

[2] On June 9, 2022, Co-operators brought an application for a declaration that Mr. Hollands did not have liability coverage on the car on the night of the accident such that it was not required to defend or indemnify him. Mr. Hollands represented himself and opposed the application, claiming that he had liability coverage on the date of the accident.

[3] Definity Insurance Company was added as an intervenor with full party rights because it would be liable to one of the passengers if Cooperators were successful in the action. Definity opposed the relief sought by Co-operators and argued that any change or cancellation requested by Mr. Hollands was not effective in law because it did not comply with the requirements of the *Insurance Act*, R.S.O. 1990, c. 18.

[4] The matter proceeded before me between June 3 to 5, 2024. Cooperators called one witness, an insurance agent, who testified that she took instructions from Mr. Hollands to change the coverage on the car from collision to comprehensive a few days before the accident. Various corroborating business records were tendered. However, in the course of the insurance agent's cross-examination, it became clear that other critical business records—namely, documentation confirming the changes Mr. Hollands made to the insurance contract—had inadvertently not been disclosed by Cooperators. After a short adjournment, Cooperators disclosed the missing documents and the trial continued.

[5] Mr. Hollands did not call a case. Definity called Mr. Hollands as a witness. Under cross-examination, Mr. Hollands admitted that he called Cooperators to change his coverage on the car from collision to comprehensive a few days *before* the accident but stated that he had meant for the change to become effective *after* the accident.

[6] The two issues before me were whether Mr. Hollands called Co-operators to cancel the liability coverage for the car involved in the accident, and whether Co-operators complied with the statutory requirements such that the change in coverage was effective in law. Cooperators was successful on both issues. In an oral decision delivered at the end of trial on June 5, 2024, I found that Mr. Hollands had cancelled his liability coverage on the car before the accident, and that the change was effective in law because Co-operators complied with the statutory requirements.

[7] The parties cannot agree on the matter of costs. I have a broad discretion when it comes to awarding costs: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 131(1). I must consider the factors set out in Rule 57.01(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg 194, including: the result, offers to settle, the principle of indemnity, the amount that the unsuccessful party could reasonably expect to pay, the complexity and importance of the matter, the conduct of any party during the litigation, any unnecessary steps, and any other relevant matter.

[8] As the successful party, Cooperators seeks substantial indemnity costs in the amount of \$103,375.96 against Definity. The Plaintiff says that the trial was on a narrow issue but “high stakes,” and that Definity has consistently and unnecessarily expanded the scope of the issues and the costs of proceedings. The Plaintiff notes that Definity insisted on cross-examining the insurance agent on her affidavit, brought a (successful) motion to convert the application into an action, (unsuccessfully) opposed the Plaintiff’s request for a jury trial, and brought two (unsuccessful) pre-trial motions before me in relation to the proposed jury questions and tendering of an expert report. Cooperators says that because Definity is a professional litigant, it is imperative that I send a strong signal that its conduct was excessive and wasteful.

[9] Definity says that Cooperators is only entitled to partial indemnity costs in part because Cooperators (unsuccessfully) opposed its motion to intervene, and because of the late-breaking disclosure at trial. Definity says that costs should be set at \$58,884 because it should not be held responsible for costs incurred before its intervention, and because this matter did not require two counsel to attend the hearing. Definity says that Cooperators was always required to prove its case and there was not foul in Definity testing the sufficiency of the alleged policy change.

[10] Mr. Hollands is not seeking any costs and no costs are being sought against him.

[11] On the whole, I would decline to order substantial indemnity costs against Definity because Cooperators own conduct lengthened the proceedings. First, despite bringing a contested motion for a jury trial, Cooperators re-elected to proceed by judge alone on the eve of trial and only after I ruled in its favour on the proposed jury questions. Second, Cooperators failed to disclose key policy change documents until the middle of Definity's cross-examination, which was not only a serious breach of the Rules but also expanded the scope of the issues at play. Definity's position going into the trial was that the policy change was not effective in law because Cooperators never sent Mr. Hollands the required policy change documents. This position made no sense after Cooperators disclosed the relevant policy change documents midtrial. This matter could have been resolved in half the time had the proper disclosure been made.

[12] On the whole, I would order that the Definity pay Cooperators a total of \$70,000 inclusive of costs, disbursements, and HST.

Mandhane J.

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