

Insurers Likely to Change Tack Following Court Reverse

The doctrine of 'utmost good faith' (whereby full and truthful disclosure is required) is applicable in certain types of contract, most particularly contracts for insurance and partnership agreements. The practical effect is that in the event that a party to the contract misleads another party to it, the contract is voidable by the offended party.

In a recent case, an insurer paid out more than £72,000 on a claim, part of which was later found to be fraudulent as the insured had created a misleading invoice in support of alleged repair costs. The fraud consisted of the inclusion of a false claim for VAT in excess of £4,000, which had been included in a claim for building repairs of £42,000. This part of the claim was settled by a separate agreement from the remainder of the claim. The insurer sought to reclaim the whole of its payment on the basis that the policyholder did not show utmost good faith.

The court held that the claim was fraudulent to the extent that the misleading document had been presented and therefore the insurer was entitled to recover the £42,000 claimed. However, there was nothing misleading with regard to the rest of the claim. It was the court's ruling that the remainder of the claim could not be recovered by the insurer.

In practical terms, the case confirms that where any aspect of a claim is fraudulent, the whole claim will be void. However, where parts of a claim are subject to genuinely separate agreements, as in this case, then even if one claim is misleading or fraudulent, it may still be possible to retain the proceeds of the legitimate claim. It would be remarkable if insurers did not amend their negotiating strategies and/or policy wording to take account of the enhanced risk they will see this case as creating for them.

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