

I first met Laurie Tomlinson in Winnipeg in 1970 when he was the Branch Manager for Great American Insurance Co. while I was the Branch Manager for Boiler Inspection & Insurance Co. Laurie was a very knowledgeable insurance person then and still is. I was transferred back east in the mid seventies and lost track of him until the late seventies when he became the Winnipeg Branch Manager for the Strathcona General Insurance Co. and I was the Branch Manager for the Strathcona General Insurance Co. in Ottawa. A few years later we parted waves again.

After serving with the Insurance Bureau of Canada, and as Branch Manager for the Sovereign General Insurance Company in Winnipeg, Laurie has become an insurance "Advocate". The definition of advocate is one who assists his principal by research, instructing, or presentation using their knowledge. The advocate does not do the presentation, the principal does. The principal can be an insured, an adjuster, an underwriter, or even another advocate. An advocate not only deals with claims files they deal with underwriting files as well. The adjusting community see them as a threat, although by definition, appraisers, restoration contractors, investigators, etc. are all advocates.

Here are two articles that will explain why I find this is an interesting case to watch.

The first one is from CTV.

Risky business

CTV.ca News Staff

Extended legal battles were the last thing on Tim Leonard's mind when he went to his job as a construction worker on June 14, 1996. But everything changed on that sunny day, when a safety bar gave way and Leonard plummeted 22 feet onto a concrete slab below.

"I don't even remember hitting the ground," he recalls. "I just remember the intense heat from the sun and I was laying on my back waiting for the ambulance to show up. ... I thought my belt somehow got underneath my back and I was laying on one of my wrenches maybe or a bolt bag or my hammer, and I was telling them, 'Get it out from underneath my back.' And there was nothing there. They cut my belt off, they cut my pants off, cut my boots off and I was still complaining about something in my back, and then I knew for sure I broke my back."

Leonard crushed his L1 vertebrae – an injury that launched him into two of the biggest battles of his life.

The first was to walk again. Doctors told him he would be confined to a wheelchair for life, but Leonard was determined. "My daughter was born three months after my accident," he says. "It gave me the motivation to work towards, my goal was to walk before she did. And I did."

Leonard spent seven years working out for four hours a day. He's developed his own form of "walking," using momentum from his hips to propel his legs forward. But he has no feeling below his waist, constant chronic intestinal problems and doctors say he will eventually be confined to a wheelchair.

Most people would applaud Leonard for the strength and determination he showed by overcoming the odds to walk. But his insurance company, Mutual Life of Canada, decided that since he was back on his feet, he no longer qualified for the \$60,000 he was insured for if he became a paraplegic.

Mutual Life's refusal to pay launched Leonard on his second fight – to claim the money he believed he was owed under his policy.

"If I had to sit in my wheelchair, if I had to get depressed after my accident like most people do and just sit around and do nothing for 365 days ... I'd have my money in the bank. But because three or four months after my accident, I got up and I started doing things and I started working out and trying to get a better

quality of life ... they started fighting me and saying, 'No, you're ambulatory. You're not a paraplegic.' And it's over \$60,000. I don't understand it."

As surprising as Leonard's story may sound, insurance industry insiders say it's not an uncommon phenomenon. Canadians spend an average of \$3,125 a year on personal insurance premiums and pension contributions, according to the latest figures from Statistics Canada. And while they're paying for peace of mind, like Leonard, many find insurance provided a false sense of security when it comes time to collect.

"Deny, deny, deny"

Liz Boylan, a former insurance industry insider, told W-FIVE sales reps give people the hard sell when it comes to buying into policies. "You're young and you're healthy, but you don't know if one day you might get injured in a car accident or you might fall ill, ... pick up a virus, whatever – and they do everything to support that these are potential outcomes."

But according to Boylan – who worked at three different insurance companies -- once those terrible situations actually occur, adjusters do everything in their power to avoid paying out.

At one point, Boylan says she was given a "termination ratio," a percentage of disability claims that had to be refused. "It's based on what underwriting determines is the number of files that need to be terminated in order for daily operations to be favourable," she says.

Boylan says that number worked out to one out of every two claims.

And she isn't the only one to paint that picture about the industry.

"The number of people that I see with perfectly good claims, disability claims, that aren't paid is shocking," says Larry Pierce, a Vancouver lawyer who is leading the charge against insurance companies.

"What they do is they stall and investigate and stall. People go bankrupt, they lose their homes, they starve while these insurance companies are ignoring medical evidence," he says. "They're ignoring witness accounts, they're ignoring the facts basically. Ignoring the facts should be bad faith, in my view."

"It's deny, deny, deny," says Laurie Tomlinson, a 34-year-insurance veteran. At one point, Tomlinson was a regional chair of the Insurance Bureau of Canada. Now he runs a consulting business helping people cash in on their claims.

When it comes to insurance payouts, Tomlinson says the formula works something like this: "Deny the first time, a certain percentage of people walk away because they don't want to take up the fight; stick around and they get another denial, a certain percentage more walk away; and then deny the third time because after your three denials you are down to the people who really mean business, and they're prepared to take you to task. So whatever percentage have already walked away – that's what they gain."

In Canada, only about two per cent of all claims end up in court. Tomlinson says it's that tiny fraction that sets the practice for many insurance companies. "They tread a thin line in many cases with what is legally correct. And at the end of the day, they're prepared to take that gamble because the majority of people will walk away – the majority of people will take much less than what they deserve if they believe that their only alternative is to turn it into a legal battle."

Shifting the balance of power

With court costs that can climb into the tens of thousands of dollars for an extended legal fight, the deterrent to going up against insurance companies is obvious. "Who's going to fight them?" says Tomlinson. "What ordinary citizen is going to take a multi-billion dollar insurance company to task on a \$50,000 claim or a \$25,000 claim? You'll get advice from lawyers who say it's not worth it. ... But the advice that lawyers should be giving is saying on the pure economics of the claim, it's not right, but if we're successful in bad faith it'll become worth it."

Tomlinson points to an eight-year battle against Pilot Insurance in Ontario that could shift the balance of power.

When the home of Keith and Daphne Whiten burned down in January 1994, the couple was confident their insurance policy would cover their losses. Initially, an adjuster and arson investigator both classified the fire as accidental and Pilot kicked in with emergency funding to cover rental housing for the Whitens. But within months, the investigator submitted a new report "reclassifying this fire as being suspicious," and Pilot refused to pay the Whitens' claim.

Unlike many people whose claims are denied, the Whitens were prepared to take their fight to court. A jury awarded the Whitens \$1 million in punitive damage, in addition to their losses from the fire and court costs.

In 1999, the Ontario Court of Appeal reduced the punitive damages to \$100,000, but the Whitens took their battle all the way to the Supreme Court of Canada. In February 2002, eight years after their house burned down, the Whitens' \$1 million award for punitive damages was reinstated.

Tomlinson says if more people were like the Whitens – willing to take their fight all the way – it would send a powerful message out to insurers.

"If they know the rules have changed, that suddenly they're not just talking about denying whatever element of their claim, suddenly they could get tagged for punitive damages ... I think you would see a whole different mentality by insurance companies. Yes, they'll still fight claims, but they won't fight as many."

As for Tim Leonard, he took his fight to court. His trial lasted just two days, after which the judge ruled in Leonard's favour. She also had some tough words for his insurance company.

"(Mr. Leonard's) efforts ought to be applauded. ... It would be most discouraging for individuals who have coverage for such eventualities to find that their policies were worthless," wrote Justice Chapnik in her decision.

Mutual Life of Canada appealed the decision. They also declined W-FIVE's request for an interview to discuss the matter. But within one week of the interview request – and after 18 months of waiting on Leonard's part -- they advised W-FIVE that they were dropping their appeal.

It's those examples of people who have gone up against insurance companies and won that give Larry Pierce faith that insurance companies will one day get the message.

"You can't take a five billion dollar company and hand them a \$10,000 fine. They're not paying attention," he says. "You've got to hand a five billion dollar company a big fine. Then they'll notice."

And here is the article regarding Laurie Tomlinson by The Halifax Herald/

Tuesday, April 22, 2003

The Halifax Herald Limited

Manitoba targets insurance advocate

Consumers sing praises of man accused of working without licence

By The Canadian Press

Winnipeg - The Manitoba government is trying to shut down a former insurance company president who helps people who feel cheated by low settlements.

The province has charged Laurie Tomlinson with operating as a public insurance adjuster without a licence. The trial is set for January 2004 in provincial court.

"What I've seen is the abuse of power and privilege by the insurance companies, in terms of forcing the insured to accept less than they deserve," said Tomlinson.

The government's first attempt to get an injunction to stop Tomlinson failed when a court ruled the government did not have the constitutional right to halt his work.

He was the former regional manager of Sovereign General Insurance before he was laid off due to downsizing in 1998 and took up consumer advocacy. He is also a former regional president of the Insurance Bureau of Canada.

Tomlinson, with 34 years of experience in the insurance industry, said many people never realize they didn't receive the benefits to which they were entitled.

"The problem is everything is slanted in favour of the insurance company. They control all aspects of the investigation," including the investigation by the adjuster, said Tomlinson, who now runs a firm called Risk Sure Inc.

Tomlinson's legal argument is that he is acting as an insurance "consultant." The government claims he is acting as an adjuster without a licence. Adjusters who work for insurance companies do not have to be licensed, but independent adjusters do.

Tomlinson said he would become a licensed adjuster if the Adjusters' Council of Manitoba would give him more credit for his years in the insurance business.

But the council says Tomlinson would have to apprentice for two years with an independent adjusting firm - meaning the very sector Tomlinson fights against would have to give him an apprenticeship so he could fight against them.

Tomlinson's clients heap praise on him, saying consumers need someone to help them.

Ron Dyck of Hawthorne Woodworks said Tomlinson found he was shortchanged by nearly \$10,000 on a claim.

"This is a free country, isn't it?" asked Dyck. "How can the province stop someone from being an advocate, from being hired by people like me."

The government's legal action against Tomlinson was prompted by complaints, said Jim Scalena, the province's superintendent of insurance in charge of protecting the public under the Insurance Act.

Court affidavits show those complaints were filed by the insurance industry, not consumers.

All complaints were heard by the Adjusters' Council of Manitoba, which oversees regulatory matters. The council then filed its recommendation to Scalena.

But the adjusters' council is composed of the very people Tomlinson butts heads with on behalf of consumers, says an independent insurance consultant with 33 years of experience.

"It's like putting the fox in charge of the hen house," said Peter Harper, who is also part of a committee rewriting the province's Insurance Act for the first time in more than 60 years.

The council is made up of four independent adjusters, one insurance company claims manager and one lay person.

"It's a complete conflict of interest," said Harper. "There's no demand for public adjusters because the public thinks independent adjusters are independent of the insurance companies. The public is bamboozled."

Lois Broder, general manager of the Insurance Council of Manitoba, denied any conflict of interest with the Adjusters Council of Manitoba.

Broder said there is no distinction made between adjusters who work for insurance companies and those hired by consumers.

Finance Minister Greg Selinger, whose department includes the provincial insurance office responsible for the lawsuit, could not be reached for comment.

We as appraisers, or investigators, or contractors, are drawn into this type of situation on a daily basis. It is a fine line that has to be walked. The outcome of this particular case will set new standards in the insurance industry. It is a case to watch.



Thought for the weekend **"IF OPPORTUNITY DOESN'T KNOCK, BUILD A DOOR"**

Have a great week end!

Ron Wilkes
Integral Property Services
T - 888.880.2181
F - 604.826.9807
E - integral@shaw.ca