

BRITISH INSURANCE LAW ASSOCIATION

MOCK TRIAL

30TH JUNE 2005

Goodheart Limited (in receivership) v. Honour Bright Insurance Plc.

1. The Goodheart family's company has manufactured office furniture at its Leeds premises for 30 years.
2. Throughout that time it has been insured by the Honour Bright against risks including property damage by fire (cover £10 million). The policy contains a simple insuring clause imposing an obligation to indemnify in respect of loss and damage arising from specified causes.
3. In the early hours of 1st January 2000 a fire broke out at the premises. It had been negligently caused by Goodheart Limited's employees celebrating the New Year. The Goodheart premises suffered substantial damage and all production ceased.
4. Mr. Goodheart Senior recalls that in an unguarded moment Honour Bright's loss adjuster, Mr. Gladhand, observed that:

"I have been told to take up the drains here. Non-disclosure, breach of condition, under-insurance, the lot. My claims manager says you guys were barely able to pay the premium this year. He's in no rush to pay the claim if there's a chance you will just vanish anyway. For a serious discount I might get you something as a quick payment. Then you could sell the site and retire."

This version of the discussion is disputed. Mr Gladhand and insurers will say that the period prior to payment was occupied by the proper investigation of genuine doubts about the bona fides of the claim and various coverage issues.

5. In any event there was no quick deal. Insurers reserved all their rights and stated that investigations were continuing. Goodheart Limited went into receivership two years after the fire.

6. The Receiver eventually settled all of Goodheart Limited's claims against Honour Bright under the insurance 3 ½ years after the fire. Insurers paid the amounts originally claimed by Goodheart Limited less an allowance for Goodheart's irrecoverable costs of proceeding to trial. The payments included an amount in respect of interest. Honour Bright settled immediately after being served with proceedings by Goodheart Limited.
7. The Receiver did not settle Goodheart Limited's claim for punitive and/or compensatory damages in respect of Honour Bright's "wrongful failure promptly to pay to Goodheart Limited sums for which it was properly liable under the policy" and "failure promptly to investigate and disclose their decision on coverage". Compensatory damages are claimed in the sum of £25 million being the reduction in value of the business of Goodheart Limited consequent upon the receivership and its cessation of trading.
8. At first instance Honour Bright obtained summary judgment pursuant to part 24 on the following grounds:
 - (1) In English law there could be no claim for damages flowing from a failure to pay damages and Honour Bright's only obligation following the fire was an obligation to pay damages.
 - (2) There was no room for the implication of a term that Honour Bright should either pay claims promptly or resolve the coverage issue promptly.
 - (3) Even if there was such a term it was always open to Goodheart Limited to act independently of insurers, for example in rebuilding their premises and resuming production. If they could not do so then the loss was truly the result of their impecuniosity and thus irrecoverable.
 - (4) Even if there could be said to be breach of the duty of the post-contractual duty of good faith the only remedy was avoidance and Goodheart Limited had opted not to avoid.
9. Goodheart Limited now appeal all elements of that summary judgment.
10. Directions have been made for the hearing of the appeal as set out below.

Directions

1. The appeal be listed for hearing by a Court of Appeal of 3 judges pursuant to the Supreme Court Jurisdiction (Prevention of Appeals) Act 2006 (as amended) at 5 p.m. on 30th June 2005 with a time estimate of 90 mins.
2. Pursuant to s. 101(3)(6) of the said Act, the Court of Appeal shall in determining the said preliminary issue have jurisdiction to review its own previous decisions and previous decisions of the House of Lords.
3. Permission to both parties to adduce evidence as to the relevant insurance law and practice in foreign jurisdictions, and/or as to the relevant interests of insurers and consumers in England and Wales and/or other jurisdictions. Witnesses to be limited to 2 for each side, the substance of whose evidence (not to exceed 3 sheets of A4 paper) shall have been served on the Court and the other side by 4 p.m. on 23rd June 2005. Evidence in chief and cross-examination to be permitted, not to exceed 10 minutes per witness in all.
4. Skeleton opening arguments (not to exceed 4 sheets of A4 paper) to be exchanged and sent to the Court by 4 p.m. on 27th June 2005. Closing speeches to be limited to 10 minutes or as the Court may direct.
5. Liberty to apply by e-mail to Jacquetta.Castle@charlesrussell.co.uk.
6. Costs in the appeal.