

SLS Reported Decision – The Court of Appeal gives guidance on ‘disclosable facts’ under a Claims Made insurance policy

Laker Vent Engineering Ltd v Templeton Insurance Ltd [2009] EWCA Civ 62. Templeton Insurance Ltd (“Templeton”) appealed against a decision that it was bound to indemnify Laker Vent Engineering Ltd (“LVE”) under a legal expenses insurance policy. LVE submitted a claim to Templeton in which it sought an indemnity for legal expenses in connection with a dispute with GWUG. Templeton rejected the claim on the basis that LVE had failed (1) in its duty of good faith to disclose a material fact or circumstances; and (2) to comply with the claims notification provision. Templeton had identified five material facts which it said were known (or ought to be known) to LVE before or at the time of renewing its policy. The alleged disclosable and material facts related to an escalating dispute between LVE and GWUG concerning progress of the contract works. Templeton alleged that such facts were ‘material’ to a prudent underwriter and it was induced by their non-disclosure to renew the policy. Templeton argued that LVE failed to give notice in writing immediately it was aware of any cause, event or circumstance likely to give rise to a Construction Claim as required by the policy. The trial judge rejected the notion that any difference or dispute between the contractor and employer in a building contract that might possibly give rise to a formal process of dispute resolution must be disclosed as a ‘material fact’. The judge held that the existence of disputes between a contractor and employer would only be material to be disclosed if there were “*features of the relationship which, viewed objectively, show a real risk of escalation to the point of formal dispute resolution procedures beyond the risk ordinarily inherent in any complex construction contract*”. The judge found that the state of the relationship between LVE and GWUG “*had not reached the stage where it was properly to be regarded as a material circumstance required to be disclosed to Templeton*”. The judge held that as an insurer of legal expenses risk, Templeton would be presumed to know that disputes about the timing and quality of work and payment were endemic between contractor and employer in the construction industry. The Court of Appeal dismissed Templeton’s appeal and affirmed the trial judge’s conclusions. The Court held that the trial judge’s finding that the dispute had not progressed to the extent that it ought to have been disclosed as a material fact was not obviously wrong and there was no evidence that Templeton’s underwriter had been induced to agree to renewal because he was not told the facts of LVE’s and GWUG’s relationship.

Julian Ives of SLS Solicitors successfully acted for Laker Vent Engineering Ltd.