

5. Absence or Refusal of Any Retraction or Apology

[184] Lloyd had requested a retraction more than once, to which Dunn refused. I am unaware of any apology or sign of remorse from him. Dunn thought that he owed a duty to advise the insurers and that the information he conveyed was true. It is unclear if he would have elaborated on that belief had he been able to testify at trial.

6. Conduct of the Defendants From the Time the Defamatory Communication was Published Until the Conclusion of the Case

[185] Aside from the defendant's failure or refusal to retract the communications or apologize for the communications, the Court is unaware of the defendants' conduct.

7. Evidence Led in Aggravation or Mitigation of Damages

[186] The Court received no evidence of efforts to mitigate Corrinne's losses, which is understandable in the circumstances. While no direct evidence was led concerning Finnie Holdings, I accept that Lloyd's evidence of mitigation equally applies to Finnie Holdings.

[187] McCuskee testified that Corrinne was insurable in her own right. I accept that Dunn believed Lloyd acted on Corrinne's behalf, but Dunn had never confirmed a POA or other permission for Lloyd to act for her. When Lloyd and Dunn's relationship deteriorated, Corrinne was included. In my view, Corrinne did nothing wrong.

2024 SKKB 223 (CanLII)

[188] Lloyd had instructed Dunn to cancel Corrinne's policy with Wawanesa. I am unaware of any attempt to obtain insurance with Wawanesa after that. Dunn requested a signed cancellation, which Lloyd provided.

[189] Regarding Finnie Holdings, Lloyd and Joy sought to borrow money to buy out the Barnsleys in 1997 when they asked to withdraw. Lloyd did not explain why they did not attempt to obtain insurance in Joy's name.

[190] At some point, Lloyd became dissatisfied with Dunn's service, presumably due to his inability to move away from SGI as an insurer. Lloyd did not wish to be insured by SGI. Lloyd had spoken to other brokers in 1992, but McCuskee said it was a difficult market for ILOs and that SGI was the main insurer in the ILO market then.

[191] Much of the plaintiffs' argument focussed on Dunn's perceived failures as an insurance broker. The plaintiffs argue that while it was a tumultuous time for the Stilborn operations, Dunn failed to do his homework and ask the right questions or seek clarification from Lloyd. They say Dunn never understood how the farming operations worked and could not present a clear picture to the underwriter. I decline to comment on these arguments. The plaintiffs admit they were generally unsatisfied with Dunn as an insurance broker, but I fail to see a connection between those concerns and the defamation claim.

[192] Lloyd took steps to obtain insurance through Tarita, Mark's Agencies, and others, including Dusyk & Barlow in Regina, Saskatchewan. I accept that Lloyd tried to mitigate his losses. Still, the evidence shows he was not entirely forthright in reporting his insurance history to Tarita, Dusyk & Barlow, and perhaps others. Indeed, Lloyd's withholding or presenting misleading information undermines any effort to mitigate losses.

2024 SKKB 223 (CanLII)

[193] In a letter dated July 5, 1992, Tarita wrote to Lloyd and Rowland Hill asking Lloyd questions, including, “Most underwriters do not like wood fireplaces even if the chimney is to code. Is that why Saskatchewan Mutual cancelled your policy?” Tarita confirms the poultry operation was claims-free aside from minor wind damage in 1988. He notes Lloyd’s four-year claim-free history and one claim in the complete history of poultry operations.

[194] Tarita says the hog and feed plant had one small claim in 1989 but was otherwise claim-free between 1987 and 1992. Tarita confirmed receipt of Lloyd’s insurance records and stated he would review them over the summer.

[195] Tarita did not have accurate and complete information at that point. He did not ask about Lloyd asking to lapse the SGI policy or whether they declined to renew. Presumably, Tarita was searching for insurance on the hog barn/feed mill because Lloyd advised Tarita that he asked Dunn to allow the SGI policy to lapse.

[196] We do not know what occurred between July and August 1992, respecting Lloyd’s insurance, but the SGI policies were to expire in October 1992. Tarita was gathering information about the SMI cancellation and learned about the October 1992 tractor claim. Ultimately, Tarita is unable to secure Lloyd's insurance (Letter from Tarita to Lloyd, dated November 5, 1992):

> Dear Lloyd:
>
> **RE: Agricultural Insurance**
>
> We have just received a fax from our Underwriter stating that pursuant to additional information provided by us on November 2, 1992, including the letters received from Dunn Insurance, they are not prepared to offer terms.
>
> This and SGI are our only source of capacity for Speciality Agricultural Risks. We therefore regret that we are unable to pursue this any further.
>
> Yours very truly,

2024 SKKB 223 (CanLII)

Leo Tarita

[197] The defendants argued that we do not know which underwriters Tarita was dealing with. I agree. Further, there was no evidence of whether the insurers Tarita spoke to declined or backed out of coverage. The Court has no information about why those insurers declined or backed out of coverage. It is acknowledged that by that point, Tarita had received Dunn's correspondence, but he had also learned of the additional claim in October 1992 and SMI's cancellation.

2024 SKKB 223 (CanLII)

[198] While we do not know for certain that Simcoe declined or withdrew coverage due to Dunn's communications, it appears that the communications were not considered in their decision. In a letter dated November 12, 1992, Simcoe wrote to Dunn in response to the Simcoe Letter. It states:

> Dear Mr. Dunn,
>
> I have received your letter of October 28th regarding Finnie Holdings and your advice to a Mr. Lloyd Stilborn of Melville, Saskatchewan.
>
> This is to confirm that the Simcoe Erie does not have any involvement with this insured, contrary to your letter of October 28, 1992.
>
> Yours very truly,
>
> Neville Harriman
>
> Senior Vice President
>
> Insurance Operations

[199] Finally, there was no evidence that Dunn's communications negatively impacted Lloyd's reputation. Lloyd was undoubtedly upset with Dunn's communications, understandably so, but he has failed to prove his losses to the degree required for a higher damages award.

[200] It is unclear whether Corrinne's claim was properly continued and any damages she may have had were not pursued. As a result, Corrinne's claim is dismissed.

[201] The above factors illustrate that while general damages are appropriate

for Lloyd and Finnie Holdings, they should be on the low end. I, therefore, award general damages of $7,500 to Lloyd and $2,500 to Finnie Holdings.

(ii) Special Damages

2024 SKKB 223 (CanLII)

[202] Lloyd argued that Dunn's communications made him uninsurable and prevented him from growing his poultry operation. He was insured before Dunn was involved; afterwards, Lloyd was uninsurable throughout the 1990s. It was not until Buhler set the record straight that he became insurable again. The plaintiffs argue that it was not Lloyd's claims history or the SMI cancellation; it all resulted from Dunn's actions.

[203] The defendants argued that there was no evidence that Dunn's communications impacted Lloyd's insurability. He already had insurability issues, and McCuskee's uncontroverted evidence was that Dunn's communications had no impact on Lloyd's insurance problems.

[204] The defendants further argue that there are no damages concerning SGI. Terminating the relationship was mutual; Lloyd did not want SGI as an insurer, and SGI did not want to insure him. SGI ignored Dunn's communications; its relationship with Lloyd had already ended. When Lloyd testified, he showed disdain for SGI, commenting that he did not want the government involved with his business.

[205] The defendants say that Lloyd and his operations were experiencing financial difficulties and that his assets had been liquidated. The plaintiffs say that their financial challenges resulted from Lloyd's brothers wishing to leave the operation and their inability to agree on the pricing of some of the assets. Regardless, Lloyd's operations were not running smoothly between 1988 and 1992. Even if I accept the financial difficulties caused by Lloyd's brothers leaving and disagreements over asset prices, he still went through a debt review process, assigned land to ACC, and ended

up with a default judgment against him.

[206] The defendants argued that the extensive poultry expansion was a complete fabrication. They argued that there was no plan Lloyd could have put into action in 1992. The Claim issued in 1994 alleges that Dunn's correspondence caused the chinchilla operation to fail. Later, the Claim was amended, but the reference to chinchillas was unchanged. At trial, Lloyd claimed losses associated with the inability to expand his poultry operation to 200,000 birds.

2024 SKKB 223 (CanLII)

[207] The 200,000-bird expansion was not mentioned during questioning in 1999. Lloyd spoke about a $30,000 loss based on a 24,000-bird expansion. The plaintiffs pointed to the proposal for CIBC, but the CIBC proposal and the evidence from questioning was that following the chinchilla venture, Lloyd planned to borrow money to get back into the hog or swine business. After that, Lloyd had plans for the feed mill; then he would borrow more money for the 24,000-bird expansion.

[208] In response to the defendants' challenge over Lloyd's claim for the poultry expansion versus the chinchilla operation, the plaintiffs argued that the motivation for the litigation changed over time.

[209] The plaintiffs argued that Hoffart's calculations could be scaled down to a 24,000-bird expansion should I find that Lloyd did not intend to expand his operation to the 200,000-bird quota. I disagree. Based on the information before me, I cannot estimate the construction costs, if any, for 24,000 birds. I cannot estimate the feed costs, for example, for 24,000 birds. Lloyd has claimed he planned a 200,000-bird expansion; he either planned to expand to 200,000 birds or he did not.

[210] In a June 23, 1992, memorandum, Taylor notes "Lloyd Stilborn" in the subject line and references the hog barn/feed mill policy. She states:

> Further to our discussion about the above risk, we were able to speak

> with the insured today.
>
> He reports that work is not complete on the feed mill. He reports that renovations include roof repair, and rewiring of the feed mill equipment which will not be complete until the fall of 1992.
>
> The insured is also vague about a proposed plan to reopen the hog barn portion of the risk sometime in early 1993 for some yet to be named "intensive" livestock operation. Such an enterprise is to involve some "venture capital" from unnamed third parties.
>
> …
>
> If you agree, I intend to advise the client that we will be happy to re apply at such time in the future that he is open for business and is able to submit a proper business plan and some statement of financial capacity from his bankers.

[211] It appears that Lloyd had not settled on a plan for the hog barn and feed mill, nor had he presented a business plan and statement of financial capacity. This is consistent with the defendants' argument.

[212] The defendants argue that the plaintiffs provided no evidence that Dunn's communications caused Lloyd's uninsurability and that his inability to obtain insurance caused the loss of expected profit. They have shown no evidence to support a plan for a 200,000-bird expansion and no evidence Lloyd could obtain financing for such a project. Importantly, they argue that there was no evidence that the lack of insurance kept Lloyd from expanding his operations.

[213] I agree. The gaps in evidence are apparent. I do not accept that Lloyd planned to expand his poultry operation to the extent he described during his testimony. His evidence given during questioning is markedly different from his testimony at trial. The poultry expansion inexplicably grew from 24,000 birds to 200,000 birds, and he downplayed the prospect of raising chinchillas, the focus of his Claim and Amended Claim.

[214] McCuskee's expert evidence respecting the impact of the impugned

2024 SKKB 223 (CanLII)

correspondence on Lloyd's insurability is compelling. Her qualifications and evidence were uncontroverted, and she testified in a professional, straightforward manner. In her view, Dunn's correspondence did not play a role in Lloyd's insurability, and his portfolio was subject to many other problems.

2024 SKKB 223 (CanLII)

[215] SMI's inexplicable mid-term cancellation appears to be Lloyd's most significant problem, and Lloyd did not provide any reasonable explanation for the cancellation.

[216] The plaintiffs argue there was miscommunication between Lloyd and SGI. However, Lloyd's disdain for SGI dictated his overall approach to insurance and made it difficult to find coverage. If there was any miscommunication between Lloyd and Dunn regarding lapsing the SGI policy, which is unclear, that miscommunication could be attributed equally to Lloyd and Dunn.

[217] The plaintiffs have not proven any special damages caused by Dunn's communications, and the claim for special damages is dismissed.

(iii) Aggravated Damages

[218] I accept that aggravated damages may be appropriate in defamation matters. In *Hill*, the Court notes that aggravated damages may be awarded when the defendant has insulted the plaintiff or acted in a high-handed, spiteful, malicious or oppressive manner (*Hill* paras 188-189).

[219] However, the plaintiffs must prove actual malice that increased the plaintiff's damages (*Hill* at para 190). To some degree, Dunn's communications were unprofessional and even spiteful. The reason for this is unknown, but the plaintiffs opined that perhaps Dunn was upset that Lloyd moved his portfolio elsewhere.

[220] The Court is unaware of the impact of Dunn's communications on

Lloyd's (or any of the plaintiffs') reputation. Dunn's communications surprised Lloyd; he was offended, and his inability to obtain insurance caused him stress. In my view, Dunn's motives in reaching out to Wawanesa, Simcoe, and SGI were disingenuous, but I did not have the benefit of Dunn's testimony to confirm his motives. I do not accept that Dunn's correspondence was the reason for Lloyd's inability to obtain insurance. Still, it does appear that Dunn would have known his correspondence could affect Lloyd's insurability. The problem, however, is that the plaintiffs have not shown Dunn's communications were motivated by actual malice that increased the injury to the plaintiffs (*Hill* at para 190).

2024 SKKB 223 (CanLII)

[221] As a result, the claim for aggravated damages is dismissed.

(iv) Pre-Judgment Interest

[222] The plaintiffs argue that the pre-judgment interest that may attach to any award to the plaintiffs may be significant given the delay in bringing the action forward. The defendants ask the Court to waive pre-judgement interest in light of the extreme delay attributable solely to the plaintiffs.

[223] The defendants rely on ss. 5(3) of *The Pre-Judgment Interest Act*, SS 1984-85-86, c P-22.2:

> 5(3) If it is proven to the satisfaction of the court that it is just to do so having regard to the circumstances, the court may, with respect to the whole or any part of the amount for which judgment is given, refuse to award interest under this Act or award interest under this Act for a period, or both, other than a rate or period determined pursuant to section 6.

[224] The Court acknowledges that the trial was initially scheduled to commence on June 13, 2022, but the assigned trial judge was elevated to the Saskatchewan Court of Appeal. As a result, the trial was rescheduled almost a year later, and this one-year delay is no fault of the parties. Aside from that delay, it is unclear

why the matter took so long to get to trial. A review of the file shows lengthy periods of inaction and excessive delay.

[225] I find no adequate explanation for the 26-year delay in bringing this matter forward. As mentioned earlier, the delay has been problematic from an evidentiary standpoint, and a plaintiff should not be rewarded for such a delay.

[226] A generous period for his matter to come to trial is eight years. Pre-judgment interest is awarded on the damages award for eight years, between 1994 and 2002.

VIII. COSTS

[227] As requested, I remain seized on the issue of costs with leave to the parties to speak to costs.

IX. ORDER

[228] I make the following orders:

(a) The claim by the plaintiff, Rowland Hill Poultry, is dismissed;

(b) The claim by the plaintiff, Corrinne Cecilia Stilborn, is dismissed;

(c) The plaintiff, Lloyd Herbert Stilborn, is awarded general damages of $7,500, payable by the defendants;

(d) The plaintiff, Finnie Holdings Inc., is awarded general damages of $2,500, payable by the defendants;

(e) The plaintiffs, Lloyd Herbert Stilborn and Finnie Holdings Inc., are awarded pre-judgment interest for eight years from 1994 to 2002; and

2024 SKKB 223 (CanLII)

(f) The parties have leave to speak to costs, by request to the Local Registrar.

_______________________ J.
C.L. NORBECK

2024 SKKB 223 (CanLII)

KING’S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 223**

Date: **2025 01 23**
Docket: QBG-RG-03273-1997
Judicial Centre: Regina

BETWEEN:

LLOYD HERBERT STILBORN, CORRINNE CECILIA STILBORN, ROWLAND HILL POULTRY, DOROTHY EDITH SCHLUFF AND FINNIE HOLDINGS INC.

PLAINTIFFS

- and -

DWIGHT DUNN AND DUNN REALTY & INSURANCE LTD.

DEFENDANTS

Counsel:

Mark T. Persick and Konstantinos L. Stamatinos — for the plaintiffs
David E. Thera, K.C. and Amy Banford — for the defendants

CORRIGENDUM to JUDGMENT
DATED December 31, 2024 — NORBECK J.
January 23, 2025

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[1] Paragraph 50 should read as follows:

> On further cross-examination, McCuskee testified that Lloyd’s situation had too many factors. Looking at the whole insurance package, everything would be weighed, and the poultry barn, hog barn, and feed mill were undesirable risks. Take that with the many other issues; she was not surprised coverage was declined. In her view, Dunn’s communications played no role in Lloyd’s inability to obtain insurance.

[2] The first sentence in para. 84 should read as follows:

2024 SKKB 223 (CanLII)

Buhler was presented with a letter addressed to Lloyd, dated October 8, 1999, bearing his signature.

[3] The last sentence in para. 97 should read as follows:

Koback advised that they were willing to look at his property for several reasons and confirmed they considered Buhler's October 8, 1999, letter.

[4] Paragraph 147 should read as follows:

What Lloyd's litigation history, claims history, and SGI declining the hog barn/feed mill policy renewal has to do with Corrinne is unclear. While SMI's mid-term cancellation of the farm home policy is true, it has nothing to do with Corrinne. Dunn's comments regarding the farm debt review process are misleading. Dunn's comments regarding the "insured's" failure to pay is confusing and untrue. Corrinne's home policy with Wawanesa does not insure Lloyd; from that perspective, the comment is inaccurate. It may even be inaccurate about Lloyd himself regarding his insurance policies.

J.
C.L. NORBECK

2024 SKKB 223 (CanLII)