

# Newsletter



Robinson Sheppard Shapiro  
Avocats • Lawyers

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## Reminder That Breach of Formal Warranty Leads to the Suspension of Insurance Coverage

*Justice Guylène Beaugé of the Quebec Superior Court recently rendered a judgment dismissing legal proceedings instituted by insureds against their insurer while granting the latter's cross-claim on the grounds that there was a breach of a formal warranty. Miller c. Promutuel Boréale, société mutuelle d'assurances générales, 2019 QCCS 1288.*

Essentially, the insurer denied the insureds' claim for damages pursuant to a fire which destroyed their bed and breakfast because they had breached a formal warranty. The insurer in turn claimed back from the insureds the payments made to the hypothecary creditors maintaining that the fire was intentionally set.

The insureds had obtained an all risks home owner's policy from the insurer which was renewed on an annual basis.

In March 2010, after the property was inspected, the insurer requested that certain protective measures be taken with respect to an antique wood burn-

ing stove within a certain delay. The day following the visit, one of the insured signed the insurer's form acknowledging that the modifications would be made.

On November 27, 2014, a fire destroyed the property causing extensive damages.

The fire was a result of an insured testing a camping stove in the basement of the property by emptying the contents of a naphta container on same.

The insurer denied the claim on the grounds that the insureds had breached the formal warranty and that the fire resulted from an intentional act.



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The Court reviewed the principles governing formal warranties by stating that they are formal promises to carry out well-defined actions to reduce the risk being insured. As such, the undertaking must be relevant to the risk considered.

The Court dismissed the insureds' argument that the formal warranty was not valid as it was not included in an endorsement and was not signed by them. It underlined that the formal warranty does not require any formality, that it does not have to take the form of an endorsement and that it only requires a signature if it is included in an endorsement subsequent to the conclusion of the insurance contract. If at the time of the loss, the modifications are not carried out, there is breach of formal warranty, unless there is a stipulation to the contrary in the policy. Furthermore, the suspension of coverage affects the co-insured as well even if she ignored its existence or its breach.

The Court stated that the recommendations made to the insureds were to reduce the risk of fire and the insured

falsely represented that the protective measures with respect to the wood-burning stove had been taken. Consequently, the Court concluded that there was suspension of coverage in case of fire. Although this was sufficient to dismiss the claim, the Court addressed the issue of intentional fault.

The Court emphasized that in the absence of direct proof establishing intentional fault, the Court may analyze the facts and take into consideration presumptions that are serious, precise and concordant. Based on the evidence at trial about the fire and the circumstances surrounding it, the Court found that the insureds, who were in a very precarious financial situation and had been trying to sell the property for some time, had committed an intentional act. The insurer's cross-claim was granted.

This case is a reminder of the principles governing formal warranties and breaches of same, and that it is unnecessary for the insurer to prove that but for the non-compliance of the warranty, the loss would not have occurred.

