

Parties are in hot water over hot works dispute: proceedings issued in Britannia Hotels (No.2) v Aviva Insurance Limited

09 May 2023

The Claimant hotelier, Britannia, took out a Corporate and Speciality Risks Property Damage and Business Interruption insurance policy with Aviva via its broker JLT.

One of the Claimant's hotels in Aberdeen suffered fire damage on 9 June 2016 and the Claimant claimed under its Policy for reinstatement works, reduction in turnover and increased costs of working. After application of its £1.25m deductible, the issued claim exceeds £6 million.

The fire was caused by a contractor's repair works, which included the use of a blowtorch to weld layers of waterproofing to repair a roof leak. The fire affected all three floors and required closure, at least in part, of the business for approximately 2 years as reinstatement works were completed.

The Policy purported to contain the following Hot Works Condition:

"If in relation to any claim for Damage to Property Insured by fire and/or explosion, You have failed to fulfil the following condition, You will lose Your right to indemnity or payment for that claim[.] Wherever there is any hot work undertaken at The Premises involving... (3)...blow torch...: All of the following Minimum Requirements must be complied with..."

There were several conditions attached including the issuing of a permit for hot works and the provision of a fire watch of the area above and below the location of the hot works for 30 minutes after the works ceased.

Britannia denied having knowledge that the roofing repair works included hot works. Aviva challenged that position and declined the claim owing to Britannia's failure to comply with the Hot Works Condition.

Britannia alleged it wasn't provided with a copy of its Policy until *after* the fire so the Hot Works Condition was not incorporated, although it concedes it was aware that such a condition may be applied. Further, the Policy contains the following Non-invalidating Clause:

"The insurance by this Section will not be invalidated by any act, omission or alteration, either unknown to You or beyond Your control, which increases the risk of Damage..."

Aviva denies, on the evidence, that either of these matters can be relied on in support of an indemnity under the Policy.

In addition, the period of insurance was 1 April 2016 to 28 February 2017, which transcended the Insurance Act 2015 coming into force in August 2016. Britannia relied on alleged pre-contractual statements made by Aviva to its broker that it would apply the Insurance Act 2015 from early 2016 and argues this is an implied term of the Policy. Aviva denies such statements.

Issues in dispute include whether:

1. a Hot Works Condition was incorporated into the policy incepted in April 2016 and whether it was sufficiently brought to the Claimant's attention;
2. there was an implied term that Aviva promised it would adjust claims in accordance with the Insurance Act 2015;
3. there was a breach of the Hot Works Condition; and

4. non-compliance increased the risk of the damage and loss.

The claim was issued in June 2022 and pleadings have recently concluded with the filing of the Britannia's response to Aviva's request for further information. As at the date of publication, proceedings were ongoing.

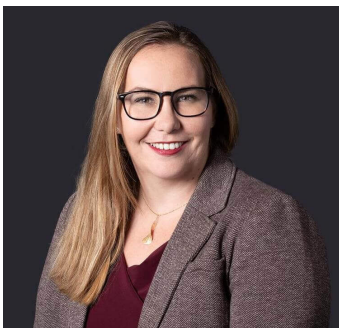
The dispute raises questions as to the terms of the insurance contract between the parties including the applicability of the Insurance Act 2015; if applicable its impact (including section 11, a provision addressing insurance terms not relevant to the actual loss) and whether the Hot Works condition was incorporated.

We will keep readers informed as the case progresses.

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