COVINGTON

English Court Considers Effect of Breach of Insurance Policy Warranty

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Insurance

The Commercial Court in London has recently held that breach of a specific policy provision described as a warranty in a buildings insurance policy allowed an insurer to avoid coverage for a fire claim, but was not grounds for making the policy completely void from inception, as the insurer had argued. The case is *BlueBon Ltd v Ageas (UK) Ltd* [2017] EWHC 3301 (Comm).

The case highlights the need for policyholders to review wordings of insurance policies and insurance policy applications/declarations carefully and to ensure compliance with all warranties, so as to avoid the risk that an insurer will deny a claim, even if failure to comply with a warranty may not necessarily invalidate the entire policy under the current law.

The Facts

The policyholder insured its hotel under a buildings insurance policy against a number of risks including fire risks. The applicable policy covered the year from December 2009 to December 2010. The policy schedule contained a term labelled “Electrical Installation Inspection Warranty” under which the policyholder warranted that the electrical installation would be inspected and tested every 5 years by an approved contractor. The hotel was destroyed by fire in October 2010.

It transpired that there had been no electrical installation inspection or test since September 2003. The insurers refused to pay the policyholder’s claim, relying on the policyholder’s breach of the electrical installation warranty. The Insurance Act 2015 did not apply because the policy was entered into before August 2016.

The policyholder argued first that it had not breached the warranty, because the period of 5 years in which it was required to carry out an inspection and test the electrical installation only started to run from the date of inception of the policy, and not the date on which it had carried out the last inspection and test. It also argued that, if it was found to have breached the warranty, the breach did not deprive it of the relevant cover, because the warranty was in fact a “risk-specific condition precedent”, breach of which applied only to a fire caused by an electrical defect - and there was no evidence that such a defect had caused the fire.

The insurers argued that the policyholder was clearly in breach of the warranty, which was either a “true warranty” or a “suspensive warranty”. Breach of a true warranty would make the policy void from inception under the current law, while breach of a suspensive warranty would merely eliminate cover for particular claims while the warranty remained unremedied.

Mr Justice Bryan held that the warranty was a suspensive warranty or condition and that the breach had the effect of suspending cover for losses arising out of the risk of fire until the breach was remedied. The insurers therefore had no liability to the policyholder for this claim.

The Basis For The Decision

The Judge held first that the policyholder was in breach of the warranty because its interpretation of the obligation imposed by the warranty made the warranty meaningless and was unbusinesslike. The policyholder had sought to rely on the principle of contra proferentem on the basis that the wording was ambiguous, but the Judge found no ambiguity that required him to consider whether that principle should apply to a warranty in an insurance policy.

The consequences of the breach depended on whether the clause was a risk-specific condition precedent, a true warranty or a suspensive warranty. The Judge found certain characteristics suggesting that it was a true warranty. However, the fact that no inspection had been carried out in the previous 5 years created an obligation by the policyholder to undertake an immediate inspection, and cover under the policy would be suspended pending such an inspection: this factor was more consistent with a suspensive warranty than a true warranty, and the Judge therefore held that it was the former. He held that the term could not be a risk-specific condition precedent, as it would be an unbusinesslike construction for the warranty only to suspend cover in respect of losses arising out of defects in the electrical installation but not losses arising out of fire generally.

The Insurance Act 2015 And Lessons For Policyholders

As already pointed out, the policy was entered into at too early a date for the Insurance Act 2015 to apply to this case. The result nonetheless anticipates to some extent the basic legal position under the Act, which provides that breach of a warranty no longer permits an insurer to treat a contract as void, but gives the insurer the right to refuse to pay claims that occur before the breach is remedied and where the breach has increased the risk of the loss occurring in the circumstances in which it occurred.

It is not clear whether the outcome would have been different if the Insurance Act 2015 had applied to this insurance policy. The Judge's view that the warranty was intended to limit the risk of fire in general (and not just fire caused by defects in the electrical installation) would have encouraged the insurers to argue that the breach had increased the risk of a fire loss, whatever the cause: such an argument would have required the Court to investigate and determine the nature and scope of the increased risk which the insurer must prove that the breach of warranty caused in order to be able to deny the claim, under the Act.

Whether the current law or the Act applies, however, the outcome of the case underscores the need for a policyholder to be fully familiar with all warranties and other obligations in its policies, so as to minimise the risk of claims occurring and avoid giving insurers grounds to deny coverage for claims that do occur. Such familiarity can only be gained from a thorough review of the policy wordings and from putting systems in place to ensure up to date knowledge of, and control over, the warranted conditions.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Insurance practice in London:

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