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Insurance Law Update

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BC SUPREME COURT PROVIDES FURTHER DIRECTION ON VOIDING A POLICY FOR NON-DISCLOSURE

The Supreme Court of British Columbia has recently provided further direction on the ability of an insurer to void a policy of insurance for failure of an insured to disclose material facts when applying for insurance.

BACKGROUND

In *Wells v. Canadian Northern Shield* 2007 BCSC 1899, the insured made an application for home insurance requesting $900,000 in coverage for the value of his home and $1,500,000 for its contents. The insured told the broker placing the policy that he needed $1,500,000 in contents insurance because he *"liked to collect things"*. He also advised the broker that he had a large wine collection, showed the broker pictures of the wine collection, but did not disclose the value of the wine collection. The broker in turn advised various insurers that the insured had *"…a large contents limit because he collects rare (and obviously expensive items including antiques)."* The risk was eventually placed with "contents-only flex-coverage" for $2,328,000. This was the limit of coverage available in respect of a contents only claim.

After policy inception a flood occurred at the insured's home in which the wine collection was largely destroyed. The wine collection was valued at between $5,000,000 and $10,000,000.

The Court was asked to decide whether the insurer was allowed to void the policy on the basis of non-disclosure of material facts by the insured, namely the existence of a rare, multi-million dollar wine collection.

THE RULING

After determining that the insurer was indeed aware before entering into the contract that the insured had unusual contents in the home, including a wine collection, the Court undertook a lengthy analysis as to whether the value of that collection was material to underwriting the risk.

In deciding whether the value of the wine collection was material to underwriting the risk the Court considered the long standing practice of the insurance industry of providing contents coverage at 70 – 80 % of the value of the insured building. This practice suggested that the ordinary, prudent insurer does not expect the contents limit set out in the policy to be a true and accurate reflection of

the actual value of the contents – it may be more or it might be less.

This method of valuation was said to stand in stark contrast with insurers concerns of the value of the insured building which is often subject of written appraisals by qualified experts -- which is what took place in the instant case. On this point, the Court stated that:

> *"*[The insurer] *insisted on being supplied with an appraisal of the building from which they could estimate its current actual value. That is good evidence that the value of the building is considered to be material. But* [the insurer] *asked no questions regarding the total value of the contents…an insurer's failure to inquire on a subject may provide evidence that it does not consider the information relevant…[the] reference to collecting rare and expensive items was sufficiently explicit to put* [the insurer] *on inquiry to seek more information if this was a matter that they considered to be material to their evaluation of risk*...[The insurers] *failure to ask for any more information, having thus been put on inquiry, must be taken as a waiver of any obligation on the* [insured] *to specify a value for the wine collection."*

In other words, the insurer had required an appraisal of the house, but did not investigate the contents, despite being placed on notice that the home contained *"rare and expensive items"*; if the details of the wine collection or the contents of the house had been a material fact to the insurer, it would have investigated the wine collection and contents. As such, the details of the wine collection and its value were deemed to be immaterial to the application for insurance, and the insurer was not permitted to void on the basis of non-disclosure or misrepresentation.

PRACTICAL IMPACT FOR THE INSURANCE INDUSTRY

Unspecific or unusual information in an application for insurance will be deemed to be sufficient notice to the insurer that the information might be material, and the failure to investigate the information will render the information immaterial.

Accordingly, insurers are well advised to investigate information of this kind prior to binding to a risk. Not undertaking such an investigation will likely preclude insurers from voiding a policy at a later date as the information will be deemed immaterial to underwriting the risk.

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