

# THE OBLIGATION TO ACT WITH THE HIGHEST GOOD FAITH IS NOT ONLY INCUMBENT UPON THE INSURED

The insurer's decision must not be based on trivial suspicions.

Caroline Tremblay, Gilbert Simard Tremblay | S.E.N.C.R.L.



There is plenty of caselaw dealing with the principle that an insured must act with the highest good faith towards his insurer. However, it is important to keep in mind that this onus also lies upon insurance companies, namely in the treatment of a claim. The judgment rendered by Justice Chantal Sirois in the matter of Bergeron vs Promutuel Lac St-Pierre-Les Forges is certainly a good example.

### Means of defence invoke by the insurer

In this matter, Defendant Promutuel insured Plaintiffs which were the victims of theft in their home. Promutuel essentially refused to indemnify Plaintiffs for their loss, which led to an action in damages, by which they claimed:

- \$7,555 for the stolen goods;
- \$2,000 for non-pecuniary damages;
- \$5,000 for extrajudicial fees;
- \$10,000 for punitive damages.

To justify its refusal to indemnify, Promutuel alleged:

- Simulated theft by Plaintiffs;
- Plaintiffs' financial situation did not allow them to purchase the goods they are claiming;
- Deceitful representations after the loss (section 2472 CCQ) namely: (1) contradictory versions as to where the stolen goods were bought and (2) renunciation to claim certain goods when the insured were asked to submit to the polygraph test.

### The judgment

Firstly, Justice Sirois blames Promutuel for invoking means that are not supported by facts, and even contradicted by its own witnesses at the trial in order to justify its refusal to indemnify.

As for the allegation pertaining to the simulated theft, Promutuel did not provide any proof in this regard during the trial. Even its own adjuster admitted that this hypothesis was discarded at the beginning of the investigation.

Regarding Promutuel's allegation to the effect that Plaintiffs renounced to part of their claim when faced with the possibility of submitting to a polygraph test, the proof made was rather to the effect that Plaintiffs always agreed to undergo such a test. It was Promutuel's investigator that strongly suggested Plaintiffs withdraw certain items so that their claim could be processed rapidly.

As for Promutuel's allegation concerning Plaintiffs' financial situation, the adjuster's testimony was to the effect that it was above average.

Finally, as to the allegation regarding the origin of the stolen goods, Justice Sirois underlines that the contradictions on which is based Promutuel's refusal are trivial. According to Justice Sirois, if Promutuel would have proceeded with a complete investigation, its doubts could have been easily disregarded.

Justice Sirois severely criticizes the investigation conducted by Promutuel. She reproaches the adjuster to have omitted to provide the investigator with some crucial information. As for the investigator, she is of the opinion that he did not conduct his mandate in a duly manner since he neglected to question Plaintiffs on the origin of the items claimed, which was the main reason why Promutuel refused to indemnify them.

Also, Justice Sirois did not neglect the fact that after the action was served,

Promutuel requested that Plaintiffs submit separately to statutory examinations and refused to provide them with copies of the transcripts. Furthermore, Promutuel was opposed to the transfer of the file before the Small Claims Division of the Quebec Court after Plaintiffs willingness to reduce their claim to \$7,000.

### The necessity to conduct a complete investigation

Considering Promutuel's behavior, Justice Sirois concludes that the latter acted in bad faith towards its insured and consequently granted the claim in its totality.

To conclude, what is interesting with this case is that at first Promutuel doubts were legitimate, namely on the actual existence of the goods claimed. However, it is important to keep in mind that insurance companies must go beyond their doubts and conduct a complete investigation when considering a claim. Acting otherwise by disregarding evidence favorable to the insured may expose an insurer to punitive damages.

1. 2010 QCCQ 5595

