Lang Michener LLP

Law Note - Insurance: Misrepresentation of Risk

June 30, 2008

In the Supreme Court of Canada, adopting the conclusions of the Quebec Court of Appeal that, since the insured had committed a fraud against Lloyds, there was no chance of success, leave to appeal was dismissed. The Applicant, Shama Textiles Inc., owned by two brothers, was issued an insurance policy for its property. A fire broke out and water damage was caused to machinery and spare parts. Notice of loss was given and adjustors appointed. After an investigation, Lloyds refused to pay on the grounds that Shama had misrepresented the risk (thus nullifying the policy), and that it had grossly exaggerated its claim. Shama then commenced a law suit claiming $3,090,032 representing its direct physical loss, $1,150,000 for loss of goodwill, business interruption and loss of profits, and $3,000,000 representing punitive and exemplary damages.

The trial judge found that the testimony of the two brothers was not credible and that they had exaggerated the claim. He decided that Shama was not entitled to payment, as the claim had been made with the intention of defrauding Lloyds, which nullified the policy from the start. He also found that in any event, Lloyds had discharged its burden of proving that Shama had misrepresented the risk when applying for insurance. Finally, he dismissed the claim for punitive and exemplary damages for lack of credible evidence. In the Supreme Court of Canada: *Shama Textiles Inc. v. Certain Underwriters at Lloyds.*

This law note was prepared by Eugene Meehan, Q.C.

Law Notes: This section offers a brief note or comment on an area or point of law that may be of interest.

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