

1 Prince George Registry  
2 No. SC 749/84

3 IN THE SUPREME COURT OF BRITISH COLUMBIA

4 PRINCE GEORGE, B.C.

5 June 10, 1985

6 BETWEEN: )

7 PAUL SCHLAMP )

8 PLAINTIFF )

9 AND: )

10 FEDERATION INSURANCE COMPANY )  
11 OF CANADA and HARVEY MILNE )  
12 AGENCIES LTD. )

12 DEFENDANTS )

REASONS FOR JUDGMENT

OF THE HONOURABLE

MR. JUSTICE MACDONELL

13 DICK BYL, Esq.

appearing for the Plaintiff

14 T.V. COLE, Esq.

15 appearing for the Defendant,  
16 Harvey Milne Agencies Ltd.

17  
18 THE COURT: (Oral) The plaintiff's action against the defendant,  
19 Harvey Milne Agencies Ltd., is for damages arising out of  
20 the fire loss of a logging skidder on the 12th of February,  
21 1984. The basis of the plaintiff's claim is breach of duty  
22 on the part of the defendant agency in failing to specify  
23 the precise time the policy expires. The pleading itself  
24 claims damages for negligence as a result of the  
25 defendant's failure to place insurance on the skidder.

26 However, the case at trial is somewhat different from  
27 that claim as is not suggested there was an obligation on

1 the defendant to renew. The narrow issue that has to be  
2 decided is whether the notice that the policy was to  
3 expire sent by the defendant to the plaintiff should  
4 have, in addition to setting out the expiry date as it did  
5 of February 12th --

6 MR. BYL: Eighty-four, My Lord.

7 THE COURT: Yes. The time of expiry should have been placed  
8 in the notice as well.

9 The policy of insurance that covered the skidder was a  
10 comprehensive policy carrying a floater for the skidder  
11 which I take it was added at a later time. That policy had  
12 been in existence for some three years. And as I understand  
13 it, the arrangement between the plaintiff and the defendant  
14 was that notices were sent similar to the notice, Exhibits  
15 1 and 2, to the plaintiff when the renewal was coming up  
16 and the defendant, or at least the plaintiff went into the  
17 firm and either paid the premium or part of it that was  
18 required, and renewed.

19 What had happened prior to the fire loss in this case  
20 is the reminder notice of expiry was sent on January 27th  
21 setting out the policy number, that it related to the skid-  
22 der, and gave the expiry date of February 12, '84. I take  
23 it no response was made to the first notice and the second  
24 notice was sent out with the same information. No communi-  
25 cation went between the plaintiff and the defendant with  
26 respect to renewal and the policy was not renewed.

27 Shortly after the policy expired at 12:01 February 12th,

1 or sometime during that day, the skidder burned and the  
2 nature of the claim here is for the damages for the loss.

3 The narrow points, as I said, relied upon by the  
4 plaintiff is a duty on the part of the defendant to advise  
5 the plaintiff precisely the time when the policy expires. It  
6 is my view that no such obligation attaches to the defendant  
7 to set out precisely the minute when the policy expires,  
8 particularly when the plaintiff has a copy of the policy,  
9 which is an exhibit in these proceedings, and the notice  
10 referred to the policy number and to the expiry date.

11 Surely the first thing the plaintiff should be concerned  
12 about when he saw that the policy expired on February 12th  
13 is to say to himself well, what time on February 12th does  
14 it expire and that question is simply answered by looking  
15 at the bold face of the policy, the floater endorsement  
16 which says expiry date February 12th, '84 at 12:01 a.m.

17 It is my view that there is no obligation on the agent  
18 to spell out the time. The plaintiff had the policy. It  
19 set out the time and the defendant's duty, I am satisfied,  
20 was met when he gave a first notice let alone a second  
21 notice of expiry. Accordingly, I find no negligence on the  
22 part of the defendant in the circumstances and the plain-  
23 tiff's claim is accordingly dismissed with costs.  
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