

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Whidden v. Kings Mutual Insurance Company, 2007 NSSC 110

**Date:** 20070404

**Docket:** 225933

**Registry:** Truro

**Between:**

Havey Whidden and Christine Whidden

Plaintiff

- and -

The Kings Mutual Insurance Company

Defendant

- and -

The Antigonish Farmer's Mutual Insurance Company

Intervenor

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**DECISION**

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**Judge:** The Honourable Justice J. E. Scanlan

**Heard:** December 11, 12, 13, 14, 18, 19, 2006, in Truro, Nova Scotia

**Final Written Submissions:** Received February 12, 2007

**Counsel:** Douglas Caldwell, Q.C./Robert Pineo, Solicitors for the Plaintiff  
R. Peter Muttart, Q.C./Thomas R. MacEwan, Solicitors for the Defendant

**By the Court:**

[1] In the late evening, early morning, of September 28<sup>th</sup> and 29<sup>th</sup>, 2003 hurricane Juan roared through rural Nova Scotia destroying property including Whidden's family farm. At first Mr. Whidden struggled to try and save some of his property, then he retreated to his house where, with his wife and children, he huddled in the basement. They no longer just worried about the property that was being destroyed, they feared for their lives.

[2] Like many other Nova Scotians, when Havey Whidden and his family crawled out of their make shift bunker they witnessed a scene of destruction which was unprecedented in their lifetime. Just about every part of the Whidden farm had been damaged to one degree or another. There were dead livestock in areas where barn roofs had collapsed. Roofs torn off buildings and cement structures had collapsed. The Whidden dairy farm was so severely damaged that for many months it could no longer operate as a viable dairy operation. A cement silo had collapsed, falling into the milking parlour, completely destroying that part of the building and all equipment contained therein.

[3] The Whiddens immediately began to deal with the challenges of continuing or rebuilding a dairy operation with no electric power, destroyed buildings and loss of equipment. The destruction was so severe the milking cattle had to be taken from the Whidden Farm to a neighbouring operation so that the milking could continue.

[4] Mr. Whidden had very substantial insurance coverage with the defendant, Kings Mutual Insurance Company. He received many tens of thousands of dollars from the insurers. Those insurance benefits were paid to Mr. and Mrs. Whidden to cover losses which the defendant insurers acknowledged they had insured. **This case deals with the issue as to whether or not one of the most devastating aspects of the loss was covered at the time of hurricane Juan.** I refer to the loss of the milking cooler, milking parlour and equipment therein.

[5] The Whidden farm is a substantial dairy operation. There are a number of silos constructed on the Whidden property. One of these was situated immediately adjacent to the main barn and milking parlour. The silo was a 75 foot tall cement panel structure. It collapsed, falling directly on top of the milking parlour area of the barn. There were a number of photos showing the destruction and

consequential cleanup. A review of the photos makes it obvious that there was a total loss of the milking parlour equipment, cooler, and milking parlour building itself. It is difficult to describe the damage in detail, except to say that I cannot imagine that exploding a substantial bomb in the area could have caused any more damage.

### **Background of the insurance policy and insurance coverage for the Whidden Farm**

[6] Havey Whidden is now 51 years old. He graduated from grade 10 and then worked in the construction industry for 10 years before returning to dairy farming operations in the late 1970's. In the late 1970's he purchased the farm operation in question from his mother and father. This 750 acre farm is located about five kilometres from Stewiacke, Nova Scotia. The main barns and silos, together with the farm house and out buildings, are all located in a fairly close proximity to one another.

[7] The Whiddens first insured their farm operations with Kings Mutual Insurance Company in 1981, dealing with an insurance agent by the name of

Egbert Caldwell. By the late 1980's they were dealing with insurance agent, Steve Roach of the insurance agency Caldwell Roach.

[8] The relationship as between the Whiddens and Kings Mutual was interrupted in 1996 when Mr. Whidden got into a dispute about insurance premiums. The background to that dispute is somewhat relevant to this case in that it is apparent that the premium quote by Kings Mutual was in error and the result of a mistake made by Kings Mutual. Mr. Whidden was installing what was described as TMR feed mixing equipment. Mr. Whidden contacted a Kings Mutual inspector and discussed the installation of the equipment. He was advised by the inspector, Richard Forsythe, that his insurance rate would not change as a result of the installation of the TMR feed mixer. As the expiry date of the policy approached Mr. Whidden was advised there would in fact be a substantial rate increase as a result of the installation of the TMR mixer in spite of the earlier representations by the Kings inspector.

[9] The evidence and correspondence produced in the trial on this issue would suggest that the issue should have been attended to by the Caldwell Roach agents at an earlier date. A letter from Doug Cook, the manager of Kings Mutual,

indicates that in fact there was a problem with the classification and that the initial representation by Mr. Forsythe was accurate. The policy should not have been rated with an increased premium. By the time the error was noted Mr. Whidden had moved his insurance business to a different insurer, Antigonish Farmers Mutual.

[10] When the problem arose in relation to the rate increases, related to the TMR mixer, Mr. Whidden recalled an earlier visit from an insurance agent representing Antigonish Farmer's Mutual Insurance Company. He contacted that agent, Mr. Vandeweil. When Mr. Vandeweil first came to visit, Mr. Whidden was still insured with Kings Mutual. Mr. Vandeweil was making what I would describe as a cold call, letting Mr. Whidden know that Antigonish Farmers Mutual would be interested in his insurance business. The two individuals spent some time reviewing the insurance summary page related to the policy then in place. Mr. Vandeweil expressed an opinion that he felt Mr. Whidden was under insured. With that in mind Mr. Whidden says he then contacted Steve Roach of Caldwell Roach and told him of the discussions with the Antigonish Farmers Mutual agent. He noted the fact the Antigonish Farmers Mutual agent suggested the Whiddens should have better coverage. Mr. Whidden says he told Mr. Roach that he wanted

“the best coverage”. The policy issued for the period August 13, 1994 to August 13, 1995 provided improved coverage and Mr. Whidden indicates that although he did not know the precise details of the coverage he felt the change was in response to his request for the “best coverage”. The coverage in place for the 1994-1995 year in relation to the milking parlour area would not have included coverage for wind damage or damage from falling objects for the milking parlour area. In other words even after discussion with both Mr. Vandeweil and Mr. Roach, the Whiddens did not have “the best” coverage as it did not include coverage for a number of potential risks. This was in spite of the explanation as to coverage Mr. Vandeweil and Mr. Roach say they gave to Mr. Whidden. It was only as a result of Antigonish Farmers Mutual internal changes made at the end of the coverage period that the milking equipment had coverage which would have covered the loss in question.

[11] I refer for a moment to the period when Mr. Whidden had his insurance with Antigonish Farmers Mutual in 1996. Even though Kings Mutual had apologized and acknowledged their mistake in relation to the policy rate issue, Mr. Whidden decided that once he was with Antigonish Farmers Mutual he should acknowledge the fact they had helped him out with the insurance rate issue. He

expressed that gratitude by staying with that company for a number of years. Mr. Whidden said he also appreciated the acknowledgment of the mistake by Kings. He also referenced the yearly visits from Mr. Forsythe, the Kings inspector, and his availability to discuss possible changes that might affect his insurance. After a few years Mr. Whidden felt he was ready to go back to Kings Mutual.

[12] Mr. Whidden told Mr. Vandeweil when he transferred his insurance policy from Kings to Antigonish Farmers Mutual that he wanted equal to or better coverage than provided by Kings. Mr. Whidden simply provided Mr. Vandeweil with a copy of the insurance summary page for Mr. Vandeweil to understand the Kings coverage. It is indicative of the fact Mr. Whidden knew the coverage summary page included details as to the coverages even if he did not understand the various codes.

[13] An important theme throughout this trial is that Mr. Whidden indicates that as he reviewed the insurance summary document he did not understand the various codes and how they affected the types of coverage for the various aspects of his farm operation. In this regard I note the insurance coverage summary page referenced, for example, barn number one coverage FB, milking equipment and



feeder coverage "FE3", milk cooler "FE2", etc. These codes changed over the years but were consistent as among all of the mutual companies in the Maritimes. The various coverage codes were explained in further detail in what was referred to as the AGRIPac Manual. Without that manual an insured would not be able to determine what the various codes meant unless they were explained by an agent. Mr. Whidden says of the two versions of the AGRIPac Manual that existed during the relevant periods, he had never received either one from Kings Mutual or Antigonish Farmers Mutual. He says he was not even aware of the existence of the AGRIPac Manual. Mr. Whidden says it was only after the hurricane that a vet stopped into the Whidden farm and indicated this AGRIPac Manual existed and Mr. Whidden should perhaps call a lawyer in New Brunswick to inquire as to what it was and how to get it. He says it was as a result of that conversation he called Mr. Roach asking for a copy of the AGRIPac Manual. Mr Roach says a copy of each AGRIPac manual would have been mailed or delivered to the Whiddens.

[14] Prior to the hurricane Mr. Whidden decided to return to Kings Mutual. A review of the Antigonish Farmers Mutual coverage summary page in place at the time of the change back to Kings reveals that the milking equipment was insured against a number of perils including insurance against falling objects and wind

damage. I have already noted this extended coverage did not come about based on any instruction Mr. Whidden gave or based on any discussion with the agent. It was the result of internal changes made at the insurance company. In August of 2001 when Mr. Whidden decided he would again get his insurance coverage through Kings Mutual, he testifies that he took a copy of the coverage summary page to Mr. Roach. The milking equipment and the Antigonish Farmers Mutual coverage summary page contained FE2 coverage which included extended coverage as against wind damage and falling objects. He says there was no discussion as to what the FE2 code meant in the various policies but his general instruction to Mr. Roach was that he wanted the best coverage Kings could provide. Mr. Whidden suggests Mr. Roach was in agreement and that it was Mr. Roach who filled out the insurance application. Mr. Whidden says that although he did not ever receive a copy of the AGRIPac Manual he did orally review the coverage with Mr. Roach.

[15] Steve Roach testified as to the meeting which occurred when Mr. Whidden came back to Kings Mutual. He says he met with Havey Whidden for a long time. He says he specifically discussed the coverage for the milking equipment and milk cooler. He says that Mr. Whidden specifically choose not to have extended

coverage for that equipment as Mr. Whidden felt the only possible damage for that area and equipment therein would be caused by fire. Steve Roach said the coverage was discussed, explained and agreed to. It was not the best coverage available but it was what Mr. Whidden said he wanted. Mr. Roach said he works on commission and he would not have undersold the policy coverage on the milking equipment as it would reduce his premium.

[16] I would note that in relation to the coverage summary page for all of the policies that were in place there is no reference on the coverage summary page indicating that the AGRIPac Manuals existed or that the terms of the policy were established by a document other than the coverage summary page.

[17] It is a point of interest that on the morning after the hurricane the Kings inspector, Richard Forsythe attended at the property and Mr. Whidden indicates that his first words were:

Hey you do not have a thing to worry about, you have the best insurance of any farmer in Nova Scotia.

Kings Mutual has refused to cover the loss for the milking parlour and equipment and the milk storage tank as they indicate that the FC coverage in place did not include coverage for wind damage or falling objects.

[18] I will return later to the relationship as between the Whiddens and Kings Mutual as is relevant to other claims that the plaintiff makes. In that regard I reference the fact that Kings refused to renew the insurance coverage with Mr. Whidden after the hurricane when the dispute arose in relation to the issue of coverage.

[19] Steve Roach was the primary agent Mr. Whidden dealt with during the relevant time frame. Mr. Roach had been in the insurance business for 20 years as an independent broker. In the last 10 years he has specialized in farm insurance. He indicates he advised his clients on the types of insurance coverage they should have, their needs, pricing, etc. He services approximately 30 commercial dairy farm operations. All of those clients are insured through Kings Mutual. Mr. Roach testified that generally he has a lot of contact with the farmers he deals with. He attempts to meet with them at least once a year to review their insurance coverage, doing a point by point review with the farmer if the individual is willing

to sit down with him and do a review. This often does not occur because farmers are simply too busy to meet with him. During these discussions Mr. Roach said that he would not necessarily refer to the coverage by using “FA”, “FB”, “FE”, etc. Instead he would describe the coverage being provided. For example in relation to FC, he would describe it as fire only. FB he would describe as including a number of perils including fire, wind and impact by falling objects.

[20] There are a number of changes noted in the Whidden policies over the years. Mr. Roach could not recall any conversations leading up to those changes in coverage. Mr. Roach says it was always his policy to recommend the best coverage available for buildings and for any item that was to be insured. He referenced the fact that he works on a commission basis and the better the coverage, the higher the premium. The higher premium, the higher his commission. Mr Roach said that in the end it was the client who decided on the coverage and he placed insurance as instructed by the client.

[21] Mr. Whidden did not always buy the best coverage available. I note in this regard that Mr. Whidden had a barn collapse as a result of snow load in February, 2001. When Mr. Whidden attempted to get coverage for the damage to his barn he

was advised there was no coverage available for that peril. Although Kings paid for some of the animals that died as a result of the roof collapse they did not pay for the structural damage to the building. Subsequent to that date Kings did begin to offer the snow load coverage. Mr. Whidden declined that extended coverage indicating he knew what to watch for in terms of snow load in the future. He was satisfied he could prevent snow load damage himself. As regards snow load at least, Mr. Whidden declined the best coverage available.

[22] The discussions that occurred at the time Mr. Whidden transferred his insurance from Antigonish Farmers Mutual to Kings is of course very important. Mr. Roach indicates he sat down with Mr. Whidden and did a rate comparison between the Kings Mutual and Antigonish Farmers Mutual coverages and then did an item by item review. Although Mr. Roach indicates he doesn't recall the exact words of the discussion he recalls quite vividly that equipment coverage "FC" in barn number one was discussed as providing coverage for fire, lightening and explosion only. He says he explained this to Mr. Whidden. Mr. Roach says he recalls specifically discussing the silo as well. According to Mr. Roach, Mr. Whidden said the worst case scenario would be the silo might be damaged by the cover blowing off. Aside from that type of damage, Mr. Whidden didn't feel a

cement silo could be damaged by wind. Mr. Roach says he recalls Mr. Whidden was prepared to accept that risk. As regards the milking equipment and milk storage tank Mr. Whidden did not think that it could be damaged by wind or falling objects. The only risk Mr. Whidden felt was real was that of fire. Mr. Roach does acknowledge that Mr. Whidden had provided a copy of the Antigonish Farmers Mutual insurance coverage summary page, including the extended coverage on the milking equipment and milk storage tank but extended coverage was declined as it was explained to him.

[23] There were some differences noted in terms of the codes that Kings would use as compared to Antigonish, for example FE(2) refers to equipment, FB refers to milking equipment. That difference aside, it is clear that Mr. Roach would have understood what coverage was in place through the Antigonish policy for the milking equipment and parlour. I have already mentioned he says he would not have down sold the coverage for the milking equipment or the milk cooler as there would have been more commission with the increased coverage. Mr. Roach says emphatically that the plaintiff did not ask for the best coverage Kings could provide nor did he ask for wind damage coverage on the milking equipment. In

essence Mr. Roach says he made it clear to Mr. Whidden that there was better coverage on the milking equipment and Mr. Whidden “chose not to get it”.

[24] After considering the totality of the evidence, including the references to the discussion as between Mr. Whidden and Mr. Roach, I am not satisfied on the balance of probabilities that Mr. Whidden indicated he wanted the best coverage available. I am satisfied the policy was written to reflect the detailed discussion as to what was available. The policy as written reflected instructions as given by the insured to the agent based on what Mr. Whidden perceived as his needs. Who would have predicted a hurricane would roar through and topple a cement silo into the milking parlour? Certainly Mr. Whidden did not.

[25] If Mr. Roach did not explain the coverage and if the policy did not reflect the agreement and instructions the issue would have been whether Mr. Whidden received a copy of the AGRIPac Manual in effect at the time of the loss. It would have been clearer if on the insurance coverage summary page there was some notation which would alert anyone who read the insurance summary coverage page that detailed terms and conditions were set out in another document or supplementary document. It would then be apparent to anyone who read the



insurance coverage summary page that the summary page was not a full explanation of the insurance coverage. The issue in this case is somewhat moot because I am satisfied Mr. Roach explained the details of the coverage to Mr. Whidden and placed the insurance as instructed. He explained specifically that the coverage on the milking parlour equipment and milk cooler did not include coverage for wind damage or falling objects. Even though in a general sense Mr. Whidden requested the best insurance coverage available and requested insurance that was equal to or better than the Antigonish Farmers Mutual policy, when specifics were discussed he requested and agreed to something less. Having said that it is obvious that the situation could have been made much clearer if there was a better system to ensure the AGRIpac manual had been forwarded to Mr. Whidden.

[26] A reasonable review of the coverage summary page would make an insured aware of the fact that there were codes referencing types of coverage. The explanation as to those codes were not included in the coverage summary page. If at any time prior to the loss the AGRIpac Manuals had been provided to the Whiddens the terms of the coverage as set out in the AGRIpac Manual would have been sufficiently explained, through that manual. In this regard, I am satisfied it

is appropriate to impose upon an insured an obligation to review the insurance coverage as detailed in a manual such as the AGRIPac Manual. Mr. Whidden knew or should have reasonably understood that the coverage summary page included coded information which referenced different coverages. He knew this by the time Mr. Vandeweil discussed the adequacy or inadequacy of the coverage. This was long before he ever took his business to Antigonish Farmers Mutual. Mr. Whidden suggested Antigonish Farmers Mutual did not provide a copy of the AGRIPac Manual either.

[27] Mr. Whidden was obviously concerned with his insurance coverage throughout the years and wanted to make sure that he had adequate coverage so as to protect his dairy operation. In assessing his insurance needs Mr. Whidden made choices affecting his coverage. I am satisfied the one choice he made was not to insure the milking equipment and milk parlour for anything other than fire. Mr. Peter Vandeweil, the agent for Antigonish Farmers Mutual recalled visiting Mr. Whidden sometime after 1994 and reviewing his coverage summary documents. Even after that visit Mr. Whidden did not change his coverage on the milking equipment and cooler to the best coverage available. He did not even make that change when he transferred his business to the Antigonish Farmers

Mutual Insurance Company. I am satisfied that is reflective of his conscious decision not to insure against a risk that Mr Whidden did not perceive as real or substantial.

[28] I accept that although Mr. Whidden didn't understand the various codes in the insurance coverage summary pages relating to the perils that were included he did have an understanding from Mr. Vandeweil as to what coverages were in place by the time he changed from Antigonish Farmers mutual back to Kings Mutual. Mr. Whidden did not choose extended coverage for the milking equipment at that time to include coverage for wind damage or falling objects.

[29] Mr. Whidden ran a good dairy operation. I accept his evidence when he testified that the single most important aspect of any dairy operation is the milking parlour, milking equipment and milking cooler. Mr. Whidden correctly points out that all other aspects of the dairy operation are areas where you spend money and, for the most part, one would expect that you could work around difficulties in other aspects of the operation. If the milking parlour is not up and running you have an immediate urgent problem of not being able to milk the cattle. This means a loss of the one part of the operation that brings in money instead of requiring an

expenditure of money. I am satisfied that Mr. Whidden was sufficiently aware of the importance of this aspect of the dairy operation. In spite of the recognized importance of that aspect of the operation I am satisfied he instructed Mr. Roach to put limited coverage on the milking parlour equipment and cooler. Mr. Whidden relied upon Mr. Roach to implement the instructions even though Mr. Whidden did not understand the meaning of the specific codes in the insurance policy summary.

[30] As Mr. Roach gave his evidence he referenced repeatedly what he generally does when dealing with clients. He referenced the routine of those dealings and although he was familiar with the various codes, for example, FA, FB, FE, etc., he would talk about those coverages by reference to the letter and descriptions of the coverage. As Mr. Roach was taken through various requests for change in relation to Mr. Whidden's farm over the years he could not recall many of the conversations surrounding the request for change or the details of those conversations. It is not unreasonable for him to forget specifics of all conversations. I do accept that he can recall specifically a conversation which decreased coverage for this single aspect of Mr. Whidden's dairy operation. Mr. Whidden consciously deleted the wind storm coverage for the most essential aspect

of the Whidden operation, contrary to what Mr. Roach now says would have been his recommendation that the insured get the best coverage available.

[31] Throughout the coverage years there appeared to be changes in the lettering which denoted the types of coverage, for example, changes from FB, to FC. The only possible conclusion that I think logically explains what occurred in this case is that Mr. Whidden did have discussions where he indicated to Mr. Roach that he wanted coverage changes. Mr. Whidden not knowing what the codes meant simply relied on Mr. Roach to do as he had instructed. As I listened to the two versions of what occurred on the day the application for insurance was made, I am satisfied that the facts as suggested by Mr. Roach are more reflective of the exchange than what is now suggested by Mr. Whidden. I am satisfied there was a detailed conversation as to what was in the Antigonish policy and what was required by Mr. Whidden.

[32] Mr. Roach noted in his evidence that when the AGRIPac Manual was adopted from 1993 onward, there was nothing in the insurance coverage summary pages that refers to the AGRIPac Manual or the fact that there are terms in that AGRIPac Manual which would explain the coverages. If the AGRIPac

documents were not sent out Mr. Whidden would be relying upon the explanations as given by Mr. Roach as Kings Mutual agent. That would in fact bind the insurer in this case. The coverage I am satisfied is reflective of the instructions given by Mr. Whidden.

[33] Neither Kings nor Caldwell Roach had any system in place to provide confirmation that copies of the AGRIPac Manual were forwarded to clients who had farm coverage. In other words there was no check list or acknowledgement of receipt. There was nothing to verify if or when Mr. Roach or any other agent may have delivered a copy of the AGRIPac Manual to any of the insured customers. Of the thirty or so farms insured by Kings Mutual through Caldwell Roach Agency, two of them were called on rebuttal. James Burrows is a dairy farmer milking 60 cattle. He is and has been an owner/operator since 1980. He is also a member of the Board of Directors for the Scotsburn Dairy which is the largest dairy processor in Atlantic Canada. He has been a Kings Mutual insurance client since about 1980 when he started dairy farming. Mr. Burrows said he is familiar with the AGRIPac Manual but that he only received the manual from Bob Cameron after he became an agent in September of 2003. Mr. Burrows said that prior to 2003 he had been serviced by Mr. Steve Roach for approximately five to seven

years and he doesn't believe he ever received an AGRIPac Manual from Mr. Roach. He indicated he looked through his insurance files and was not able to locate any earlier copies of the manuals. Mr. Burrows recalls calling Mr. Roach trying to understand the coverages that were in place and he said during those discussions Mr. Roach never used the codes, but simply explained the coverages that were in place. In the absence of any AGRIPac manual such discussion could provide the foundation for a partly written and partly oral contract. I would note that the reason Mr. Burrows now deals with Bob Cameron as opposed to Steve Roach is that in 2003 he had written a letter to Kings Mutual to the attention of Wally Jarvis. That letter expressed his frustration in dealing with the Kings Mutual agent at Caldwell Roach, that is Steve Roach. Mr. Burrows was complaining about the lack of response from Mr. Roach to inquiries as regards information on possible coverages for equipment. He was complaining that Mr. Roach was not following up. Mr. Burrows was complaining that he had been a Kings Mutual customer for 23 years and he was frustrated in his dealings with Mr. Roach and asked to be assigned to another agent who "takes our business more seriously".

[34] Curtis Moxsom is another farmer on one of the largest farms in the province. He indicated that he did meet with Mr. Roach from time to time and had asked what the different codes meant in his insurance coverage summary page. Mr. Roach did indicate to him what the coverages were prior to hurricane Juan but he says he doesn't recall ever having received or seen a copy of the AGRIPac Manual. He did see the earlier AGRIPac Manual sometime in the late 1990's. He was not sure if it was in the mail or given to him by Steve Roach. He says that if it was forwarded after 2002 it would still be in his file. Mr. Moxsom says that since 2003 he has met with Mr. Roach to do a detailed review on an annual basis. All of this only serves to suggest that Mr. Roach did make it a practise to explain the types of coverage provided and as reflected in the coverage summary page codes.

[35] Wayne Murray was employed with Kings prior to his retirement in March of 2006. From 2000 to 2001 he was vice-president of claims and had a number of duties including supervision for investigation and settlement of claims. He was in charge of supervision of the loss prevention department and responsible for inspectors reporting to him. He was also involved in reviewing new applications or request for changes. He said he was familiar with the Whidden claim. Mr. Murray testified that it was the agent's responsibility, in this case Steve Roach's



responsibility, to discuss coverages and perils with client applicants as well as to discuss the policy once it is received. He testified that as the agent of Kings Mutual, Mr. Roach in this case was a person authorized to explain what the various coverages meant. I am satisfied in this case, as a Kings agent at the time of the application, Mr. Roach did correctly explain the coverage which was in place at the time of the relevant loss.

[36] I note in relation to some aspects of the losses claimed there is a total lack of evidence. For example, the plaintiffs claim additional losses resulting from the delay in the replacement and repair of the milking parlour, milking equipment and milk storage tank. It is obvious that construction and installation of the equipment was a very substantial undertaking. Mr. Nelson indicated he was hired by Mr. Whidden to do installation of the new system. They started working in August, September, October, he wasn't sure as to the date, that would be subject to verification. He said he finished the installation in late March or mid April of 2005. In other words there was a six or eight month construction and installation process. Although it must have been a financial concern for the plaintiffs in terms of them wondering how or whether they were going to get the money to pay for the milking parlour equipment it is not clear as to how long, or if, the denial of

coverage resulted in a delay. The proof of loss was rejected in February of 2004. There were negotiations prior to February, 2004, but as I have noted the evidence of Mr. Nelson suggests that the installation work in term of quotes and assessments began almost immediately after the hurricane. Much of that is now moot as I have decided that Kings was justified in denying a substantial portion of the claim in any event.

[37] There is one portion of the claim which I am not satisfied should be dismissed. As I considered the terms of the policy it would appear that the milking parlour building is insured separate from the equipment itself. There are portions of the milking equipment which is removable and replaceable. That part of the equipment, I am satisfied, was not covered as part of the barn coverage. That portion of the claim I have dismissed. I am however convinced that some parts of the system were so integrated in the building that they became part of the building itself and are more appropriately insured as part of the building. There was coverage on the barn in which the milking equipment was located and under that coverage the electrical wiring for the milking equipment was paid.

[38] In the insurance policy “barn” was defined as follows:

**Barns or Implement Sheds** means only those described for which a limit of insurance is specified in the Coverage Summary including additions in contact with the barn or shed, all permanent fittings and fixtures, glass, permanent appliances for lighting, heating or ventilating the building, fuel used for heating in the building, and corrals attached to the building or structure but excluding computer and electronic data equipment, automated farming systems, milk coolers, milking equipment, electronic scales, poultry cages, conveyors and silo unloaders, unless specifically insured. Silos, whether or not attached to any building or structure, are not covered unless specifically insured.

[39] In reviewing that section it is clear that fixtures are included as part of the barn. That, of course, would be the justification for covering the electrical wiring as part of the barn even though it was to service the milking equipment in the parlour. The definition went on to exclude “milking equipment”. In this case I am satisfied the non fixture components of milking equipment were properly excluded from the coverage. There were however portions of the equipment so embedded into the building as to become fixtures and part of the barn proper as opposed to being part of the equipment. Those portions which are fixtures include more than the wiring in this case. Parts of the equipment were in place and poured into concrete during construction only to have other portions attached at a later date. Those parts were such an integral part of the barn as to be part of the barn proper and not milking equipment. I understand that part of the claim is still open. That is different than, for example, glass milking jars or controls etc., which can be

removed or replaced. The portions that are poured in cement are part of the building, to remain in place until the building is destroyed or replaced. Nothing in my decision changes that fact. I do not view the entire system as a single unit as suggested by the plaintiff. I am however convinced that it is, or at least was, possible to view the equipment and see where the part embedded in cement ends and the removable part begins. This should be done by the parties and separate pricing and installation costs should be determined so as to deal with that portion of the claim as part of the building costs. If the parties are unable to agree I am prepared to hear detailed evidence or specific costs related to the part of the equipment which in fact became part of the barn.

[40] After the dispute as to the extent of coverage, Kings refused to renew the Whidden policy. The Whiddens had difficulty getting insurance with another provider. When they did it would appear their premium is substantially higher. In saying this I note it is difficult to compare the coverages and costs. Mr. and Mrs. Whidden claim there was a conspiracy as between Kings Mutual and Antigonish Farmers Mutual to deny coverage after the Whiddens made a lawful claim on the insurance policy.

[41] It was at the instance of Caldwell Roach that Kings had decided not to renew the risk coverage when it came up for renewal. Caldwell Roach suggested Mr. Whidden was being unreasonable in his demands and that Caldwell Roach had bent over backwards in trying to meet his demands. I am satisfied Mr. Whidden was quite reasonable in his approach to both Caldwell Roach and Kings. In saying that it is not unusual for an insured to press what they think is a valid claim. In fact, as noted above, I am satisfied there is still a valid claims for a part of the losses to be covered under the policy. Having said that I have also ruled on the fact there are some portions of the claims which were not valid and Kings was justified in not paying those portions. It is clear from the evidence that Mr. Whidden was left in a very difficult situation where he found it difficult to obtain alternative insurance coverage. He now finds himself in a situation where he appears to be paying substantially more in premiums to get coverage. Mr. Whidden had been a good client of Kings for many, many years and made only minimal claims as against the policy up to the time of this unfortunate natural disaster. I am not satisfied that Kings is or was obliged to continue insuring the Whiddens. They were in the middle of litigation in which the parties could not agree on what the terms of the policy meant. It was not unreasonable for Kings to therefore decide they had better not enter into an insurance contract where the parties knew from the

beginning that they disagreed. For that reason alone they could have declined insurance coverage to the Whiddens. In addition, I am satisfied there is no evidence to support a conspiracy as between Kings Mutual and Antigonish Farmers Mutual to deny coverage. Specifically, I accept the evidence of Wally Jarvis, Manager of Kings Mutual that they did not request of Bill Chisholm, who was with Antigonish Farmers Mutual, not to insure the Whidden property.

[42] I will hear the parties as to costs if they cannot come to an agreement.

J.