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High Court ruling emphasises the importance of fair presentation

03 March 2025 Felicity Pallas

The High Court has delivered a significant judgment in the case of Clarendon Dental Spa LLP and Clarendon Dental Spa (Leeds) Limited v Aviva Insurance Limited and Zurich Insurance PLC.

This case, stemming from a fire in June 2021 that caused extensive damage to a dental practice in Leeds, has shone a spotlight on the critical issue of fair presentation of risk under the Insurance Act 2015.

The dispute

The dispute arose following the fire, with insurers alleging that the claimant dental practice failed to make a fair presentation of risk during the policy renewal process. The dental practice had undergone a structural reorganisation in 2014, transitioning operations from an LLP to the Company for tax efficiency purposes. Despite this, insurers contended that the LLP still retained ownership of certain equipment.

The case centred on whether the dental practice had failed to make a fair presentation of the risk as required by s.3 Insurance Act 2015. The insurers alleged multiple breaches, particularly focusing on the insolvency of former partners and directors of entities previously involved with the business. They argued that the Company had misrepresented the insolvency history which was material to the risk assessment.

However, the court's examination led to a different conclusion. It determined that the insurance questions and declarations were targeted specifically at the current directors or partners of the policyholder. The court found that the Company had correctly answered the questions based on a reasonable interpretation of the wording.

Moreover, the court held that insurers had waived their right to the disclosure of insolvencies of other entities not directly involved with the policyholder. This was because the questions were specific to the policyholder's current directors or partners.

What does this mean for insurers?

This judgment serves as a useful reminder that whilst the duty of fair presentation is wide reaching, the questions asked by insurers pre-inception can act to limit the scope of the duty. For example, if an insurer asks for details of claims in the last three years, insurers will generally be considered to have waived the obligation on the policyholder to inform them about any older claims, even where material.

Insurers are advised to carefully consider the language used in their proposal forms and questions sets to ensure they are not inadvertently waiving their right to information that underwriters would want to consider when assessing the risk.

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