



Interpretation of insurance policies

THE IMPORTANCE OF CLARITY

We are presently seeing a growing number of court actions being brought by disgruntled insureds against their insurers due to unhappiness with how their pandemic-related claims were assessed. Against the backdrop of disputes over whether insurers will pay claims arising from COVID-19 or not, a recent court judgment highlights the importance of defining events excluded from insurance policies.

Insurer must give certainty

The decision of the Full Bench of the Gauteng Local Division in the matter of *Anabella Resources CC v Genric Insurance Company Ltd* is yet another reminder of the importance of clarity in insurance policies. In that case, the Court reminds us of the trite position that:

“The obligation lies with the insurer, the author of the contract, to give certainty to the risks it wishes to exclude from the cover ... absent such certainty, the relevant provision or provisions will be construed in favour of the insured”.

The insured had lodged a claim for indemnity under a clause that provided indemnity for hijacking, theft, and armed robbery of insured property. The claim followed the theft of money from the insured after one of its employees was kidnapped, kept at an unknown location, and forced to instruct another employee, who was at the insured's premises and had access to money stored in the safe, to hand it over to an individual working with the kidnapers.

The employee who received the instruction obeyed it, and the money was stolen after it was handed over. There was no violence or threat to the employee who carried out the instructions. The insurer rejected the insured's claim, as a result of which the insured instituted action in the High Court.

Armed robbery not defined

The relevant policy defined theft and hijacking as the “seizure of insured property whilst stored and secured in the premises, where such seizure is accompanied by unlawful removal, or accomplished

by means of violence or threat of violence on or against the person or persons who are employed by the insured / or the insured whom, at the time of such seizure, are in actual lawful control of such insured property”. Armed robbery was not defined.

On appeal, the Court a quo having found for the insurer, the issue was whether the incident described above constituted an indemnifiable event under the policy. The Appeal Court afforded armed robbery its common law meaning, given that it had not been defined. As regards theft and hijacking, the Court found that the requirement of actual lawful control of the insured property includes “effective control” as opposed to real or concrete control of access to the safe in which the money was stored.

The Court concluded that the kidnapped employee had retained effective control of the money, as he was able to give an instruction for its release, despite his absence from the premises. The Court ultimately found that an armed robbery and/or theft or hijacking as defined had taken place and ordered the insurer to indemnify the insured.

Ambit of cover

In the context of the ongoing disputes and litigation pertaining to whether coverage is available under certain insurance policies for damages arising from the ongoing pandemic, the importance of clearly describing the ambit of cover that is available and what is not covered under an insurance policy cannot be overstated. If words are intended to bear special meanings for the purposes of the policy, they should be clearly defined.

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