CITATION: Pinder v. Farmers' Mutual Insurance Company (Lindsay), 2019 ONSC 610
PETERBOROUGH COURT FILE NO.: 40/05 and 374/06
DATE: 20190125

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
CINDY PINDER and JOYCE PINDER Plaintiffs	Alfred M. Kwinter, for the Plaintiffs
– and –	
FARMERS' MUTUAL INSURANCE COMPANY (LINDSAY) Defendant	Martin P. Forget, for the Defendant
BETWEEN:	
FARMERS' MUTUAL INSURANCE COMPANY (LINDSAY) Plaintiff	Martin P. Forget, for the Plaintiff
– and –	
CINDY PINDER and JOYCE PINDER Defendants	Alfred M. Kwinter, for the Defendants
	HEARD: In Writing

REASONS FOR DECISION ON COSTS

VALLEE J.:

BACKGROUND

[1] The trial of this fire loss action proceeded before me with a jury beginning on December 4, 2017. The jury delivered its verdict on December 20, 2017. It found that there was a change in the heat source in the plaintiffs' home that constituted a material change in the

risk and that the plaintiffs were required to report it to the insurer. They did not report it[1]. The jury found that Cindy Pinder made 39 wilfully false statements on the proof of loss form. As a result of these findings, the jury was not required to consider whether any conduct of the insurer warranted an award of punitive damages. The jury did consider whether the insurer's conduct in handling the claim was high-handed, spiteful, malicious or oppressive such that an award of aggravated damages was warranted. The jury found that it was not. The defendant insurer was successful in defending the plaintiffs' claims. It also obtained judgment in the related mortgage action.

[2] The defendant is presumptively entitled to costs based on the principle that costs follow the event. The plaintiffs state that no costs should be awarded to the defendant because it treated the plaintiffs unfairly both in the adjustment period and during litigation. The plaintiffs state that the defendant acted in bad faith. The defendant states that it is clearly entitled to costs. The issue of the insurer's conduct was before the jury. The plaintiffs now seek to re-litigate it. The defendant states that substantial indemnity costs should be awarded because the plaintiffs alleged bad faith against the defendant and failed to prove it.

[3] The plaintiffs do not contest the amount requested for costs – just the entitlement.

Should the defendant be denied costs?

Applicable Law

[4] In *702535 Ontario Inc. v. Non-Marine Underwriters, Lloyds London England*, 2000 CarswellOnt 904 (C.A.) the court stated that an insurance contract is one of utmost good faith. The duty of good faith requires an insurer to act both promptly and fairly when investigating, assessing and attempting to resolve claims made by it's insured. The duty includes an obligation to pay a claim in a timely manner where there is no reasonable basis to contest coverage or withhold payment. An insurer must not deny coverage or delay payment in order to take advantage of the insured's economic vulnerability or to gain bargaining leverage in negotiating a settlement. The duty of fairness, however, does not require that an insurer necessarily be correct in making a decision to dispute its obligation to pay a claim. A denial of a claim that ultimately succeeds is not, on its own, an act of bad faith.

[5] The plaintiffs provided one case in which a successful party was denied costs. In *Saleh v. Nebel*, 2015 ONSC 3680 (CanLII), the court denied costs to a successful party in circumstances where it failed to comply with directions and orders, it made late disclosure of important documents and counsel's conduct was uncivil.

[6] The defendant provided the appeal decision. The Divisional Court found that it was "impossible to link ignoring the trial management order to specific conduct or inefficiencies occurring prior to the existence of that order that warranted a complete denial of costs." The court allowed costs up to the date of the trial management order and one-

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[1] Joyce Pinder is Cindy Pinder's mother. Joyce Pinder owned the house and Cindy Pinder lived in it.

third of the costs requested for the period after that date. (See *Saleh v. Noble*, [2018] O.J. No. 350 (Div. Ct.))

The Positions of the Parties

[7] The plaintiffs state that the insurer denied coverage on the basis that a failure to notify of the change in the heating system constituted a material risk. The insurer voided the policy on virtually no evidence which was outrageous.

[8] The defendant states that this issue was squarely before the jury. The jury decided that the failure to notify constituted a material risk. The plaintiffs were required to report it. By raising this issue in costs submissions, the plaintiffs are inappropriately seeking to re-litigate the matter.

[9] The plaintiffs state that Statutory Condition 11[2] requires that an insurer and the insured proceed to an Appraisal Tribunal to determine the value of the loss[3]. The insurer refused to attend on the basis that the policy was void. The plaintiffs were required to bring a motion and obtained an order in November, 2004 requiring the insurer to proceed to the Appraisal Tribunal. The insurer appealed. On July 4, 2005, the Court of Appeal upheld the decision. This resulted in a delay of seven months.

[10] The defendant states that part of this time was prior to litigation. The defendant's position regarding the appraisal was novel. The Statement of Claim was issued on February 5, 2005. The plaintiffs could have proceeded with the action any time after coverage was denied. They chose to wait.

[11] The plaintiffs state that the order required the insurer to appoint an appraiser within 30 days. It did not do so.

[12] The defendant states that it did appoint an appraiser on August 17, 2005. This was only two weeks past the required date.

[13] The plaintiffs state that they brought a contempt motion in September, 2005, because the defendant objected to the plaintiffs' choice of appraiser, Mr. T. Yates. The defendant's objection was a delay tactic. Cross-examinations were held. The motion was scheduled to be heard on November 15, 2006. It did not proceed; however, the motion caused a further one year delay.

[14] The defendant states it objected to Mr. Yates because the plaintiff, Cindy Pinder, retained him during the adjustment process to assist her in completing the proof of loss. He had a contingency fee arrangement with Cindy Pinder based on the amount that she would be paid for the house contents. The defendant states that it believed that Mr. Yates was not independent or objective. The motion was unnecessary. The plaintiffs withdrew it on the

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[2] Found in the *Insurance Act*, R.S.O. 1990 c. I.8.

[3] Each party appoints an appraiser. They agree on an umpire.

hearing date. Again, the plaintiffs could have proceeded with the coverage action in the meantime. The delay cannot not be attributed to the defendant.

[15] The plaintiffs state that at the commencement of the trial, an order was made to exclude witnesses. Mr. Coutu, the adjuster who initially dealt with the loss and was examined for discovery, remained in the court room. The plaintiffs believed that he was a representative of the insurer. On cross-examination of Mr. Coutu, the defendant took the position that he was only a fact witness, not a representative of the insurer. He did not make the decision to deny coverage. The plaintiffs state that the defendant did not call a witness who was a representative of the insurer. This prejudiced the plaintiffs because they were unable to elicit certain evidence. Had plaintiffs' counsel known that the defendant was not producing a representative of the insurer, he would have included this in his opening statement. Early in the trial, he would have demanded that the decision-maker be produced as a witness.

[16] Furthermore, the plaintiffs state that a person named Mr. Phillips, who worked for the insurer, came to the house before the fire and took pictures of the wood stove that was being using for heat[4]. The plaintiff, Cindy Pinder, was not cross-examined on this point. There was no related evidence. The defendant did not call the broker as a witness at trial.

[17] The defendant states that it was not required to call witnesses to give evidence for the plaintiffs' case. They did not ask the defendant about the witnesses that it intended to call. The plaintiffs could have requested a brief adjournment to permit them to summons an additional witness. The plaintiffs failed to take any steps in this regard. They cannot now say this disentitles the defendant to its costs.

[18] The plaintiff, Cindy Pinder, testified at trial that there was one log[5] in the wood stove and three space heaters turned on part-way when she left the house on the night of the fire. The defendant did not ask the plaintiff how often she put one log in the wood stove. There was very little evidence on this point.

[19] The defendant states that this evidence should have been elicited from the plaintiff. The defendant had no obligation to cross-examine on this point.

[20] The plaintiffs state that the defendant did not call any witnesses to dispute the values of the items on the proof of loss.

[21] The defendant states that the plaintiffs' obligation is to prove the values of the items on the proof of loss. The defendant has no obligation to disprove them. There was no request either informally or in writing to admit facts.

[22] The plaintiff, Cindy Pinder, states that the defendant alleged that she had made wilfully false statements on the proof of loss. The defendant was obliged to set out some particulars regarding the alleged wilfully false statements. Until the weekend prior to the

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[4] As opposed to gas, which was stated as the heat source on the insurance application.
[5] The log was the type that is manufactured and wrapped in paper.

commencement of trial, the plaintiffs did not know which statements were alleged to be wilfully false[6].

[23] The defendant states that particulars were never requested. The Amended Statement of Defence is dated August 17, 2005. The trial was held in 2017. There was plenty of opportunity to request particulars[7].

[24] The defendant states that at the conclusion of the trial, the plaintiffs requested that judgment not be entered for the defendant because they wished to bring a motion requesting that the verdict be set aside on the grounds that it was perverse. They also wished to request relief from forfeiture. This motion was heard in March 2018. The defendant was successful in defending the motion and obtaining judgment.

Analysis

[25] The plaintiffs' issues can be divided into three categories: delay, failure to call witnesses and failure to provide particulars.

Delay

[26] In his opening and closing statements, plaintiffs' counsel repeatedly stated that the defendant acted in bad faith because it engaged in delay tactics to try to wear down the plaintiffs, among other things. A review of the chronology shows that this allegation is unfounded.

[27] As noted above, the plaintiffs issued the Statement of Claim on February 1, 2005. The plaintiffs could have proceeded with the coverage action at any time after it was denied on May 27, 2004. The fact that there was a dispute regarding whether the defendant had to proceed to the Appraisal Tribunal and, subsequently, whether the appraiser suggested by the plaintiffs was appropriate did not prevent the coverage action from moving forward.

[28] Examinations for discovery were arranged for August 8, 2007. The plaintiffs did not attend. No explanation was provided. The plaintiffs retained new counsel one year later. There was no explanation for the plaintiffs' one-year delay.

[29] The defendant brought a motion for summary judgment on the mortgage action and was initially successful on February 6, 2009; however, the Court of Appeal set aside the judgment on January 21, 2010, finding that there was a triable issue. The coverage action had to proceed first. Although this motion and appeal took two-and-a-half years, there was no reason why the plaintiffs could not have proceeded with the coverage action. The mortgage action was separate.

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[6] At a pretrial meeting with counsel on the Friday, I requested that counsel for the defendant provide a list of the alleged wilfully false statements to the plaintiff.

[7] The plaintiffs changed counsel three times. Trial counsel was retained three years prior to trial.

[30] In 2010, the defendant renewed its efforts to schedule the plaintiffs' examinations. Seven written requests were made between June 21, 2010 and February 14, 2012. The plaintiffs did not respond. Finally, examinations were confirmed for March 27 and 28, 2012 but were rescheduled to May to accommodate counsel's illness. The plaintiff, Cindy Pinder, was examined; however, Joyce Pinder did not attend. No explanation was provided. The defendant attempted unsuccessfully to reschedule Joyce Pinder's examination.

[31] On July 25, 2013, the plaintiffs received a letter from their counsel stating that he was withdrawing from practice. Neither the plaintiffs nor counsel contacted the defendant.

[32] The defendant scheduled examinations for April 15, 2014. Joyce Pinder agreed to attend; however, she did not.

[33] In September 2014, the plaintiffs retained trial counsel.

[34] On October 7, 2014, almost five years after the first examination was scheduled, the defendant filed a motion to compel Joyce Pinder's attendance. The motion was withdrawn upon agreement that Joyce Pinder would attend on February 15, 2015. The plaintiffs were the sole cause of the delay between May 2012 and February 2015.

[35] Mr. Coutu was examined for discovery in March 2012, two years before the action was set down. He was not asked for any particulars regarding the alleged wilfully false statements.

[36] On March 9, 2017, the parties attended a pre-trial conference.

[37] The trial proceeded from December 4 to 22, 2017. The jury delivered its verdict on December 22, 2017 in favour of the defendant.

[38] The plaintiffs brought a motion to set aside the verdict and enter judgment for the plaintiffs. It was heard on March 27, 2018. The decision on the motion was released on May 9, 2018. Judgment was granted to the insurer in the amount of $156,572.13. The plaintiffs' claim was dismissed.

[39] I do not accept the plaintiffs' position that the defendant demonstrated bad faith by engaging in tactics to delay the action and wear down the plaintiffs. The plaintiffs contributed significantly to the delay.

Failure to Call Witnesses

[40] The plaintiffs state that the defendant's failure to call the individual who made the decision to deny coverage and the broker who may have had information that the wood stove was being used rather than gas for heat, caused trial unfairness. Similarly, the defendant's failure to cross-examine the plaintiff, Cindy Pinder, on her use of the wood stove showed bad faith because important evidence was not elucidated. I do not accept these arguments. The plaintiffs had the onus to call the witnesses required to prove their case. There is no indication that the defendant agreed to call them and then failed to do so at the last minute. Certain remedies were available to the plaintiffs. They did not request an adjournment to locate the witnesses and serve them with summonses. If evidence of the plaintiff, Cindy

Pinder's, use of the wood stove was important, it should have been covered in examination-in-chief. The defendant had no obligation to cross-examine her on this issue

Failure to Provide Particulars

[41] In its Statement of Defence, dated August 17, 2005, 12 years prior to trial, the defendant alleged that the plaintiffs had made wilfully false statements on the proof of loss. It appears that the plaintiffs did not request particulars at the defendant's examination in 2015. The plaintiffs set the action down for trial in 2016, indicating that they were ready. I do not accept the plaintiffs' position that this caused trial unfairness or that the failure to provide particulars showed bad faith. There is no evidence that the plaintiffs requested particulars at any time.

Conclusion

[42] The court should not depart from the long standing principle that a successful party is entitled to costs except for very good reason. The case provided by the plaintiffs, *Saleh,* was partly overturned on appeal. The successful party was denied only a portion of its costs. The plaintiffs have not demonstrated a very good reason for the court to deny the defendant its costs. Accordingly, I find that the defendant is entitled to costs.

What level of costs should be awarded to the defendant?

[43] On November 19, 2010, the defendant made an offer to settle in which it agreed to have both actions dismissed without costs. It was willing to forego recovery of the amount that it had paid out to the mortgagee, approximately $150,000.

[44] As noted above, the defendant requests substantial indemnity costs for this action as well as the related mortgage action in the total amount of $646,842.10. The defendant states that the plaintiffs made allegations of disreputable conduct against the insurer which were not proved. Mr. Yates, the plaintiffs' witness, testified that the steps taken by the insurer during the adjustment process were reasonable throughout. The plaintiffs were well aware of this. In the alternative, the defendant requests partial indemnity costs up to the date of the offer and substantial indemnity costs after that, in the amount of $616,843.27. The difference in the defendant's positions is $19,998.83.

[45] The plaintiffs state that during the trial, the defendant brought three motions. The first was for a mistrial after the plaintiffs' opening. The second was to amend the defence mid-way through the trial. The third was to strike the jury after plaintiff's counsel's closing address. The defendant was unsuccessful on all three. The defendant should not be allowed any costs for these motions

[46] The defendant states that trial motions should not be dealt with separately unless they unnecessarily delayed the proceedings.

Applicable Law

[47] In *Sagan v. Dominion of Canada General Insurance Co.*, [2014] O.J. No. 1722, the plaintiff brought an action for indemnity under an insurance policy. The plaintiff alleged bad faith and requested an award of punitive damages. The defendant was successful on a motion for summary judgment to dismiss the claim. The plaintiff made unsubstantiated allegations of bad faith. The claim for punitive damages was unsuccessful. The court determined that the defendant was entitled to substantial indemnity costs because the plaintiff "had made empty bad faith allegations right up to the hearing of the motion". In para. 3, the court stated,

> The jurisprudence has held that substantial indemnity costs may be appropriate where party makes empty bad faith allegations. The purpose of this consequence is to diminish frivolous and speculative litigation, to cause litigants to focus on the real issues, and to foster sober reflection above that of an emotional response.

[48] In *DiBattista v. Wawanesa Mutual Insurance Co.*, [2005] O.J. No. 4865, which involved a fire loss, the plaintiffs brought an action pursuant to the policy and claimed punitive damages alleging that the insurer acted in bad faith. The plaintiffs had published the allegations of bad faith in a newspaper. The jury rejected the claim. The court awarded substantial indemnity costs for the entire action to the defendant on the basis that the plaintiff had asserted bad faith claims which were unfounded. The court stated in paras. 5 and 6,

> I have reviewed the case law submitted by counsel and am satisfied that costs should be awarded on a substantial indemnity basis where unfounded allegations of a fraud or dishonesty or other improper conduct seriously prejudicial to the character or reputation of the party are made… I have considered both the allegations made in the evidence adduced in the course of trial by the Plaintiff's against all Defendants. This went well beyond the questioning of credibility or presenting their case vigorously. The claims and allegations by the Plaintiffs against all Defendants satisfy the standards set out in these cases for costs on a substantial indemnity basis.

[49] In *131843 Canada Inc. v. Double "R" (Toronto) Ltd.*, [1992] O.J. 3879, the plaintiff brought an action alleging conspiracy to injure and interfere with economic relations. The action was dismissed. The defendant requested substantial indemnity costs on the basis that the plaintiff persisted with the allegations through the trial without being able to substantiate them. The court stated in paras 14 and 15,

> 14. As Mr. Justice Rosenberg said in *Proctor Ltd. v. U.S.W.A.*, (1990), 71 O.R. (2d) 410:
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> > "Solicitor-and-client costs may be justified where a defendant unjustly accuses the plaintiff of fraudulent

> and dishonest conduct, (and) persists in those assertions through to and including trial without being able to substantiate them."
>
> 15. So, too, where a plaintiff unjustly asserts such allegations against the defendant, with the same unsubstantiated results.

[50] The defendant was awarded substantial indemnity costs for the entire action.

[51] In *Davies v. Clarington (Municipality)*, 2009 ONCA 722, the court referred to *Young v. Young*, [1993] 4 S.C.R. 3 and stated that elevated costs are warranted "only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties." The court also referred to M. Orkin, The Law of Costs, 2nd ed., looseleaf (Aurora Ont. Canada Law Book, 1993) at para 219 which stated that elevated costs should not be awarded "unless there is some form of reprehensible conduct either in the circumstances giving rise to the cause of action or in the proceedings which makes such costs desirable as a form of chastisement".

The Defendant's Position

[52] The plaintiffs claimed $1,000,000 for punitive damages. They alleged, among other things, that,

(a) the insurer consistently delayed and obstructed presentation, valuation and payment of the claim;

(b) it knowingly caused its insureds, particularly Cindy Pinder, financial embarrassment and emotional distress by its delays and refusal to pay reasonable alternate living expenses and the indemnity owed under the policy;

(c) it treated its insureds, particularly Cindy Pinder, in a degrading, demeaning, rude and insulting fashion, completely inconsistent with its duty of good faith; and

(d) it raised frivolous and irrelevant objections and procedural grounds for the purpose of delaying and frustrating the plaintiffs' claims and causing them to incur otherwise needless legal costs and mortgage interest, all of which was inconsistent with the duty of utmost good faith owed by the insurer to the plaintiffs.

[53] The defendant states that throughout the trial, the plaintiffs attacked the integrity of the defendant. In his opening and closing addresses to the jury, plaintiff's counsel stated that the investigation of the claim was a sham. The defendant required the plaintiff, Cindy Pinder, to provide proof of the value of certain items in the house when it knew all along that it would deny coverage based on material change in risk.

[54] In the plaintiffs' opening and closing statements, counsel stated that the defendant set a trap hoping to catch the plaintiff, Cindy Pinder, in a lie. It intentionally delayed the progress of the action hoping to wear down the plaintiffs, in particular Joyce Pinder who, at the time of trial, was 91. The insurer knew that the plaintiffs could not fight forever.

The insurer wanted to wait them out and see how long they would last. The defendant had "thrown anything at the wall to see if it would stick" to wear down the plaintiffs. The defendant had been dragging the plaintiffs through the court system for years. The defendant had called them liars and fraudsters. The plaintiffs had brought the defendant to court "kicking and screaming" in order to force it to go to the Appraisal Tribunal. The plaintiffs were required to obtain a court order because the defendant would not comply with a previous order. The plaintiffs were entitled to punitive damages and aggravated damages. The awards should ring out from Victoria to Halifax so that insurers across the country would know that they cannot treat people this way.

[55] The defendant states that the plaintiffs knew that Cindy Pinder's evidence would be undermined at trial. For example, the plaintiff, Cindy Pinder's evidence was that certain items on her proof of loss came from an inheritance she received from grandparents. Joyce Pinder did not testify at the trial because she is deaf; however, portions of her transcript were read in. She stated that Cindy Pinder had not received any inheritance from her grandparents. Cindy Pinder listed several fur coats on the proof of loss. Joyce Pinder stated at discovery that Cindy had only one. Cindy Pinder responded to the adjuster's request for verification that she had bought one of the coats at Cahill Furriers[8]. She provided a receipt from Cahill stating that such a coat would cost a certain amount to purchase; however, nothing was produced from Cahill which stated that the plaintiff had purchased the coat there. No explanation was given for this omission. The plaintiffs knew that Cindy Pinder's evidence was significantly undermined by her mother's evidence in February 2015, approximately two years and ten months before the trial commenced, yet they persisted with the claim.

[56] The defendant states that the plaintiffs knew that the defendant had handled the claim in a reasonable manner. At trial, Mr. Yates (the plaintiffs' witness), an experienced adjuster, was asked about the various steps taken in the adjustment period. He stated that all of them were reasonable. The plaintiffs ought to have expected to provide proof of the value of the various items claimed.

[57] The defendant states that this was not a case where a claim for punitive damages was just thrown in as boiler plate. The bad faith allegations were an integral part of the claim. The plaintiffs' objective was to secure punitive damages. The Appraisal Tribunal found that the plaintiffs' claim for the building (actual cash value), contents and additional living expenses totalled $203,909.41. The plaintiffs made only one offer to settle for $500,000, plus partial indemnity costs and a consent to dismiss the mortgage action without costs. The defendant's claim in the mortgage action was for approximately $150,000 so the offer was essentially to accept $650,000 plus costs, which was $447,000 beyond the Tribunal Award. As a result, the trial was inevitable.

[58] The defendant states that the plaintiffs' conduct in proceeding with its claim for punitive damages based on serious unfounded allegations against the defendant constituted reprehensible, scandalous and outrageous conduct. The jury's verdict supports this. As

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[8] Located just down the street from the court house.

noted above, the jury found that the plaintiffs had not reported to the insurer a material change in risk. The jury also found that the plaintiff, Cindy Pinder, made 39 wilfully false statements on the proof of loss. Therefore, there was no need for the jury to consider whether the defendant breached its duty to the plaintiffs to act in good faith. The jury also found that the defendant's conduct did not warrant an award of aggravated damages.

The Plaintiffs' Position

[59] The plaintiffs did not make submissions on the level of costs to be awarded to the defendant. Their position was that no costs should be awarded.

Analysis

[60] Prior to the defendant's 2010 offer, it refused to attend the Appraisal Tribunal on the grounds that the policy was void. The plaintiffs had to bring a motion. The defendant appealed the result and was unsuccessful. The defendant did not appoint an appraiser within the mandated time. The plaintiffs had to bring a motion, although it was withdrawn on the hearing date. The defendant also brought a motion for summary judgment on the mortgage action. It was unsuccessful on appeal.

[61] The defendant put the plaintiffs in the position of having to bring two motions and defend a third. While costs were likely addressed on these motions, this is not a case where substantial indemnity costs should be awarded to the defendant from the outset of the matter. I find that the defendant is entitled to partial indemnity costs up to the date of its offer, November 19, 2010.

Should substantial indemnity costs be awarded after the date of the offer?

[62] The plaintiffs state that the defendant should not be awarded costs for any of the three motions that it brought during the trial because it was unsuccessful on all of them. I disagree. The motions for a mistrial and to strike the jury were reasonably brought because of the language used by counsel regarding the claim for punitive and aggravated damages. In his closing address, counsel stated words to the effect that the plaintiff, Cindy Pinder's, statements were not wilfully false because there was no intention to deceive. I had made an earlier ruling on the test for a wilfully false statement which did not require an intention to deceive. I had to revise the charge to address this. The defendant brought a mid-trial motion to amend the defence. While the motion was not allowed, it did not consume much of the trial time.

[63] I agree with the defendant's submission that the plaintiffs took a very aggressive approach in their claim for punitive damages. They made hard-hitting allegations to attack the integrity of the defendant. The plaintiffs' position was that the defendant's investigation was a sham, that the defendant had called them liars and fraudsters, that they had to bring the defendant to the court kicking and screaming regarding the appraisal issue and that the defendant had dragged out the litigation in the hope that the plaintiffs would give up or that Joyce Pinder would not last until the trial. The plaintiffs knew before trial that Cindy Pinder would have credibility problems and that their own adjuster's evidence was that the insurer's approach during the adjustment period was reasonable and expected. The

allegation that the plaintiffs might "give up or die" because of delay caused by the defendant was particularly reprehensible because the plaintiffs were responsible for a good part of the delay in the action. As noted above, an examination of Joyce Pinder was scheduled for August 2007. She finally attended in February 2015. The plaintiffs made bad faith allegations which they could not substantiate.

[64] For these reasons, I find that the defendant is entitled to substantial indemnity costs after November 19, 2010. As noted above, the plaintiffs did not contest the amount requested. Therefore, the plaintiffs shall pay to the defendant costs in the total amount of $616,843.27.

M E Vallee J.

Vallee J.

Released: January 25, 2019