

Overview

Industry

Insurance, Legal,
Policy Coverage

Location

England and Wales

Challenge

Application and
interpretation of policy
warranties and conditions
precedent

Solution

Consideration of relevant
terms under section 3 of
the Insurance Act 2015

Results

Insurer entitled to decline
cover when breach
of warranty/condition
precedent has taken
place

Implications of the Court of Appeal decision in Lonham Group Ltd v Scotbeef Ltd on claims involving policy coverage issues such as warranties

April 2025

Applicable to loss adjusting claims involving:

- Commercial contracts
- Policy coverage issues
- Complexities surrounding warranties and representations
- Application of the Insurance Act 2015

Claim background

Scotbeef Ltd (**“Scotbeef”**) sought compensation from D&S Storage Ltd (**“D&S”**) for damage to meat which had spoiled while it was stored at D&S’s warehouse facility.

D&S defended the claim on the basis that the Food Storage & Distribution Federation Terms & Conditions (**“the FSDF Terms”**) had been incorporated into its trading relationship with Scotbeef, including a time bar and limitation of liability clause.

High Court decision: first preliminary issue

The FSDF Terms had not been incorporated.

What happened next?

D&S went into liquidation. Second issue preliminary trial took place to determine if D&S had a right of indemnity against Lonham that could be enforced by Scotbeef.

How would the loss adjusting process have been impacted/involved at the early stage of such a claim?

Key things:

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- Collation of insurance policy documents, including pre-inception disclosure
 - Investigating and documenting contract formation process between the parties

The policy position

Lonham Group Ltd (“Lonham”) insured D&S’s warehouse keepers’ legal liabilities pursuant to a policy of insurance (“the Policy”).

The Policy contained a ‘Duty of Assured Clause’ (“DOAC”), making the following sub clauses “conditions precedent to liability”:

- Trading terms would be FSDF terms
- D&S would trade under Lonham approved terms
- D&S shall take reasonable and practicable steps to ensure their trading conditions were incorporated in all contracts entered into

If a claim arose, where D&S failed to incorporate the relevant terms, their right to indemnification would not be prejudiced as long as it had taken all reasonable and practicable steps to achieve incorporation.

High Court decision: second preliminary issue

Lonham could not rely on DOAC and sub clauses had to be read together. In particular:

- Sub clause one was a pre-contract declaration and could not stand as a warranty or condition precedent under the Insurance Act 2015 (“the 2015 Act”)
- Sub clause two put the Insured in a worse position in line with s.16 of the 2015 Act
- There had been a misrepresentation by D&S in the context of the s.3 duty of fair presentation of risk

To avoid the Policy, Lonham would have had to show that it would not have entered the Policy on any terms which had not been established.

Loss adjusting implications

- Understand the difference between representations and warranties
- Check material facts disclosed during underwriting process
- Keep clear records relating to compliance with policy conditions
- Be clear when communicating to Insured re policy terms and effects
- Consult legal experts when complex policy issues arise

Court of Appeal decision

The issue at the heart of the appeal was proper characterisation of sub-clauses two and three, and whether they were warranties.

The Court of Appeal held:

- Sub clause one was a pre-contract representation
- But sub clauses two and three were plainly future warranties regulating the Insured's conduct during the Policy term
- They were also conditions precedent

Therefore sub clauses two and three fell to be considered under Part 3 of the 2015 Act.

S.10(2) of the 2015 Act states that an Insurer has no liability for any loss after a warranty has been breached, so Lonham was entitled to rely upon it to avoid liability under the Policy.

Finally, neither sub clauses two nor three put the Insured in a worse position than it would be under the 2015 Act.



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