

ENGLISH SUPREME COURT REJECTS INSURERS' RELIANCE ON "DELIBERATE ACTS" POLICY EXCLUSION

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INTRODUCTION

The English Supreme Court recently dismissed the appeal of an insurance company attempting to rely on a policy exclusion for “deliberate acts.” Although the court in *Burnett or Grant v International Insurance Company of Hanover Ltd*¹ agreed with the insurers on the interpretation of important aspects of the exclusion, it decided that recklessness was not covered and found that the exclusion did not apply on the facts of the case.

BACKGROUND

On 9 August 2013, Craig Grant was accidentally killed by Jonas Marcus—a door steward employed by Prospect Security Ltd (Prospect) to work at the Tonik Bar in Aberdeen. Mr. Grant was ejected from the bar, and an altercation ensued outside, during which Mr. Marcus applied a neck hold to Mr. Grant for three minutes, causing him to suffocate to death. Mr. Marcus was tried for murder and acquitted—the trial judge accepting that his actions were “badly executed, not badly motivated.”

THE POLICY

At the time, Prospect had purchased public liability insurance (the Policy) from the Insurance Company of Hanover Ltd (Hanover). The Policy was governed by English law, and it insured against “...all sums which the INSURED shall become legally liable to pay as compensatory damages and claimant’s costs and expenses arising out of accidental INJURY [defined as bodily injury death illness disease or shock causing bodily injury] to any person....”

However, the Policy excluded “[l]iability arising out of deliberate acts wilful default or neglect by the INSURED...or any EMPLOYEE of the INSURED” (the Exclusion).

THE ISSUE

Prospect went into liquidation, with the result that Mrs. Grant (Mr. Grant’s widow) claimed that the right to be indemnified under the Policy in respect of damages resulting from accidental death was transferred to and vested in her under the Third Party (Rights Against Insurers) Act 2010. This was accepted by the court at first instance, and it was not appealed by Hanover.

The central issue on appeal was whether Hanover was entitled to rely on the Exclusion on the basis that Mr. Marcius' actions described above constituted a "deliberate act."

Hanover contended that "deliberate acts" meant acts that are intended to cause injury or acts that are carried out recklessly as to whether they will cause injury. Mrs. Grant's case was that it meant acts that are intended to cause the specific injury which resulted, in this case death, or at least serious injury, but on any view it did not include reckless acts.

INTERPRETATION OF THE EXCLUSION

Deliberate Acts

The English Supreme Court noted that the Policy did not draw a distinction between different kinds of injury or between serious and less serious injuries. The insured peril was liability arising out of accidental "injury," which was defined to include all kinds of "bodily injury" without differentiation.

The court also concluded that an interpretation that focused on the specific injury intended could lead to arbitrary results that were unlikely to reflect the parties' intentions. For example, where a doorman punches a man in the face intending to break his nose, and he is successful, the Exclusion would apply. However, if instead the man fell over but suffered a more serious injury, the Exclusion would be inapplicable on the basis this was not the injury intended.

Furthermore, there were significant difficulties in identifying and establishing the requisite intention for these purposes, as in many cases there would not be an intention to cause a specific injury.

Accordingly, the court accepted Hanover's argument that, in the context of the present case, "deliberate acts" meant acts that are intended to cause injury (not the specific injury that resulted).

Recklessness

In quite a convoluted series of submissions, Hanover had attempted to argue that the Exclusion would also apply if Mr. Grant's actions met the standard of "recklessness." However, the court rejected this for a number of reasons, including that:

1. There were no cases in which the word "deliberate" had been held to include "recklessness."
2. Prospect was in the business of "Manned Guarding and Door Security," and there is a clear risk that door stewards will use a degree of force in carrying out their duties. Accordingly, an exclusion for "reckless acts" would lead to a very wide and commercially unlikely exclusion.

APPLICATION TO THE FACTS

Despite finding for Hanover that "deliberate acts" meant acts intended to cause injury, as opposed to the specific injury in question, the court held that, on the facts, the Exclusion did not apply. There was no evidence that Mr. Marcius had intended to injure Mr. Grant. Even if "deliberate acts" included recklessness, which the court had concluded was not the case, there was no finding of recklessness on the facts.

CONCLUSION

The English Supreme Court decision confirms the principles of interpretation applicable to insurance policies and exclusion clauses set out by Lord Hodge in *Wood v Capita Insurance Services Ltd*². Policies are to be interpreted objectively by asking what a reasonable person, with all the background knowledge that would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean. This involves a consideration of the words used in their documentary, factual, and commercial context. This approach applies equally to exclusion clauses.

However, the judgment is especially helpful for its discussion of the differences in meaning between “deliberate,” “willful,” and “reckless” acts. Such acts are commonly excluded in insurance policies but not always in particularly clear terms. This judgment confirms that a “deliberate” act is one that “connotes consciously performing an act intending its consequences” and that “[i]t involves a different state of mind to recklessness.” While the judgment relates specifically to public liability insurance, the clarity it provides may prove beneficial to policyholders in other insurance contexts.

FOOTNOTES

¹ [2021] UKSC 12

² [2017] UKSC 24; [2017] AC 1173, paras. 10-13.

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