

WHAT IS A MATERIAL CHANGE FOR INSURANCE PURPOSES?

An insurance contract being a contract of “the utmost good faith” the insured must disclose to the insurer all “material” facts (and not misrepresent material facts). In deciding what is material a statutory definition says “every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk”.

A recent case Ansari v New India shows how such provisions can apply in practice. A landlord of a tenanted factory had replied to the question “are the premises protected by an automatic sprinkler system?” with the answer “yes”. However, the tenant isolated the sprinkler system (cutting off the water supply which therefore deactivated the sprinklers, not paying the water bills with the result that the water was disconnected; and obstructing the sprinkler control handle so that it could not be turned on).

A fire broke out and the insurance company rejected the claim on the basis that there had been a “material” change affecting the policy which had not been disclosed to them.

The Court of Appeal agreed with the insurer. If the sprinkler had been temporarily turned off for maintenance or repair (as opposed to being permanently inoperative) then that would be different, but the key fact was that the court considered an automatic sprinkler system to be an integral part of the building intended to function permanently. A previous court decision had said that where an insurance proposal stated that premises would be covered by an intruder alarm this did not mean that the alarm system had to remain operational or always be turned on when the premises were unattended. However the Court of Appeal in the Ansari case said that an alarm system would not be regarded as an integral part of a building but a sprinkler system would.

The landlord’s problems were compounded since he was not able to rely on the standard “non-invalidation” clause which protects the insured from the acts or omissions of other people, provided that the insured notifies the insurance company as soon as he becomes aware of the increased risks. In this case, the evidence showed that the landlord was fully aware that his tenant had permanently disconnected the sprinkler system.

Both landlord and tenant should bear in mind the importance of lease provisions requiring the tenant to disclose matters affecting the insurance. It would be prudent for both parties to check the proposal form completed by the landlord so that the tenant can then notify the landlord of any relevant changes.

If you wish to discuss any of the issues raised in this article, or for information on any other commercial property matters, please contact Jenny Harbord on 01872 226994, or by email: jenny@murrellashworth.co.uk.



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