

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA  
Citation: *Herridge v. A.A. Munroe Insurance Brokers Inc.*, 2017 NSSM 86

SCC SN No. 457459

BETWEEN:

JANET MARY HERRIDGE

CLAIMANT

and

A.A. MUNROE INSURANCE BROKERS INC.

DEFENDANT

**REASONS FOR DECISION**

***Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.***

**BEFORE:** A. Robert Sampson, Q.C., Adjudicator  
**DATE OF HEARING:** Hearing held at Sydney, Nova Scotia on February 7, 2017  
**DECISION RENDERED:** February 15, 2017

**APPEARANCES:**

**For the Claimant:** Self-Represented  
**For the Defendant:** James Kerr and Darlene MacDougall

**PRELIMINARY MATTER:** The Claimant sought damages in the amount of \$4999.99 arising from sewer flood damages to the Claimant's home which occurred in October 2016. At the heart of the claim was the issue of whether the Claimant was entitled to coverage under the terms of her home insurance policy which was held by the Defendant. The Claimant confirmed that she came to the hearing prepared to provide evidence on all aspects of her claim, both dealing with the issue of coverage as well as the details of the damage and related costs sustained from the flood/sewer backup. At the suggestion of the court, the parties agreed that we would proceed

at this hearing with only the evidence/representations surrounding the “coverage issue”, with the agreement that if that issue was found in favor of the Claimant, the parties would attempt to work out the issues surrounding the “loss/damages” and if no agreement could be reached, the matter would be returned before me on a re-scheduled date for further determination. Alternatively, if the Claimant was not successful on the issue of coverage, the matter would be at end insofar as all matters associated with this Claim.

**BY THE COURT:**

1. The Claimant testified that in October 2016 she and her husband, Daniel, as a result of a high-volume rain storm, sustained sewer backup and resulting damage in the newly installed (full foundation) basement of their home situate at [address removed] Sydney Mines, Nova Scotia which gave rise to damages in the amount claimed. Mrs. Herridge testified that following the event she reported it to her insurance company representative, the Defendant, A.A. Munroe Insurance Brokers (“Insurer”) at their office in North Sydney, N.S.

2. The Claimant testified that when the storm event and resulting damage occurred, before calling her insured, she was confident in discussions with her husband that they had sewer backup coverage. However, after speaking with the Defendant representative, she was advised that she did not have any sewer back up coverage under her current insurance policy and that their file information confirmed she had called them in 2010 and had requested that this optional coverage be cancelled from her home owner’s policy.

3. The Claimant denies ever having called her insurance company in 2010 to cancel this specific coverage and tendered in support of her position a copy of her February 2009-2010 (Exhibit 1) and February 2010-2011 (Exhibit 2) Billing Notice and Policy Renewal forms she received from the Defendant, both of which confirmed “SEWER BACKUP” coverage, the limit and corresponding premium amount required to be paid.

4. The Claimant testified they have held their home insurance with the same agency (now operated by the Defendant) for the past 30 years. The Claimant testified that each year she would receive her annual renewal, however, she seldom looked at the details of coverage other than any changes in premium costs.

5. The Claimant acknowledged that for the longest time and, for certain in and around 2010, a Ms. Gordon was her main agent contact. The Claimant further acknowledged that she did recall contacting Ms. Gordon sometime back in 2010 after reviewing her annual renewal notice to ask why her premium had increased so much. She admitted asking Ms. Gordon to get her a better (which I took to mean cheaper) premium. However, she confirmed that she does not recall asking her to delete any specific aspect of her coverage, in particular their sewer back up coverage.

6. The Claimant further testified that she recalled again contacting her insurance agent in and around 2014, after receiving her renewal notice, to obtain reduced rates because of the increase in premiums, suggesting the rate had nearly doubled.

7. The Claimant tendered into evidence copies of her February 2015-16 (Exhibit 3) and Feb 2016-17 (Exhibit 4) renewal notices, which she stated were similar to that which she received each year. Neither one, under the terms of additional coverage showed "SEWER BACKUP" on the coverage schedule nor is any premium noted to have been levied for such coverage.

8. The Defendant, represented by Mr. Kerr, the current manager of the Defendant, explained what their file information states had happened back in 2010. He confirmed that renewal notices, similar to those exhibited by Mrs. Herridge are routinely sent out several weeks before the actual renewal date. In this instance, it appears that after the initial notice was sent out (Exhibit 2), sometime in January 2010, a reassessment for insurance valuation purposes (Exhibit 6) was carried out in connection with the Herridge home. Mr. Kerr explained that these are completed for insurance company purposes to properly assess (or reassess) the appropriate level of value/coverage required for a policy.

9. The Defendant also tendered a recent email exchange (Exhibit 6) they had with one of the senior underwriters with the insurance company who issued the policy to the Herridges back in 2010. This email referenced an earlier email exchange that their records confirmed had taken place back on January 15, 2010 where Colleen Gordon, employed with the Defendant, had sent the valuation/assessment form (Exhibit 5) to them requesting a reduction in the coverage value of the home and advising that the insured (Herridge) "would like sewer backup deleted".

10. Mr. Kerr then tendered Exhibit 7 which was a file copy of the "re-issued" renewal the insurance company had sent to the Claimant back in late January/early February 2010 setting forth the revisions to the terms of the renewal policy, which they maintain was a direct result of the request of the insured, the Herridges.

11. Mr. Kerr further tendered as Exhibit 8 the payment schedule for the renewal period 2010 through to February 2011, confirming that the payments made by the Claimant corresponded to the "revised" (second) renewal Policy amount that had been issued in February 2010 (Exhibit 7).

12. Mr. Kerr confirmed that Colleen Gordon was a long-time employee of the agency and had retired approximately three (3) years ago.

## **DISCUSSION ON EVIDENCE**

13. Much of the evidence from the Claimant was focused on the fact that her home owner's policy back in 2009 and 2010 stated she had sewer backup coverage. The evidence does in fact

support this submission based on the policy information exhibited by her to the court. However, the determination on this point is more directly clarified and determined based on the information the Claimant for one reason or another did not retain or choose to not tender.

14. The Claimant admitted contacting her insurance agent back in 2010 regarding the amount of premium, wanting it reduced. Such calls I assume are common from time to time. The premium amount charged for insurance, whether it be a car, home or some other type coverage is largely determined by a combination of risk, scope of coverage and value. If any one of these features change or are reassessed for purposes of determining the value required to be covered, then a valuation report, similar to the one used here (Exhibit 6), is completed. This together with the removal of any coverage options and/or the amount of the deductible are the main ingredients to trigger any change in coverage and in turn premium to be paid. As a rule, such changes are not completed arbitrarily or automatically on an annual basis. Something or someone needs to trigger such reports.

15. I am satisfied, as confirmed by the Claimant's own testimony that the main purpose of her contact with her agent back in 2010 was to secure a lower premium. Logically, Ms. Gordon would have reviewed the options available. I am satisfied, based on the evidence that whether the Claimant fully understood or not, as a result of that conversation/request, Mrs. Herridge directed that this specific item of "additional" insurance (sewer backup) be deleted.

16. I am also satisfied that a revised renewal notice would have been sent to Mrs. Herridge before the commencement of her February 2010 policy which would have confirmed the changes as requested, including the elimination of sewer backup coverage under additional coverage and the corresponding reduced amount of premium. Further I note that she proceeded to pay the revised premiums throughout the ensuing year.

17. While I accept the Claimant's evidence that, seldom has she spent much time reviewing the details of coverage when she received her renewal notice, but rather focused on the changes in annual premiums, by her own evidence this led her to call her insurance agent twice, once in 2010 and again in 2014. Both of those calls were to ask for her policy to be reviewed in an effort to reduce the premium. In each instance, the only way to achieve any change would be for the Claimant and agent to focus on both the amount and extent of coverage to determine whether any changes could be made to result in a lower premium. Therefore, even if Mrs. Herridge has missed or misunderstood the deletion of sewer coverage which had occurred in 2010, clearly a further review by her together with her agent occurred, again by her own testimony, in 2014 and there was no request to add back in sewer coverage.

18. Finally, much of the evidence of the Claimant surrounds what coverage she used to hold prior to 2010 and the fact that she does not recall asking for her sewer coverage to have been deleted. However, in assessing this claim I find the most relevant evidence surrounds what coverage was in place at the time of the loss—October 2016. The terms of the policy tendered to me confirm that there was no sewer backup coverage associated with the Claimant's home owner's policy in effect at the time of the alleged loss (October 2016) (Exhibit 4).

19. Insurance coverage is a contract. Generally, as in this case, it is a yearly contract between the insurance company and the insured. As a result, it remains open to either party, from year to year to direct changes to the policy terms and if there can be no agreement, then there would be no continuing contract. As a result, as with any contract situation, it remains the responsibility of each contracting party to review the terms of their coverage each and every year. While often many renewals are sent out automatically to the insured, it is equally the case that changes in coverage and amount of premiums are set forth in such renewal information. The responsibility must remain with the insured to know the type and scope of coverage and the corresponding premium costs.

20. As unfortunate as it is to incur an uninsured loss, based on the evidence I am satisfied that the contract for insurance in place between the Claimant and the Defendant covering the period of the loss (October 2016) did not contain any coverage for damage arising from sewer backup. I am further satisfied that the Defendant was not negligent in exercising any duty owed to the Claimant in connection with their administration of this renewal policy back in 2010.

#### **DECISION**

21. I find for the Defendant and dismiss the claim. I further find, as agreed to by the parties, that there is no need for any further hearing for purposes of reviewing the nature, extent and value of the damage sustained by the Claimant.

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**A. ROBERT SAMPSON, Q.C.**

**Adjudicator**