

Review

Litigation



A fire in Camden Town...and a timely reminder for insurance brokers

Introduction

The Commercial Court has recently handed down a judgment touching on a key issue for insurers, insureds and brokers alike: is a broker under a duty to draw the imposition by an insurer of a risk improvement measure which had a material and potentially deleterious effect on the insureds' cover, to their clients' attention and to obtain their instructions in relation to it?

The Facts

In *Ground Gilbey Limited (2) Davey Autos Limited v Jardine Lloyd Thompson UK Limited [2011] EWHC 124 (Comm)*, Ground Gilbey Limited and Davey Autos Limited owned part of Camden Market and were the insureds. Their brokers were Jardine Lloyd Thompson.

The claim under the policy followed a major fire which occurred in part of the market. The cause was a portable heater which had been left on and which ignited clothing set out for sale shortly after the market had closed for the day.

After the fire, issues arose between the insureds and their insurers which were caused by the insureds' failure to comply with the terms of the policy. The use of portable heaters breached the tenancy agreement of the stallholders, but they continued to be used. The insurers had added a new endorsement to the relevant policy, namely a survey condition requiring completion of all risk improvements. The insurer had then imposed a risk improvement measure requiring the removal of the heaters which the broker had failed to pass on to the insureds.

The Insureds' Claim

The insureds considered that their failure to comply with the policy had in turn been caused by the failure of their broker to pass on the conditions of the policy that required the removal of the heaters and to notify them about survey conditions and a risk assessment to be carried out on the site.

The insureds, acting on legal advice, settled their claim against the insurer for £3.8million which was said to be 70% of the full value, and then issued proceedings against the broker. The insureds alleged that, through the negligence of the broker, they had incurred a loss in settling the claim arising from the fire with their insurers at less than full value.

The Decision

The Court confirmed that a broker owes his client a duty to take reasonable steps to obtain a policy which clearly meets his clients' needs and which is suitable for his clients. An aspect of that is that the client should not be exposed to an unnecessary risk of legal disputes with the insurer. Furthermore, a broker owes his client a duty to draw to the client's attention any onerous or unusual terms and conditions, and should explain to the client their nature and effect.

In this case, the brokers knew that the insureds regarded the use of heaters as necessary and for that reason had embarked on the task of procuring the insurer's agreement to a safe model. The brokers knew that heaters were being used and that although banned they were not actually being removed. Once the brokers knew that the risk improvement measure had been imposed, given their knowledge of the presence of the heaters and the insureds' intention to use them, the Court said that they should have appreciated that the policy no longer clearly and indisputably met the insureds' requirements.

“This decision clarifies two important duties for brokers: to clearly warn the insured of conduct that may breach policy conditions and to obtain cover that meets the insured's commercial requirements throughout the life of the policy.”

The Court went on to say that the imposition of the risk improvement measure had a material and potentially deleterious effect on the insurance cover. The broker was therefore under a duty to draw it to the insureds' attention and obtain their instructions in relation to it; if proper advice had been given indicating the urgency and importance of the matter, the insureds would have taken steps to comply with the risk improvement measure.

As result of those failures, the insureds were left with uncertain rights against the insurer, which refused to accept liability, and accordingly they suffered a loss. The measure of that loss was the difference between what they actually recovered from the insurer and what they would have recovered "but for" the broker's negligence.

Comments

The scope and extent of insurance brokers' duties at the time of placement of a policy are to a large extent clear and settled. Whilst it is well established that brokers continue to owe some duties to their client post placement, authorities that define the limits of that duty are somewhat sparse. Against that background this is a welcome decision which clarifies a broker's duty to obtain cover that clearly meets the insured's commercial requirements throughout the life of the policy and to relay conditions imposed by insurers to an insured.

Where risk improvement measures and survey conditions are not followed the insurer can argue that they should be discharged from liability under the policy. The decision serves to highlight that brokers are likely to find themselves in the firing line when an insurance policy placed by them does not meet the needs of the insured and where they have failed to warn the client of conduct that may breach policy conditions when they are aware of that conduct.

Further Information

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