

** Unedited **

Indexed as:

**Sandy Leather Fashion Ltd. v. Continental Insurance Co. of
Canada**

Between

Sandy Leather Fashion Limited, Plaintiff, and
The Continental Insurance Company of Canada and P. Bosa
Insurance Broker Limited carrying on business as Clover
Insurance Brokers, Defendants

[1994] O.J. No. 1689
Action No. 93-CU-67420-CM

**Ontario Court of Justice - General Division
Toronto, Ontario
Hawkins J.**

Heard: May 3, 4, 1994.
Judgment: August 4, 1994.
(6 pp.)

Insurance — Property insurance — Brokers — Liability — Failure to follow client's instructions.

The plaintiff insured sued to recover a loss under an insurance policy, and sued the broker in negligence for failing to secure the proper coverage. The plaintiff manufactured leather garments at three locations. Concerned that its \$300,000.00 insurance coverage for one location was too low, the plaintiff called the defendant broker and asked that coverage for that location be increased to \$550,000.00. The requested coverage for the proper location was not effective until October 23, 1991. The premises had a break-in on October 12, 1991.

HELD: The plaintiff's action against the insurer was dismissed, but in the negligence suit against the broker, the plaintiff was awarded \$63,972.68 in damages, plus interest and costs. The broker had failed to obtain the coverage that the plaintiff requested it to obtain, and that failure was in no way contributed to by either the plaintiff or the defendant insurance company.

Statutes, Regulations and Rules Cited:

Courts of Justice Act.
Gregory N. Hemsworth, for the Plaintiff.
Thomas J. Hanrahan, for the Defendant (Continental).
Deborah Berlach, for the Defendant (Bosa).

¶ 1 **HAWKINS J.**— This is an action by an insured to recover a theft loss under a policy, with an alternative claim in negligence against the broker for failing to secure the proper coverage.

¶ 2 Sandy Leather Fashion Limited is a manufacturer of leather garments. In the fall of 1991, it operated out of three locations which were specifically named in its policy with the defendant Continental, and each of which locations had a specific dollar amount of insurance allocated to it.

¶ 3 Sandy Leather's accountant was concerned that the \$300,000.00 limit for location No. 1 was inadequate and so advised Mr. David DiCaprio, Vice President of Sandy Leather. In response to this advice, DiCaprio called Sergio Galbiati, a broker with Clover and asked that coverage for location No. 1 be increased to \$550,000.00. He was told that the request would create no problems and would be dealt with right away. What followed can only be described as a comedy of errors. Galbiati passed his instructions along to an associate, Angelo Mangiardi. Mangiardi contacted Michael Moore, an underwriter at Continental and, on or about 26 September, 1991 received a quotation from Moore for the increased coverage (Exhibit 2).

¶ 4 On or about October 1, Mangiardi sent a fax to Moore dealing with the proposed coverage increase. That fax did not identify to which of the plaintiff's three locations the increase was to apply, nor did it name the insured. On 11 October, 1991 (one day before the break in) Mangiardi sent a further fax which identified the insured and the policy number, but again, failed to specify the location to which the increase was to apply (Exhibit 4).

¶ 5 The waters got further muddied (the effect of too many cooks on the quality of the broth) when Cathy Hamilton of Clover, on October 17 (five days post-break in) sent a fax to Continental (Exhibit 9) which read as follows:

"Please Note Important.

As per our telephone conversation re policy coverage, please note that an endorsement still to be issued has changed policy coverage to for all locations, contents of every description, \$550,000.00 (stock \$450,000.00, equipment \$75,000.00, office contents \$25,000.00) effective September 27, 1991. Any questions please see Mike Moore in Underwriting."

¶ 6 These instructions were for the very thing the plaintiff did not want.

¶ 7 Finally, an unsuccessful attempt to cover tracks ex post facto can be found in Mangiardi's fax to Moore of 23rd October (Exhibit 6) which reads as follows:

"This is to confirm that request of increase to \$550,000.00 COEI is for location No. 1 only, and No. 2 and No. 3 locations remains the same."

¶ 8 An endorsement generated by Clover, undated but said to be effective 27 September 1991 (Exhibit 5) still has it wrong, i.e. it shows coverage as "\$550,000.00 blanket all locations", which is not

what the plaintiff wanted.

¶ 9 Finally, Clover issues an endorsement, undated, but effective 23 October, 1991 (post-break in) providing the correct coverage.

¶ 10 Galbiati, a Vice President of Clover and the man who got clear and specific instructions from the plaintiff as to what was needed says that Exhibit 3 and Exhibit 9, both generated within his organization, do not reflect his instructions. It is trite to observe that the failure of his company's employees to carry out his instructions is hardly the fault of the plaintiff!

¶ 11 I am satisfied that the defendant Clover failed to obtain the coverage that its' client, the plaintiff, requested it to obtain and that failure was in no way contributed to by either the plaintiff or the defendant Continental.

¶ 12 Damages have been agreed to at \$63,972.68 and the plaintiff shall have judgment in that sum plus pre-judgment interest under the Courts of Justice Act from 12 October, 1991 and costs.

¶ 13 The plaintiff's action against Continental is dismissed with costs, which costs are to be added to the plaintiff's costs against the defendant P. Bosa Insurance Broker Limited. The cross-claims of Clover and Continental are dismissed without costs.

¶ 14 As judgment was reserved and the question of costs was not addressed, I may be spoken to if necessary.

HAWKINS J.

DRS/DRS/DRS