2020 SCC SN No. 502443

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Eldridge v. Aviva*, 2021 NSSM 41

BETWEEN:

MICHAEL TERRANCE ELDRIDGE

CLAIMANT

and

AVIVA INSURANCE COMPANY OF CANADA

DEFENDANTS

REASONS FOR DECISION

BEFORE:	A. Robert Sampson, Q.C., Adjudicator
DATE OF HEARING:	Hearing held by teleconference at Sydney, Nova Scotia on June 2, 2021, 5:00 pm to 9:26 pm.
DECISION RENDERED:	October 4, 2021

APPEARANCES:

For the Claimant:	Michael Eldridge - Self-Represented
Witnesses:	Barbara Jean Kennedy
For the Defendant:	Kelcie White, Counsel (Cox & Palmer)
Witnesses:	Tyler Peeters
	Ken MacLeod
	Brenda McFadgen

PRELIMINARY MATTERS

[1] This matter was initiated with the Court by way of Claim (Form 1) filed by Mr. Eldridge on December 7, 2020. It included a partial page summary setting out the details of the Claim. A Statement of Defence was filed by the Defendant on March 2, 2021. The matter was initially scheduled for hearing on March 24, 2021 however at the request of the Defendant and consent of the Claimant the hearing was adjourned to June 2, 2021. As a result of continuing "COVID Protocols" adopted by the Nova Scotia Courts, hearings were to be held by way of telephone conference. The hearing commenced at 5:00 pm and ended at approximately 9:26 pm. The Court canvassed the parties and was satisfied everyone had copies of all relevant documents anticipated to be tendered as exhibits.

[2] The Court inquired with the parties whether there were any preliminary matters and the only item of note was an amendment to the actual amount of the claim to $12,574.63. The Claimant had acknowledged that he had failed to consider a payment he had received for "pack-in" expenses in the amount of $2382.72 (see Exhibit C-9).

[3] The Court explained how the hearing process would occur. The Court also explained to the parties the required standard of proof expected, that being that the evidence must prove, on a balance of probabilities, that the Defendant breached some form of agreement between the parties that may have existed or otherwise committed a wrong against the Claimant or his property and in so doing caused the Claimant to suffer damages and must provide proof of the corresponding amount being claimed. This is generally the practice of this Court in dealing with Small

Claim Court matters and is principally for the benefit of parties who are self-represented. Each party identified the persons on the call and those who were anticipated to provide evidence. The Court acknowledges with thanks the level of cooperation and professionalism shown by all during the hearing process and the orderly manner in which the documents were submitted. The Court had taken detailed written notes of all of the evidence given. In addition, although the following summary of evidence and decision may not reference every document tendered, the Court has taken into consideration all of the evidence submitted by the parties.

SUMMARY OF CLAIM/DEFENCE

[4] The Claimant alleges in his claim that he suffered a water damage loss in his residence situate at 3040 MacLeod Avenue, New Waterford on or about December 7, 2018 ("date of loss") as a result of a malfunction to a washing machine in the home. He and his family were required to be out of their home for approximately six (6) months while repairs were carried out. He stated: "……I feel Aviva owes me money for laundry services as well as unpacking of my contents". The amount claimed is $12,574.63 (amended).

[5] The Defendant denies the claim and states that they complied with all terms of the relevant homeowners' insurance policy in place at the time. They further took the position that "if" it was proven that there had been additional costs incurred for laundry services, such expenses did not exceed the usual expenses of living and therefore such expenses were not covered by their policy. The

Defendant further stated, as it related to any claim for additional costs incurred by the Claimant for "pack-in" costs, such costs had not been sufficiently substantiated and further the amount claimed was simply not reasonable and therefore the amount claimed was not paid.

[6] There was no contest between the parties as it related to whether there was an insurance policy in place at the time of loss nor the wording of that policy which was tendered through the Defendant witness as Exhibit D-2 and also the fact that there had been a loss. The issue(s) squarely related to:

a. whether the Defendant insurance company was justified in denying coverage for additional laundry service expenses alleged to have been incurred by the Claimant; and
b. whether the Defendant insurance company was justified in denying coverage for additional "pack-in" time and expenses alleged to have been incurred by the Claimant.

THE CLAIMANT'S EVIDENCE

[7] The Claimant's main (and only) witness was Ms. Barbara Kennedy. She was affirmed and gave evidence. Ms. Kennedy is the Claimant's partner and together they and their three children were residing at 3040 MacLeod Avenue on the day of the loss. She confirmed Mr. Eldridge owned the home at 3040 MacLeod Avenue. She testified that at the time of loss she had been substitute teaching at Breton Education Centre in New Waterford. She was also enrolled in a Master's Program and was taking courses part-time. Her evidence confirmed that

the loss occurred as a result of a malfunction in their washing machine which overflowed and water had been running for a period of time causing extensive damage to the home. Their insurer was immediately contacted and she confirmed Mr. Ken MacLeod, their insurance company's adjuster, attended at their home. She also confirmed a company known as DKI was immediately engaged to deal with the situation surrounding the damage and initial cleanup and removal of their personal property from the home. She commented that she found them great to deal with. She confirmed that the loss happened around Christmas time and that they (family) were out of their home for 25 weeks.

[8] Ms. Kennedy confirmed in her evidence that there were two items associated with the claim that were not satisfied, one relating to laundry expense and a second relating to the labour she and Mr. Eldridge spent unpacking the boxes of their personal items and household effects in connection with moving back into the home. There were a total of nine exhibits tendered into evidence through Ms. Kennedy. She initially identified Exhibit C-2 as representing a receipt given to the Claimant from her mother, Barbara MacMullin. There is no written reference or reason of any type on the receipt itself. She testified it was a receipt for a payment made to Ms. MacMullin from the Claimant for laundry serves provided to them by Ms. MacMullin at her home during the majority of the period they were required to reside outside their home while repairs were being carried out. She further referenced Exhibit C-4 which was an e-mail exchange between their lawyer, Danielle MacSween, and Mr. Ken MacLeod, adjuster, dated July 30, 2019. Relevant to the laundry issue Mr. MacLeod's e-mail states:

> We do not have any issue reimbursing your client for laundry expenses that they incurred. We would however require details on where the laundry was done and any receipts that they collected for monies paid for same. Did your

> client pay for laundry? If so, how many loads per week were washed? Was the laundry done at the hotel where they were staying?

[9] Ms. Kennedy tendered Exhibit C-3, being a copy of a further e-mail exchange between Ms. Danielle MacSween and Mr. MacLeod as well as Tyler Peeters, (also an adjuster with the Defendant) dated July 24, 2019 which referenced both issues (laundry and pack-out claims). With respect to the laundry issue this e-mail from Ms. MacSween confirmed the amount of the claim ($6000.00) and the basis for how it was derived. It referenced DKI charges calculated at $4.00 per lb. The claim presented suggested that there had been 60 lbs. of laundry per week for 25 weeks ($240.00 per week) totaling $6000.00. She stated that they were not given any compensation for laundry. She stated that when they were residing at the Cambridge Suites in Sydney, given that she was working in New Waterford and had to drive there from Sydney each day, it was more convenient to drop their laundry off at her mother's residence in New Waterford where Ms. Kennedy worked, who would then complete the laundry and either she or her partner, Mr. Eldridge, would pick it up at the end of each day after work. She testified that she was under the impression from Mr. MacLeod that this would be acceptable and they would be reimbursed.

[10] As it relates to the "pack-in" claim, Ms. Kennedy confirmed that this part of the claim totaled $8658.00 and was calculated based on the actual hours she and the Claimant spent unpacking and putting away their personal belongings and household effects leading up to moving back into their home. She stated that they did their calculation using the same hourly rate of $19.24 Aviva paid to DKI for the initial "pack-out". She testified that she had spoken directly to Mr. MacLeod and he confirmed to her that they could complete the "pack-in" themselves and if

they chose this route she needed to keep records of the time spent. Exhibit C-5 was tendered. This represented an e-mail exchange between Mr. MacLeod and Ms. MacSween addressing the "pack-in". Although there is no specific date on this document it is noted that it was responding to a prior e-mail, also included in this exhibit which was dated April 15, 2019. Therefore, it is reasonable to assume the following e-mail was exchanged a short time after this date. Mr. MacLeod in his e-mail states:

> We will pay an hourly rate based on reasonable hours to unpack boxes. We will require a breakdown of dates, hours, spent and tasks involved for review. To be clear we have already paid as part of the pack-out expenses to have the boxes delivered back to the house. So we would look at the labor involve with unpacking boxes and redirecting items in the house. We pay an average labor rate of $13.50 per hour.

It was noted that the hourly rate stated in this above noted e-mail was less than that which was paid to DKI.

[11] Finally, Ms. Kennedy referenced Exhibit C-6 which she testified was an e-mail sent from their lawyer Ms. MacSween to the insurer containing information she had provided setting forth the details of the dates and amount of time she and the Claimant had spent completing the "pack-in". It totaled 450 hours (see Exhibit C-4 verifying hours for pack-in). Ms. Kennedy referenced Exhibit C-8 which was a handwritten summary of the total claim as well as C-9 which was a copy of payment from Aviva for what they calculated as reasonable pack-in expenses owing.

CROSS-EXAMINATION

[12] Ms. Kennedy was cross-examined. She was referenced to her Exhibit 6 which was the same as found in the Defendant's booklet of exhibits D-1, tab 11, page 5. She was questioned on several of the time entries on various dates (April 18, 19, 24, 26, May 11, June 5 to 26) and specifically the number of hours alleged to have been spent un-packing (pack-in) on the dates in question. She testified that there were no substantial breaks on these days and they worked straight through. Specifically, the witness confirmed that the number of hours logged and charged between June 5th and 25th was 197 hours and of this, 55 hours were logged between June 5th and 8th. She was then referenced to an e-mail under the Defendant exhibit book D-1, at tab 11, page 3, where it contained an e-mail exchange the Claimant had with Mr. Ken MacLeod dated June 4, 2019 wherein the Claimant notes "we are almost on the last box". The witness was also referenced to several receipts the Claimant had submitted for reimbursement of meals, coffee, etc. as shown in Exhibit D-1, Tab 6 which corresponded to various dates referred to above relating to recorded time spent packing-in by the Claimant. The witness was directed to a number of meal receipts from different restaurants for the same days/times in which Ms. Kennedy had testified she and the Claimant were unpacking with no breaks. The witness attempted to explain that on the days in question it may have been family, friends, or neighbors who picked up food or grocery items for them. In response to a number of challenges advanced as to whether the hours presented were accurate, the witness, Ms. Kennedy, maintained that she was the one who kept the hours and was careful to make sure she recorded everything correctly. She repeated on cross that she only recorded the time in which she and the Claimant were in the home unpacking boxes. She further testified that while she could not recall with regards to any of the times/receipts highlighted to her who actually picked up the items, she did confirm that she was sure they consumed such items as take-out meals, coffee.

[13] On further cross-examination Ms. Kennedy confirmed that after the flood in their home, they initially stayed with her parents from December 7, 2018 into January. They then moved to an Air B & B for two weeks but it was booked after that so had no choice but to move into the Cambridge Suites, Sydney. She confirmed they remained there until they were able to move back into their home. The witness confirmed that she and the Claimant commuted back and forth from Sydney to New Waterford each day and had been reimbursed their travel costs for this. The witness confirmed that she had been working as a substitute teacher at a school in New Waterford during this period and her husband was working with a mining operation in Donkin.

[14] Exhibit D-1, Tab 5 was shown to witness and she confirmed it represented a receipt that the Claimant's mother had given to the Claimant in return for payment of $6000.00 associated with the laundry expense. She acknowledged there was no "reference" on the receipt as to what it was for. She further stated that it was her understanding that the money was paid to her mother in cash but could not recall when, suggesting it was likely around June 2020. When questioned further she could not recall where the cash came from and confirmed that they always kept some cash in their home and further, the Claimant may have borrowed some from his father. The witness maintained the position that her mother was entitled to be paid $4.02 per lb. of laundry, the same rate paid to DKI when they performed similar service immediately after the loss. She estimated (as confirmed in e-mail exchange by her lawyer) and therefore based her calculation on 60 lbs. per week. She further testified on cross that she had weighed a sample load based on dry weight. She further testified that laundry was dropped off and done daily for

her and children as they did not have sufficient room in the hotel to allow it to build up. She further testified that her partner's (Claimant) laundry was done once per week as he worked in the mines. She did acknowledge that prior to the flood they were able to allow their family laundry to build up and deal with it all on what she termed as "a laundry day" throughout the week. She confirmed that their normal routine when residing in their home was that between her and the Claimant they would arrange their schedules to get their family laundry loads done. No one assisted them. The witness further testified when challenged on cross "that nothing was stopping her from doing her own", that there was simply not enough room in the hotel to allow their laundry to build up for her and three children together with the fact that there were no laundry facilities in their hotel room or to her knowledge, in the hotel itself. She further confirmed that the insurance company (Aviva) had paid to her parents $70.00 per day during the period from December 2019 into January 2020 when they were residing with her parents to cover extra power and utility costs.

[15] When questioned Ms. Kennedy was referenced to the document found in Exhibit D-1, Tab 10 - Proof of Loss form. She stated that she could not recall whether a formal proof of loss had been filed with the Defendant Insurance Company. She stated that at some point during the ongoing dispute of the outstanding issues it seemed to her to be redundant to send more information when the claim was being denied. Finally, in response to the Court's question the witness confirmed that they relocated from her parents' home on January 25, 2019 and believed they moved back into their home towards the end of June 2019.

DEFENDANT'S EVIDENCE

[16] Mr. Tyler Peeters was affirmed. Mr. Peeters confirmed he was a senior Claims Examiner with Aviva (the Defendant). He confirmed he had in hand a copy of the exhibits. He explained his role as an examiner and distinguished it from an adjuster's role. He stated that his main task was to collect all of the relevant information associated with a claim for purposes of assessing the coverage under the policy of insurance. He confirmed that he had spoken with the Claimant on many occasions during the active claims process. He confirmed that he had been working for three years in this specific role and had performed similar roles as examiner for the previous 11 years.

[17] The relevant insurance policy was exhibited through Mr. Peeters as D-2. He specifically referenced page 11 of 34 pages in the main document entitled "…Coverage D - Additional Living Expenses":

> 1. Additional Living Expenses. If as a result of damage by a peril not otherwise excluded your dwelling is unfit for occupancy, or you have to move out while repairs are being made, we insure any necessary increase in living expenses, including moving expenses incurred by you, so that your household can maintain its normal standard of living. Payment shall be for the reasonable time required to repair or rebuild your dwelling or, if you permanently relocate, the reasonable time required for your household to settle elsewhere.

[18] He confirmed that with losses of the nature the Claimant incurred, the most common would be hotel/accommodations and increased food expenses. He stated that the coverage only pays above and beyond what such expenses would normally be. He provided the following example for food expense whereby, if the normal expense was $150.00 per week but as result of loss and having to incur additional food expenses, the cost was $250.00 per week, the policy coverage would be the

difference only, $100.00. To the point he said they pay “increased expenses” only and such payments are seldom in advance.

[19] With specific reference to laundry he stated they would pay “coin operated” expenses incurred but would not pay for any type of “laundry service” where someone else did the work. He stated that typically if an insured was required to stay with someone else, they would negotiate a rate but would never pay to use someone else’s laundry machine. He stated that in the current situation he would require some supporting documents of the actual additional/extra expenses such as utility bills. He confirmed that the only document they received was a copy of the receipt from the mother for $6000.00.

[20] With regard to the claim surrounding “pack-in” expenses, the witness testified that most insured would choose the hired approach. He stated that in situations where an insured wishes to do the pack-in themselves they obtain an estimate. In this case, they received an invoice based on 450 hours @ $19.20 per hour. He testified that once we received this, they turned to DKI for an estimate which they received confirming approximately $2400.00 (see Exhibit D-1, Tab 7 - DKI estimate). He stated that DKI’s estimate appeared consistent but a bit higher than he would normally see. The witness testified that he presented the estimate to the Claimant and he disputed it. He confirmed that Aviva denied submission of 450 hours. He stated that it was his opinion based on his experience that the hours were incredibly excessive as was the dollar amount. He stated that it amounted to 19 days of work, non-stop whereas the DKI estimate represented 96 hours of work.

[21] He referenced the blank Proof of Loss at D-1, Tab 10 and confirmed that he had requested the Claimant to provide a completed Proof of Loss but had not received one. He did acknowledge that he was aware of the claim items outstanding.

[22] On cross-examination the witness confirmed the reason he, as an examiner, had been involved was to deal with issues such as the ones in dispute. He stated that typically residences are in the 1500 to 2000 square foot range but in this instance the home was approximately 4500 square feet so he would normally seek out an estimate such as the one presented in D-1, Tab 7. At the Court's inquiry the witness confirmed that he became engaged because Mr. MacLeod (adjuster) would only have a certain amount ($) of authority. He confirmed that at the very start of the Claim there was a need to get emergency work done. He also acknowledged there appeared to have been a break-down in communication between the Claimant and Mr. MacLeod regarding the laundry expenses. He stated, with regard to the laundry issue, the issue becomes what amount is required to allow them to maintain their (Claimant's) standard of living and stated that leaving laundry with someone else to do it would be outside maintaining the Claimant's standard of living. He also confirmed that the pack-out expense, which is the work required to pack up the contents immediately following the loss so the required repairs can be effected, was $4200 and this would have included additional expenses associated with compiling a detailed inventory list of all items.

[23] The second witness for the Defence was Mr. Ken MacLeod, the adjuster who represented Aviva in connection with this Claim. He was affirmed and he confirmed that he had copies of all documents except the policy document but felt

he was familiar with its terms and was prepared to proceed. He testified he was a senior field adjuster with a company known as Crawfords. He confirmed that he had worked as an adjuster for the past 24 years and in total has been involved in the insurance industry for 34 years. He confirmed that he has handled well over 1000 claims. He recalled being contacted in December 2018 in connection with this Claim. He confirmed that his initial task was to collect information associated with the loss so that the insurance company can quantify the claim. This would include taking pictures of the damage and finally advancing recommendations as to how best to proceed.

[24] He recalled the timeline for the Claimants as follows:

- Dec 2018 - Claimant and family initial stayed at Hampton Inn;
- Dec 2018 - Claimant and family relocated to Ms. Kennedy's mother's home in New Waterford on or about December 8-9th and remained there until January 25th, 2019;
- Jan 2019 - Claimant commenced staying in Air B&B for few weeks;
- Feb 2019 - Claimant and family relocated to hotel, Cambridge Suites, Sydney;
- April 26th, 2019 - last day stayed in hotel, Sydney (re-located back to residence).

[25] Mr. MacLeod testified that in claim situations such as this, at times they have homes available to rent to house a displaced family. He further confirmed that the practice is that they will compensate an insured for any "additional expenses" required to be incurred while away from their home. He cited the example of

reimbursing the Claimant for mileage expense associated with travel from Sydney to New Waterford during the period such travel had been required. He further stated that often with laundry he would reimburse for receipts received from a laundromat or out-of-pocket if the insured did their laundry themselves and incurred direct/additional expenses. He confirmed that when the Claimant moved into Ms. Kennedy's mother's residence, they had negotiated a rate of $70 per day to cover increased household utility costs. He stated that he has never encountered a Claim of this nature before.

[26] He testified that the practice is that if during a Claim period someone requests compensation then it must be quantified. He stated in this instance, where the Claimant is staying with family, they would not pay labour or otherwise would require a receipt and quantify the request. He confirmed that he was never provided any documentation of the breakdown of the expense for laundry being claimed except the receipt exhibited in D-1, Tab 5.

[27] Regarding the "pack-in" expense claimed, the witness stated that it is standard to request a detailed list of what was unpacked and the time it took. He referenced the Claimant's submission regarding the details of their pack-in found at D-1, Tab 11, page 5 and stated it was not detailed enough, they required more information. He confirmed that the insurance company was only prepared to pay $2382.00 towards the "pack-in" claim and confirmed that they do not pay any overhead or taxes associated with such claim payment to the insured. He also confirmed, to his knowledge, no formal Proof of Loss had been submitted.

[28] Cross-examination was brief and included an inquiry of Mr. MacLeod surrounding the laundry claim and confirmed that he could not recall ever receiving any document confirming the increase in power expenses by Ms. Kennedy's mother in connection with doing the laundry but did recall saying something to the effect that they would consider something in range of $100 - $200 in power increase but certainly not $6000.00. Further inquiry by the Court led Mr. MacLeod to confirm, in connection with the laundry issue, that in similar situations they would normally pay something in the range of $7.50 per load. He further stated that he believed 5 - 6 loads per week would be reasonable, possibly more depending on the circumstances. Alternatively they would pay increased utility bills associated with laundry expenses. He further acknowledged the exchange of correspondence (July 24, 2019) with Ms. MacSween, lawyer on behalf of Claimant, surrounding the laundry issue and pack-in expense claimed. He confirmed that DKI reported removing 250 boxes from the home and that each box would have been labeled as to the room in the home it was associated with. Mr. MacLeod also acknowledged the e-mail exchanges as found in the Claimant's exhibit as well as the Defendant's at D-1, Tab 11, pages 2 and 4 which related to the laundry expense issue.

[29] The parties were invited to ask any questions arising from the Court's inquiries of the witness noted above. Counsel for the Defendant asked the witness to clarify his statement about paying $7.50 per load in the past and whether there would be any requirement for receipts. The witness clarified that any such payment would always be based on receipts and that this amount represented the approximate costs normally incurred if one was to go to a laundromat. He stated that he tried to work with the Claimant on this issue but did not intend to override the policy.

[30] The Claimant also asked further questions surrounding the laundry expense issue and Mr. MacLeod confirmed that such expenses would be paid if properly documented. The witness confirmed that they were simply not provided a sufficient breakdown for them to evaluate such expense claim. The Claimant challenged the witness as to whether he could justify one load per day and the witness responded saying the claim advanced was for 2-3 loads per day.

[31] The Defendant's third witness was Ms. McFadgen. She was affirmed and confirmed she had a copy of the exhibits. She confirmed that she was employed by MECO Construction-DKI over the past ten years as "contents manager". Her role on behalf of DKI was to be the go between with homeowner and ensure the homeowner is made aware of the intended process, how their personal belongings and household furnishings would be removed, cleaned, stored and returned. Her job was to try to make everything as seamless as possible for the insured. She confirmed that she oversaw the "pack-out" of the Claimant's home and ensured that all items were recorded and all pack boxes clearly marked as to nature of contents and original room location.

[32] The witness referenced Exhibit D-1, Tab 2 which reflected the original estimate DKI provided to the insurance company. She confirmed that this document was an invoice for the work they (DKI) had completed to December 2018 associated with the pack-out. Her evidence referenced specific line items in the invoice confirming details of such tasks as packing and removing (124 hours), transportation of items (134 hours), 24 hours for moving which related to the use of three cube vans. With further reference to this exhibit, she confirmed the actual cost (labour only) of the pack-out was billed at $2578.16. She also testified that in

April they were directed to return everything to the Claimant's home and place all contents in the garage of the home. She confirmed that it took 24 hours to return items to the home which included travel time.

[33] The witness identified Exhibit D-1, Tab 7 which was an estimate of "pack-in" costs she had been asked to prepare for Mr. MacLeod in connection with the contents of the Claimant's home. She testified that in preparing the estimate she would first look to the actual "pack-out" time and costs. She testified, based on her experience, the "pack-in" cost is most often less that the "pack-out" by 30%. She further testified that Mr. MacLeod asked that some additional time be afforded because there were children involved which would likely present some additional time to get the pack-in complete. Having regard to this request she estimated the time to complete "pack-in" at 96 hours at a rate of approximately $19.00 per hour which was the rate DKI would charge.

[34] By way of cross-examination the witness confirmed that her estimate of time was based on putting everything back in the same location from where it was initially removed by DKI. She further re-confirmed that from her experience their "pack-in" costs never exceeded 70% of the "pack-out" costs.

PARTIES' SUMMARY

[35] The Claimant, Mr. Eldridge, concluded by saying that they were not seeking to get ahead but only wanted to be "made whole" from the loss they sustained. He stated that Mr. Peeters had agreed the nature of their claims are normal. He concluded by saying the laundry cost them $6000.00.

[36] Counsel for the Defendant stated recovery must be based on "proven loss" or actual expenses that had been incurred. She stated the onus/burden rests with the Claimant in this regard. The insured must prove the loss occurred and the actual costs associated with any such loss. With regard to the "pack-in" expense claim based on 450 hours, she stated that the volume of contents is what is most relevant. She submitted that the Claimant's claim, based on 450 hours represented 19 days' work, 24 hours per day over a two-month period. She referenced the evidence of the Defendants where two experienced persons involved with this claim and generally in the insurance claim industry had never seen a claim of this type so high. In further comparison she highlighted the fact, based on Ms. McFadgen's evidence, that the "pack-out" of the exact same items took 110 hours. She submitted that there is no plausible explanation before the Court as to why it would have taken four times longer. She stated that all three of the Defendant's witnesses, all experienced, were of the opinion that the amount paid to compensate for the "pack-in" expense, the sum of $2382.00, was more than fair. She submitted that the evidence provided merely listed hours unpacking boxes with little other detail. She further referenced the various receipts highlighted in her cross-examination of Ms. Kennedy which suggested that the record of the hours recorded may not have been accurate on the basis that one cannot be in two places at once. She further highlighted the e-mail exchange on June 4th where the Claimant stated that they were "almost at the last box" yet the records of the hours recorded/claimed after this date, claimed an additional 147 hours. She concluded on this issue by submitting to the Court that the evidence suggests the hours submitted were inflated and this aspect of the claim should be dismissed.

[37] Counsel for the Defendant submitted that there is little or no evidence to support the "Laundry Expense Claim". She stated that there was no evidence of

the actual payment having been made other than a receipt which provided no details at all. She submitted that the Claimant, under the terms of the policy is simply not entitled to have someone, or more directly, claim for reimbursement to pay someone for doing their laundry. She submitted to the Court that Ms. Kennedy's evidence was self-serving and the Court should be skeptical of such. She submits that the insured failed to discharge their burden and this part of the Claim should be dismissed as well. Finally, counsel highlighted the fact that it is both a statutory condition and policy condition that an insured is required to submit a Proof of Loss to the insurance company and that was not done. Nothing further was said on this issue.

ANYLISIS OF EVIDENCE AND DECISION

[38] A great deal of evidence has been received by the Court. I have set forth at the beginning of this decision the two principal issues arising from this Claim and the evidence submitted by both parties, as summarized above, has not altered the Court's views in this regard. Overall, the Court does not find any substantial issues of credibility arising from any of the witnesses. While I readily accept the submission of Defence counsel that Ms. Kennedy has a "vested interest" in the outcome of this Claim, this is not something she tried to conceal. Rather, the evidence is clear that she is a long-term partner of the Claimant and together they resided in the home at the time of loss with their three children. As such, either she or the Claimant would have been the only persons who could speak to the facts surrounding their Claim. My sense is that both Ms. Kennedy and Mr. Eldridge were both equally aware of the facts that evolved as presented by Ms. Kennedy in her evidence. Equally, the Court is satisfied that the evidence presented by each of the Defendant's witnesses came from experienced persons involved in different

aspects of the insurance claims process and that there was no evidence before me to suggest that any one of them had any reason or motivation to deal with the issues arising from this Claim any differently than any other similar claim.

[39] From the evidence, in the simplest terms, this matter arises out of an insurance contract situation. There is no dispute that an insurance policy was in effect at the time of loss. That policy was exhibited to the Court under exhibit D-2. It clearly states in the initial summary pages leading into the formal wording of the policy terms that it is a "broad form" policy (see 8th page in from 1st page of exhibit) and thus a broad form coverage. This Claim centers on a specific aspect of the coverage relating to compensation for "additional living expenses" that arise from the actual loss that has occurred. The actual or principal loss in this case arose from damage to the Claimant's real property. As a result of the principal loss, the insured were required to relocate their family and personal and household belongings from their home while the required repairs were carried out. As a direct result, the terms of the policy surrounding "additional living expenses" come into play. The evidence of the Defendant insurer directed the Court to the policy wording surrounding the permitted expenses as set forth under Coverage D, found on page 11 of the actual policy wording in Exhibit D-2. The relevant provision was reproduced earlier in this decision. In breaking down the actual wording of paragraph 1 in an effort to determine the scope of coverage relative to the Claim, while the Court acknowledges that any specific wording of a provision must be placed in context of the whole wording of such provision, having regard to the issues before this Court associated with this Claim, the most relevant wording of this provision is as follows: "….we insure any necessary increase in living expenses, including moving expenses incurred by you, so that your household can maintain its normal standard of living." The foregoing provision (Coverage D)

which included several paragraphs was the only one referenced to the Court in evidence as being relevant to the matters at issue. More directly, neither the whole of the provision or the excerpt underlined above specifically references matters relating to laundry expense or "pack-in" expenses. As a result, while the concept of "broad form coverage "is not unlimited and indeed often curtailed by the exclusions set forth in the policy wording, it would be near impossible to craft any insurance policy wording that provided specific wording to address every possible type of loss intended to be covered. Therefore, it is this Court's view that when being called upon to interpret policy provisions to determine coverage and its extent, guidance must come from the Policy wording itself which represents the contractual rights and obligations between the parties. In dealing with the issues before me, the salient words of this specific provision of the policy may be broken down as follows:

- There must be an **"increase in living expenses".** I interpret that to mean the additional costs over and above that which the insured would normally be required to pay had the loss not occurred;
- So that **your (subjective)** household can maintain its **normal standard of living.** I interpret these words to mean the specific policy holders' normal standard of living.

[40] In the simplest form, although seldom found in the actual wording of insurance policies, a lay person often views the insurance company's obligations as "keeping one whole", or ensuring that I am placed back in the same position (financially) as I would have been but for the occurrence of the loss. In many ways that is the ultimate intention of most broad form polices, provided the specific

coverage is included. However, any claim under such policies must be viewed with both a subjective component…"your…normal standard of living" as well as an objective component insofar as determining elements of reasonableness.

[41] In applying the foregoing reasoning to the two issues before me they may be better characterized as follows:

Laundry Issue

- While the Claimant was residing in a hotel, in efforts to maintain a normal standard of living, (i) was it reasonable that the Claimant would have 2-3 loads of wash per day; (ii) was it reasonable that the Claimant would choose to take their family laundry to his mother-in-law to have done and (iii) what, if anything, is a reasonable Claim amount for this.

"Pack-in" Expenses

- What is a reasonable amount of money the Claimant should be compensated for completing the pack-in of the Claimant's household and personal effects back into the home.

[42] What is most unfortunate in adjudging this Claim is the lack of communication and more directly specific guidance from the insurance company representatives to the insured as it relates to both of the outstanding issues. The Court is satisfied that the "nature" of both issues (laundry and "pack-in") is not something uncommon when dealing with "additional living expenses" or allowing an insured to effectively carry out the unpacking (pack-in) of their belongings back

into their home. However, clearly the policy wording offers no direct guidance on what or how such expenses are to be recorded or claimed and therefore once a situation evolves where the insurance company knows an insured has been displaced and these issues are likely to arise at some point in the process, sufficient guidance should be provided. Admittedly, it is somewhat of a double edged sword whereby if the insured intends to incur expenses outside the parameters of "ordinary" than they need to make sufficient inquiries as to what is permissible before incurring such costs.

[43] The Court refers to Exhibit D-1, Tab 11 where there are several pages of e-mail exchanges between legal counsel for the insured, Ms. Danielle MacSween, and the insurance company representatives, both Mr. MacLeod and Mr. Peeters. Similar copies were included in the Claimant's Exhibits at 3, 4, 5 and 6. Exhibit C-6 specifically sets forth the details surrounding the "pack-in" expense claim. It also confirms the first date of pack-in work was carried out on April 18th, 2019. The evidence of Mr. MacLeod confirms that the Claimant moved from the hotel in Sydney on April 19, 2019. With reference to the Claimant's Exhibit C-3, it represents a letter from the Claimant's legal counsel to Mr. MacLeod and Mr. Peeters dated July 24, 2019 setting forth what she describes as her client's final claim. It claims $6000 for laundry and provides the details of the formula that was used to arrive at this amount mainly based on what DKI had previously charged on a per lb. basis. No reference is made to who did the laundry, where it was done nor is any receipt from Ms. Kennedy's mother mentioned. As for the "pack-in" claim, this same letter advances the Claim for expenses totaling $8658.00. It confirms the method used to calculate this amount based on 450 hours of labour at the same rate charged by DKI ($19.24) for the initial "pack-out" of the contents of the home.

The letter further references that the Claimant kept detailed records of "unpacking, moving and cleaning" but there were no attachments with this particular e-mail/letter. Exhibit C-4 contained a response e-mail from Mr. MacLeod dated July 30th acknowledging Ms. MacSween's earlier letter and asking to be provided the detailed records she had referenced. In this response Mr. MacLeod makes note, as regards to the pack-in Claim, that he has never experienced receiving a claim advancing so many hours (450), stating in most claims he has adjusted the hours for this type work fell into the 40-50-60 hour range. As for the second issue surrounding laundry, Mr. MacLeod again requested receipts and verification surrounding the laundry expense claimed, where it was done and receipts for money expended.

[44] The exhibits confirm (C-5) that there had been an earlier e-mail exchange between Mr. Ken MacLeod and Ms. MacSween on April 16, 2019 specifically regarding the pack-in issue. Ms. MacSween in her e-mail was advising of her client's desire to complete the pack-in themselves and specifically asked whether the policy would pay him an hourly rate to do so. Mr. MacLeod's response by email is worthy of note as follows:

> **We will pay an hourly rate based on REASONABLE hours to unpack boxes. We will require the breakdown of dates, hours spent and tasks involved for review. To be clear we have already paid as part of our pack out expenses to have the boxes delivered back to the house. So we would look at the labor involved with unpacking boxes and redirecting items in the house. We pay an average labor rate of $13.50 per hour. Hope this helps.**

[45] The evidence remained unclear as to when or who actually submitted the receipt from Barbara MacMullin (Ms. Kennedy's mother) found in exhibit-2 to the Insurance Company. The receipt is dated "December-June 2019" purporting to

confirm the payment of $6000.00 from Michael Eldridge (Claimant) to Barbara MacMullin. There is no further reference on this document. The evidence is also unclear as to when and who tendered the summary of days, hours worked associated with the pack-in claim as exhibited under C-6 however it is noted that it is set forth in an e-mail from Ms. MacSween in a typed format.

[46] I will deal with the laundry claim first. Based on the evidence the Court is satisfied that an insured under the policy provisions of "additional living expenses" is entitled to advance a claim for this type of expense. The Defendant's response e-mail from Mr. MacLeod confirms their position, provided they are given some means of verification for the out-of-pocket expenses required to have been incurred. I also find, from the policy wording itself, that this type of expense must be measured against the Claimant's "ordinary standard of living". In this regard, I accept that having regard to Ms. Kennedy's profession and specifically the nature of her employment during the loss period, together with the fact that they had in their care three young children, one of which was an infant, I find it reasonable that there would be a daily laundry requirement and that two loads per day would not be unreasonable particularly having regard to the age of the children. I also accept the Claimant's evidence having regard to where they were required to reside (hotel suite) that there was little room to "store" or "build up" loads of laundry similar to what had been their practice when they resided in their home and as a result it is reasonable to conclude that there would have been a daily need to have laundry completed simply to keep up. I also take notice, again having regard to their overall temporary living circumstances as well as it being the winter months that it is not likely they had access to "all" of their normal clothing which likely compounded the need for more regular washes. With all of these factors I am

prepared to accept the Claimant's evidence that laundry (two loads) would have been necessary for six (6) days each week during the period they resided in the Cambridge Suites Hotel. I find this was required to allow the Claimant to maintain their "ordinary standard of living".

[47] The next component of the laundry claim deals with where it was done and by whom. With reference to the e-mail exchanges found in Exhibit C-3 the Court is troubled by the fact that in advancing this Claim no reference was made to whom or where the laundry had been done. In fact the basis of the Claim as set forth in the initial e-mail/Claim was strictly based on a calculation which mirrored what DKI had charged the insurer following the opening of the loss claim. The Court is also left with a great deal of uncertainty surrounding the evidence tendered to establish the $6000.00. This hearing was by telephone conference. The best evidence would clearly have been testimony from Mrs. MacMullin as to what she did, how often, how many loads, her time and out-of-pocket expenses. There was no reason given as to why she could not have provided evidence. Added to this is the fact that Ms. Kennedy could not explain or by her words recall, where the "cash" came from to pay her mother, when it was paid and so forth. As noted earlier in this decision, the receipt for the $6000.00 does not provide any accompanying details or even the fact that it is associated with providing laundry service. Finally on this issue, the Court does accept the fact that there is no laundromat or sufficient (if any) laundry service situate in the Cambridge Suites. While this point remains somewhat uncertain, as the Claimant testified that there was no laundry service and Mr. MacLeod testified he thought there was but was not sure, I find even if there was it is simply not a stretch to find that it would have proved very difficult -- having regard to the living conditions (being in a hotel), likely need to attend in a restaurant for supper meals, additional travel time to and

from New Waterford to note a few conditions -- for the Claimant to complete daily laundry duties through the use of some external facility or service. Therefore, while I am not accepting the total claimed and frankly remain suspect as to what, if anything, may have been paid to Mrs. MacMullin, I do find that this laundry service was required for the Claimant to maintain their ordinary standard of living and further that someone performed this service, most likely Mrs. MacMullin. Had it been by any other means, the Court surmises that there would have been clear receipts for ongoing laundry expenses readily available.

[48] I accept Mr. MacLeod's straightforward evidence where he confirmed that he had in the past paid in the range of $7.50 per load. I accept also that his counsel on re-examination had him clarify that in such circumstances he would have been provided receipts. However, I also accept that there appears to have been little or no communication between the parties in the early stages of this Claim surrounding the laundry issue. I assume it was addressed back in December 2018 which likely led in part to the negotiated agreement whereby the insurance company paid $70.00 per diem for 45 days to Mr. and Mrs. MacMullin to contribute towards extra utility costs during the period in which the Claimant and family resided there. The evidence before me attempts to substantiate the $6000.00 claim based on at best a guesstimate of load weight and a rate which a third party charged, in this case DKI. This offers little by way of substantiating a "reasonable" claim. Nonetheless, as noted and as logic dictates, clearly there was a need for regular laundry with a family of three young children and two working adults. I am further satisfied that if in fact Mrs. MacMullin did perform this service, I find it would have been done out of necessity to assist the Claimant and family and not as a means of trying to heighten their ordinary standard of living. Therefore, the Court

is prepared to direct that the Claimant be entitled to reimbursement of laundry expenses based on the following evidence:

- Date departed MacMullin's home - 26th January 2019 (confirmed by Mr. MacLeod's evidence);
- Resided in Air B&B for two weeks to approximately February 8th, 2019 (confirmed by Ms. Kennedy's evidence);
- Resided at Cambridge Suites Hotel, Sydney, (11 weeks, 1 day) departed April 27th (confirmed by Mr. MacLeod's evidence);
- 11 weeks, 1 day = 78 days;
- 2 loads per day for 6 days per week = 12 loads per week (based on 6 days);
- 12 loads X 11 weeks = 132 loads plus one day (2 loads) = 134 loads

Allowance for laundry per load determined to be $7.50 per load X 134 loads = $1005.00 and the Court so orders that the Defendant pay to the Claimant this amount for full and final settlement of this laundry expense claim.

[49] As for the second issue surrounding the Claim for pack-in expenses, while there is no issue surrounding whether the Claimant is entitled to be compensated, what remains at issue is the amount. Again with reference to the broad policy wording referred to above, it offers little guidance in determining what is or should be permitted. The evidence does confirm that the Defendant Insurance Company recognized this as part of their obligation to complete as part of the Claim and there is no evidence before me to suggest that they would not have completed this

task but for the request of the Claimant, through their legal counsel, to undertake and complete this work themselves. In this regard, the evidence confirms the Claimant, through their legal counsel, advanced the following direct inquiry to Mr. MacLeod:

> (1) can the Claimant do this pack-in? and
>
> (2) would they be paid an hourly rate?

The evidence confirms there was a prompt and direct response from Mr. MacLeod which confirmed the following:

> Yes - they would permit the Claimant to complete the pack-in on the following terms/conditions:
>
> i) they would pay an hourly rate based on reasonable hours to unpack boxes; and
> ii) the average labour rate paid would be $13.50; and
> iii) they require breakdown of dates, hours spent and tasks involved for review.

There is no evidence before the Court of any further communication on this point until July 2019 when the claim for "pack-out" in amount of $8658.00 was submitted. The Claim amount was determined, similar in part to how the laundry claim was calculated, in that the Claimant used the rate which DKI had billed for the original "pack-out" times the number of hours they state they worked - 450 hours.

[50] In contrast to how the Claimant dealt with the laundry issue, in dealing with this Claim issue the Claimant, through his legal counsel, was prudent in that he directly requested the factors and/or parameters upon which any claim would be

assessed for reimbursement. However, in spite of clear direction and no further communication, the Claimant chose to proceed knowing the hourly rate was in the $13.50 range and not the $19.00 range he submitted and further knowing that the insurance company highlighted directly to him that they would only pay for a "reasonable amount" of hours for "pack-in". Clearly it was open to the Claimant to make further inquiries in this regard but he did not. Further, in the Claimant's evidence, in his effort to support the proposed hourly rate claimed for this work he referenced the DKI invoice associated with their initial pack-out work. I find that this same information would have also provided to him some indication as to the actual hours billed by DKI during the "pack-out", which included preparing a detailed inventory. The evidence of Ms. McFadgen confirmed that the pack-out hours were in the range of 132 hours and based on her experience the estimated time to complete a pack-in of the same items would normally be 30% less.

[51] In spite of the list tendered by the Claimant setting forth the hours claimed, there is no evidence before me to suggest that there was anything out of the ordinary that occurred or delayed a normal "pack-in". Therefore, I find that in determining this issue it falls squarely on the test of what is "reasonable" in these circumstances. The Court is satisfied that the Claimant was on notice that the hours that would be paid were to be assessed against a reasonable standard. I find from the evidence there are a number of factors which allow me to make this determination-- most notably the evidence on behalf of the Defendant from three experienced individuals, all of whom have been involved in the insurance claims industry for many years and each of whom testified that the 450 hours claimed well exceeded anything that they had encountered in the past relative to the size of the pack-in task. I accept Ms. McFadgen's evidence, based on her direct experience with similar loss situations, that the normal hours required for pack-in

are approximately 30% less than the pack-out time required. I accept Mr. MacLeod and Mr. Peeter's evidence, based on their claims experience, that the 450 hours claimed was excessive in their opinion. I also note the submissions from Defendant counsel that suggested, again based on the 450 hours claimed, such would equate to working 19 days, 24 hours a day, over a two-month period. The Court sensed that the Claimant was operating under the belief that their only requirement was to keep a record of dates and times. That, as noted above, was only one of the stated requirements in addition to the condition that the Claim for hours worked be reasonable. Based on the evidence I find it was not. I further find that the Claimant, at their own peril, failed to make any inquiries as to what or how this aspect of their claim would be assessed and further completely ignored the Defendant's direction as to what hourly rate they were prepared to pay. It was open for the Claimant to direct that the Defendant complete the pack-in work and I am satisfied that they would have. Based on Ms. Kennedy's evidence she noted that she was very satisfied with the work DKI had performed for them in relation to this Claim and therefore there would have been no reason to determine that the Claimant would not have been satisfied had DKI completed the pack-in. Finally, I am satisfied from the evidence of Ms. McFadgen that Mr. MacLeod had directed her to be liberal in her estimate having regard to the fact that there were children involved which may have caused some delay or extra work associated with the pack-in. Based on the evidence the Court is satisfied that the insurer was required to make a determination of a reimbursement amount that was reasonable having regard to the circumstances and that the amount of $2382.72 as determined and paid by the Defendant fulfilled their obligation under the terms of the policy to compensate the Claimant for the "pack-in" expenses. **That portion of the Claimant's Claim is therefore denied.**

[52] Given that there has been a measure of success by both parties, no costs are awarded to either party.

DATED at Sydney, Nova Scotia this 4th day of October, 2021.

A. ROBERT SAMPSON, Q.C.

Adjudicator