



Recent decision on an 'unrealistic' claim brought against an insurance broker



Introduction

During these difficult unprecedented times brought about by the Covid-19 pandemic, the following recent judgment is of some optimism for insurance brokers in terms of its decision and findings.

In *Tolan -v- McLaughlin & Greany Insurances Limited T/A Future & anor* [2020] IEHC 167, the court dismissed the Plaintiff's claim against the defendant broker and insurer stating that "unrealistic" was a mild word to describe the Plaintiff's claim that the broker was responsible for the insurer's refusal to renew the Plaintiff's policy.

Facts

The Plaintiff, a farmer, had cattle sheds damaged by Storm Doris in February 2017. The sheds consisted of two lots; one lot was constructed around 1950 (with the original walls built in the 19th century) and the second lot was built in 2007. The sheds built around 1950 were damaged as a result of the storm and subject to the claim for storm damage.

Prior to notifying his insurers (Zurich) of the storm damage claim, the Plaintiff renewed his cover for all sheds with the insurer for 12 months commencing in April 2017. The broker had sent to insurers, in a letter collected by the Plaintiff, the "Zurich farm renewal schedule, tractor certificate\disc and receipt of direct debit". The Plaintiff did not tell the broker about the storm damage to the cattle sheds at the time of renewal. Shortly after renewal insurers and the broker were made aware of the Plaintiff's claim for storm damage.

The insurance claim was rejected on grounds of late notification. It appears that Zurich became aware of the true age of the older sheds after the claim was notified (this is not clear from the judgment) presumably in the report commissioned by the Plaintiff's loss assessors. As a result of the misrepresentation, Zurich withdrew storm cover retrospectively from the policy inception and refunded that part of the premium which related to the insured value of the older sheds. However, the fire and storm cover for the 2007 sheds continued to apply. Aviva, the previous insurer also declined to quote for the renewal.

The claim

The Plaintiff issued proceedings against both the broker and the insurer in the High Court claiming:

- An indemnity for the damage claim to the cattle sheds;
- A declaration that the Plaintiff at no time ever made any misrepresentation with regard to the inception of his policy;
- An order that the Plaintiff be reinstated with insurance at market rate and will be insured by [Zurich] as this error which has occurred was not of his making, and
- Damages for breach of contract and/or breach of duty, misrepresentation, including aggravated and/or exemplary damages.

The height of the Plaintiff's claim against the broker was that the broker ought to have spent more time to ensure that the Plaintiff understood that the material description of the cattle sheds was vital at proposal stage. This was based on the Plaintiff establishing that the broker ought to have notified Zurich that part of the buildings had been constructed in 1950 (and the 19th century) and that the broker compounded the errors made from the completion of a proposal sent to Aviva in April 2013 by referring to 2002 as being the year of build.

The Plaintiff denied informing the broker of the dates of 2002 or 2007 in respect of the age of the sheds when completing proposal forms in 2013 and 2015. However, the court found that the Plaintiff could not escape the fact that this information was included in the proposal forms sent to him by the broker when he first sought cover in 2013 and again in 2015. In response, the Plaintiff contended that he would not "have read every document" prior to signing the proposal form.

Decision

The Court found that, on the balance of probabilities, the broker did not unilaterally and without input from the Plaintiff enter the incorrect years for the construction of the cattle sheds. The Court took into account that no expert evidence was put forward that another broker would have assisted the Plaintiff other than how the defendant broker helped the Plaintiff. The Court also found that the Plaintiff must take responsibility for confirming information before and after inception.

The Court found no evidence of loss was given by the Plaintiff arising from the allegation against the broker in circumstances where Zurich had not repudiated the policy but had returned the premium related to storm cover on the older cattle sheds.

The Court also found that the facts relating to the material misrepresentation of the cattle sheds and subsequent late notification of the claim did not permit the court to review a refusal to renew by a private insurance company given that "Zurich makes its own decisions based on the information which it seeks and gathers".

The Court dismissed the claims against the broker and insurer.

Conclusion

This is a helpful decision given the relatively few Irish cases involving insurance brokers and their duties. However, it is nonetheless advisable that an insurance broker clearly highlights the duty of full disclosure to the insured client and its significance at inception and renewal and to ensure to document this as has been emphasised in number of judgments¹ in the UK in 2018 and 2019.

It will be interesting to see how the findings of this judgment will sit alongside the Consumer Insurance Contracts Act 2019 when it comes into force, given that the consumer client will not be

¹ Such as in *Avondale Exhibitions Limited v Arthur J Gallagher Insurance Brokers Limited* [2018] EWHC 1311 (QB) and *Dalamd Ltd v Butterworth Spengler Commercial Limited* [2019] PNLR 6

under any duty to volunteer information over and above that required by the specific questions asked by the insurer in its pre-contractual forms at inception or renewal. The Act will put an onus onto the insurer and broker to ask the right questions and proposal forms will have to be tailored to ask the right questions in order to elicit necessary information in order to fully assess the risk.

The Covid-19 pandemic more than ever brings insurance brokers' duties and obligations into strong focus. Insurance brokers are no doubt inundated with queries from clients and assisting them in dealing with a wide range of insurance and risk related issues. With a continuing hardening market, wordings will be tighter and broader exclusions will become more common, and as such brokers will need to be alive to the importance of conducting detailed risk assessments with clients to identify possible exposures, and provide bespoke advice as to the scope of cover available to address those risks. Good record keeping is a necessity in these periods of remote working, and in cases where there are little or no notes on the file, the broker, like any professional, will have greater difficulty in defending the client's version of the advice that was (or was not) given if a claim is brought. Insurance brokers will need to continue to be very mindful of the potential risks in advising their clients both now and in the future.



Further Information

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